



## Tax authorities step up efforts to recover cum-ex losses

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## Transcend launches Eligibility Central to accelerate collateral strategies

Transcend has announced the launch of a unifying platform for collateral eligibility information and analytics, Eligibility Central.

The platform aims to empower clients to accelerate critical collateral functionality, including optimisation and mobilisation.

The end-to-end functions of the platform involve a single, golden source of 'harmonised' eligibility information, including an out-of-the-box connectivity to triparty agents, central counterparty clearing and central banks.

Clients will have the ability to 'slice and dice' granular eligibility criteria across

clients' portfolios of securities and compare against multiple destinations. Furthermore, clients will be able to send eligibility information to other systems and processes to run an automated collateral management workflow.

Commenting on the announcement, BJ Marcoullier, head of business development at Transcend, explains: "As the capital markets community increases focus on enterprise collateral management, optimisation, and mobilisation strategies, the need for harmonisation of collateral eligibility schedules is clear.

"However, because the collateral

ecosystem is so large and bifurcated, we regularly hear it is taking industry players far too long to create an eligibility hub internally. Eligibility Central helps firms streamline complex collateral strategies and accelerate time-to-value timelines."

Todd Hodgin, Transcend's global head of product development, adds: "Connecting the collateral ecosystem across internal systems and external providers is a critical need in the marketplace.

"Eligibility Central helps clients realise their financial performance goals by delivering a solution that supports better collateral utilisation decisions."

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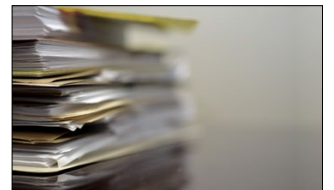
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## European Commission publishes proposal for CSDR review

The European Commission (EC) has published a proposal for the review of the Central Securities Depositories Regulation (CSDR).

As part of the Capital Markets Union Action Plan — a project launched to establish a true single market for capital across EU member states — the review aims to make securities settlements in the EU safer and more efficient.

Additionally, the proposal aims to facilitate

CSDs' ability to offer cross-border services and improve their cross-border supervision.

In the review, amendments are required under the settlement discipline regime of CSDR, which states that settlement fails are not subject to the penalty mechanism in situations where “a settlement fail is caused by factors not attributable to the participants to the transaction or where a transaction does not involve two trading parties”.

Furthermore, it specifies that cash penalties should be calculated either until the end of the buy-in process, if the Commission has adopted the relevant implementing act, or until the actual settlement date, whichever is earlier.

The proposal continues to amend matters relating to third-party CSDs, the passporting regime and banking-type ancillary services.

The International Securities Lending Association (ISLA) has announced that it will be reviewing the proposal within the Market Practice Steering Group and Regulatory Steering Group.


To accompany the package, the EC has also issued a chapeau communication and Q&As, as well as an impact assessment and a summary of the impact assessment.


### South Street Securities secures OCC membership

South Street Securities has become an active member of the Options Clearing Corporation (OCC), an equity derivatives clearing organisation.

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As a systemically important financial market utility (SIFMU), OCC operates under the jurisdiction of the US Commodity Futures Trading Commission (CFTC), the US Securities and Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System.

Anthony Venditti, managing director and head of strategic initiatives and sales, comments: "It has been exciting to witness the success of South Street's expansion into securities lending. Becoming an OCC member is a significant step for us as we build out our business to better execute and deliver for our clients."

James Tabacchi, president and CEO of South Street, adds: "The OCC is an important addition to South Street's growing roster of financial industry memberships."

These memberships include the Depository Trust and Clearing Corporation, the Securities Industry and Financial Markets Association, the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation, among others.

"Integrating OCC with our technology platform at South Street will give us a competitive edge in the securities lending market and allow us to connect with more lenders and borrowers," says Raghuram Veeramallu, director of technology product development.

### **LMAX Group and SIX to launch crypto futures**

LMAX Group will link up with SIX to offer crypto-asset futures, which will be cash settled and centrally cleared.

This launch, from the London-based FX and crypto currency exchange operator and the Zurich-headquartered financial infrastructure group, is scheduled for Q3 2022, subject to regulatory approval.

This will initially include centrally-cleared Bitcoin and Ethereum futures and will trade

23 hours, five days per week on release, extending to 24 hours and 7 days with the full product launch.

The two companies predict that this crypto futures launch will attract immediate interest from LMAX Group customers as institutional investors look to raise their digital asset



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J.P. Morgan was named Collateral manager of the year at the AsiaRisk Awards 2020, in September last year.

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allocations and as demand rises for a resilient trading infrastructure.

As digital assets and traditional capital markets converge, LMAX predicts that 24/7 trading will become an important element in transitioning to complete open market access, supporting the operation of more efficient capital markets.

LMAX Group CEO David Mercer says:

“As institutional adoption of crypto trading continues to increase, we will complete our offering by adding crypto futures to our portfolio through this partnership. Our global institutional base, including 35 top tier banks, will benefit from the strength of our proven and testing exchange trading

technology, combined with the secure clearing connectivity of SIX.”

SIX’s head of securities services Javier Hernani says: “This is a major milestone for SIX from several perspectives. We are making substantial progress according to our digital asset clearing strategy and are expanding our portfolio of cleared asset classes. At the same time, we have the opportunity to bring our Swiss and Spanish infrastructure strengths together by having a diverse product team with experts from both sides.”

Mercer concludes: “The market in crypto futures is three times bigger than spot and by offering access to deep institutional

liquidity, we are providing a significant market entry opportunity as crypto and blockchain evolves. This pioneering situation will close the gap, enabling round the clock trading of crypto futures seven days per week, meeting the needs of a rapidly growing number of institutional participants.”

### Denmark finalises extradition treaty with UAE

Denmark’s Ministry of Justice has confirmed that it has signed an extradition treaty with the United Arab Emirates.

Further to the article posted on SFT on Tuesday 15 March, Denmark’s Justice



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Minister Nick Hækkerup has signed the treaty with his Emirati counterparties.

The Danish government believes this will, among other benefits, allow it to apply for the extradition of persons accused of tax fraud through cum-ex schemes.

The treaty was signed in the Abu Dhabi Ministry of Justice with Emirati Minister of Justice Abdullah Sultan Saif bin Awad Al Nuaimi.

Nick Nick Hækkerup, the Danish Minister of Justice says: "We have signed an agreement which hopefully means that we can go a step further in two specific criminal

cases, each of which in their own way has had far-reaching consequences.

"With the agreement, we signal to suspected perpetrators that it is useless to try to hide under warmer skies to avoid being prosecuted and held accountable for their actions. I hope that the agreement will contribute to us getting the suspected perpetrators to Denmark."

### FSB publishes research on CCP recovery and resolution

The Financial Stability Board (FSB) has published a report, in collaboration with the Committee on Payments and Markets Infrastructures (CPMI) and the International

Organization of Securities Commissions (IOSCO), which confirms the need for further work on central counterparty resources for recovery and resolution.

The project has grown from a decision by the three organisations in November 2020 to conduct collaborative research on whether CCPs have adequate financial resources and tools for recovery and resolution.

This report summarises the results of data gathering and analysis conducted in 2021.

One component of this research focused on a sample group of CCPs that are systematically important in more than one jurisdiction,

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evaluating the capacity of these CCPs to absorb losses under a range of default loss and non-default loss scenarios.

Under the default loss scenarios, all 15 CCPs in the sample were found to be able to absorb all losses. Approximately half of these CCPs needed to use recovery tools, but none required resolution.

For non-default loss scenarios, the report found that, in the case of a cyber threat scenario, the resolution authorities would have needed to trigger resolution for the majority of CCPs in the sample to generate sufficient resources to cover the loss.

In another non-default situation, one CCP was

found to have inadequate liquid resources and liquidity coverage to withstand the shock.

A second part of the research evaluated the performance and financial stability implications of tools covered by the existing CPMI-IOSCO and FSB guidance, defined in the CPMI-IOSCO Guidance on Recovery of Financial Market Infrastructures and FSB Guidance on CCP Resolution.

A quantitative evaluation of these tools found that use of cash calls and variation margin gains haircutting had limited impact on the liquidity and solvency of clearing members.

This was supplemented by qualitative

analysis of the impact of different recovery and resolution tools on the wider financial system, on performance risk, and on market and public confidence.

The FSB indicates that it plans to conduct cost-benefit analysis on a wider range of alternative financial tools for CCP resolution, which will begin in Q2 2022 and will be executed in association with CPMI-IOSCO.

Alongside this, it will continue to monitor whether resolution authorities have access to an adequate set of resolution tools and resources.

The FSB has invited public comment on these findings, which should be submitted by 29 April 2022.



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## EquiLend's securities lending ADV hits new high

EquiLend has reported a new trading high on its NGT platform, with average daily trading volumes during February rising to 121,424 trades, up 14 per cent YoY and up 2 per cent month-on-month from January.

The New York-based securities finance trading, post-trade and data services specialist indicates that 2.34 million trades, with a total notional value of US\$2.6 trillion, were executed on NGT during February 2022.

The company reports strong demand for both equities and fixed income lending, with trade counts for EMEA equities and corporates up 38 per cent YoY for fixed income and up 32 per cent YoY for equities loans.

Month-on-month, fixed income loan counts have increased 20 per cent and equity lending activity was up 3 per cent on January 2022.

Fixed income lending hit a new single day volume record of 33,084 trades on 7 February.

EquiLend has observed a measure of risk-reduction in recent weeks, with some transactions being unwound. However, rising market volatility has also fuelled a step up in short selling activity, thereby driving strong loan flow across its platform.

Reflecting on the sector-wise highlights, technology, retail and high-yield ETFs were lively sectors in the EquiLend Clearing Services Loan Market, EquiLend's securities lending CCP for US equities, ADRs and ETFs, as appetite for CCP-cleared lending activity continues to rise.

General collateral (GC) lending was subdued as traders waited on forthcoming monetary policy announcements from the US Federal Reserve.

## State Street integrates Pirum's CollateralConnect onto its collateral platform

State Street Collateral+, the US bank's collateral management platform, has gone live with Pirum CollateralConnect to support common clients with their collateral management and optimisation requirements.

The Boston-based financial services corporation indicates that this collaboration between the two companies capitalises on investments that it has made in its Collateral+ solution, including the recent expansion of this platform to embrace State Street's triparty service.

Among other benefits, these developments enable buy-side firms to optimise collateral mobilisation and allocation when meeting their initial and variation margin requirements.

Pirum's CollateralConnect service takes advantage of its widespread connectivity with State Street's collateral management solutions to deliver what it calls intelligent, STP-based processing. The aim is to deliver greater efficiency to intraday margining and to enhance collateral use and mobilisation.

This, the two companies note, will deliver improved connectivity, workflow and automation to State Street's triparty collateral service.

Reflecting on the collaboration, State Street's global head of collateral management Staffan Ahlner says: "As markets continue to evolve, firms will have more and more complex collateral management needs. We are delighted to announce this collaboration with Pirum, which will further elevate our collateral posting capabilities on behalf of our clients while enhancing our operational efficiency." ■

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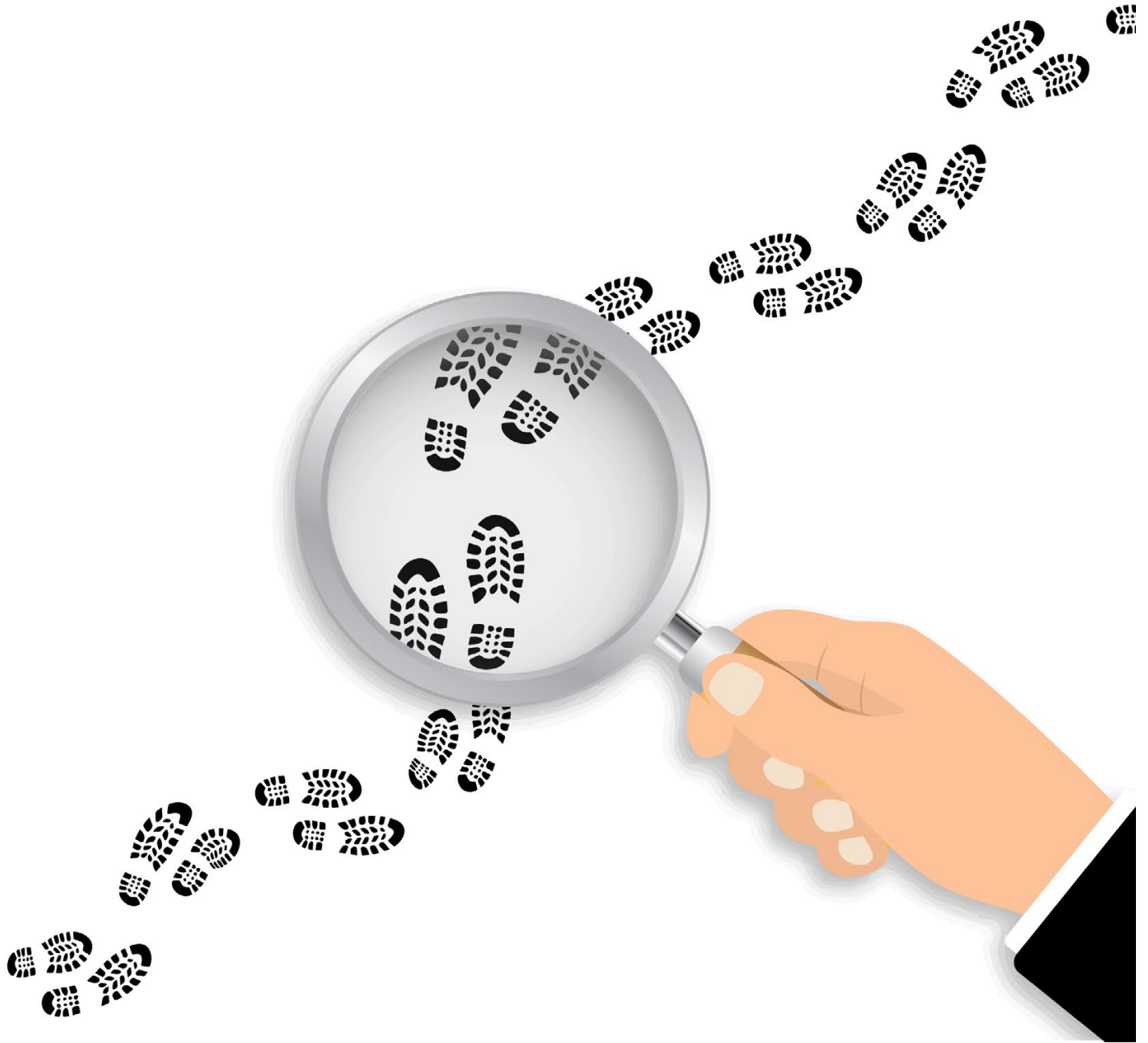
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# Tax authorities step up efforts to recover cum-ex losses

*Bob Currie provides a comparative update on the efforts of national authorities to eliminate dividend tax reclamation fraud and to seek recovery of funds lost through cum-ex and cum-cum trading*



In February, the Danish tax authority returned to the UK courts to reactivate its efforts to recover losses that it says it sustained through cum-ex fraud committed by founder of Solo Capital Partners Sanjay Shah and other parties.

The UK High Court in London previously rejected a claim by Skatteforvaltningen, the Danish tax authority ('Skat'), against Dubai-based trader Sanjay Shah on the grounds that the claim was inadmissible in a UK court (*Skatteforvaltningen v Solo Capital Partners LLP and ors*, 2021, EWHC, 974).

It did so citing a longstanding legal principle, referred to as Dacey Rule 3 (see below), that prevents courts from hearing cases brought by foreign authorities to enforce their own tax legislation.

However, Skat has succeeded in its appeal, with Sir Julian Flaux, chancellor of the High Court, finding that the claims of Skat against the alleged fraud defendants could proceed to the next phase of inquiry.

In its appeal, Skat maintained that its claims were not an attempt to recover unpaid tax but that, instead, it was a victim of fraud that was primarily orchestrated from, or conducted through, legal entities based in England.

In forming its argument that this was a case of fraud, Skat's legal team noted that the defendants did not hold shares in any of the Danish companies, they had not received dividends from those companies and, consequently, there could be no withholding tax (WHT) applied on dividend payments from those companies to the defendants. With this in mind, there was no WHT entitlement to refund by the tax authority to these persons.

In upholding Skat's appeal, Sir Julian Flaux judged that the claim by Skat against the defendants does not constitute a claim for unpaid taxes or a claim to recover tax. Rather, it is a claim "to recover monies which had been abstracted from Skat's general funds by fraud".

"The alleged fraud defendant's submission that the claim to the refund is still a claim to tax is simply wrong as a matter of analysis and the judge fell into error in accepting that submission," said the judgement ([2021] EWHC 974 (Comm), para 128).

On bringing the case, the Danish State Prosecutor for Serious Economic and International Crime, Per Fiig, formally charged Sanjay

Shah, a UK national resident in Dubai, and another British national who is resident in the UK, with having defrauded the Danish state of more than DKK 9 billion (US\$1.5 billion).

Per Fiig alleges in a public statement on 7 January 2021 that the two defendants committed "cynical and meticulously planned fraud" in a "well-designed and organised fraud scheme" where it submitted more than 3000 applications to unlawfully receive dividend tax refunds from the Danish exchequer.

The Danish state prosecutor alleges that these unlawful applications for dividend tax refunds involved the formation of 24 Malaysian companies and 224 US pension plans. It also included more than 70 companies incorporated in locations including the British Virgin Islands, the Cayman Islands, the United Arab Emirates and the UK.

In outlining its original case, the prosecutor said that these two British nationals are suspected of fraud of a particularly aggravated nature — in contravention of section 279, read with section 286(2) of the Danish Criminal Code. At the time of application, the maximum penalty under Danish law for these offences was eight years' imprisonment. However, the State Prosecutor indicated that owing to the severity of the cases, the size of the amount, the length of the period for which these cases were committed and the organised nature of the fraud, the prosecutors would apply a special section of the Criminal Code through which the maximum penalty could be increased to 12 years' imprisonment.

### Fight for recovery

A primary focus [during the initial 4-day trial](#), conducted in the High Court of England and Wales in April 2021 under Justice Andrew Baker, was that the English courts will not hear claims by foreign states which represent extra-territorial assertion of a state's sovereign powers.

Dacey Rule 3 is a substantive rule of English law (and also Cayman and BVI law) and applies irrespective of whether English law will govern the merits of the claim more generally. According to Harneys, the BVI and London-based law firm, it is for the English (or Cayman, or BVI) Court to decide whether a claim falls within the rule. For example, in the Skat proceedings, the issue of whether Skat's claim fell within the rule was a [question of English, rather than Danish, law](#).

In finalising his judgement in the case of Skat's appeal, chancellor of the High Court Sir Julian Flaux ruled:

“In my judgement, this claim against the Skat defendants is not a claim to unpaid tax or a claim to recover tax at all. It is a claim to recover monies which had been abstracted from Skat’s general funds by fraud. The alleged fraud defendants’ submission that the claim to the refund is still a claim to tax is simply wrong as a matter of analysis and the judge [Andrew Baker] fell into error in accepting that submission.” (op.cit., parg. 128)

Furthermore, because there is no unsatisfied claim to tax, the “essential feature” of the revenue rule [as Lord Mackay described it in *Williams & Humbert*] is absent. The argument by the alleged fraud defendants that the claim is precluded by the wider sovereign powers rule within Dacey Rule 3 is also misconceived, according to Chancellor Julian Flaux (parg 129).

The Chancellor finds that in bringing a claim to recover funds that it has lost as a result of alleged fraud, Skat is not doing an act of a sovereign character or enforcing a sovereign right. “Rather it is making a claim as the victim of fraud for the restitution of monies of which it has been defrauded, in the same way as if it were a private citizen. I very much doubt whether payments induced by fraudulent misrepresentation can properly be described as sovereign acts [since] the effect of the fraud is to render those payments a nullity or invalid,” says the court judgement (parg 130).

He continues: “in revoking the refunds and seeking to recover the monies, Skat is not seeking to vindicate those acts even if they were sovereign, but to invalidate them.” (ibid)

Skat’s legal team at One Essex Court were approached for comment on these findings, but were unwilling to respond at this time.

To add further substance to its ability to pursue recovery from Sanjay Shah, and any other tax fraud defendants resident in the UAE, Denmark signed an extradition treaty with the UAE on 17 March 2022. Outlining the rationale for this action, Danish Minister of Justice Nick Hækkerup says:

“We have seen examples of suspected perpetrators hiding under warmer skies, and thus avoiding prosecution and being held accountable in this country for their actions. This applies both in the cause of fraud with dividend tax and in connection with the reckless driving that cost a police officer his life in Langebro in 2019, where the suspected perpetrator later fled to Dubai.

“As Minister of Justice, I find that completely unacceptable. This agreement will hopefully enable us to get the suspected perpetrators to the country, so that they can be prosecuted in Denmark,” he concludes.

In establishing the treaty, the Danish government noted that a number of other EU countries have recently established similar agreements with the UAE, including The Netherlands and Belgium, which entered into extradition and mutual legal aid agreements with the UAE in 2021.

### Cross-jurisdiction comparisons

Salomé Lemasson, head of EU business crime and regulatory practice at Rahman Ravelli notes that since 2018, Skat, alongside the German authorities, has been one of the most active and creative European authorities in terms of pursuing cum-ex related cases. Skat has filed more than 500 legal actions against businesses and individuals in Denmark, the UK, Germany, the US, and other countries including Dubai, Canada and Malaysia, in its efforts to recover close to US\$2 billion in losses that it says it is owed due to cum-ex or cum-cum fraud. Skat estimates that it may spend up to US\$380 million by 2027 in pursuing these cases through the UK legal system.

Beyond the UK, there has been an increase in enforcement actions in Germany after successful prosecutions were confirmed in the German courts during the summer of 2021.

Specifically, in Germany, two UK bank employees were given suspended sentences in March 2020 following their role in cum-ex trading activities.

In June 2021, a former executive at German private bank MM Warburg was given a 5.5-year custodial sentence by judges in Bonn, having been found guilty of aggravated tax evasion linked to cum-ex trading.

This difference in sentencing is mainly explained by the significant co-operation of the two UK bank employees with the investigation, resulting only in a suspended sentence.

Also, in February 2022, another former MM Warburg employee was sentenced in Bonn to 3.5 years of gaol time, having been found guilty

## Cum-ex hearings in the German Finance Courts

Law firm Rudolph Rechtsanwälte observes that, in Germany, a ruling involving cum-ex claims against US Fund KK Law Retirement Plan Trust (Cologne Finance Court, file number 2 K 2672/17) can be regarded as a test case for a sizeable number of similar disputes currently pending before the Federal Central Tax Office (Bundeszentralamt für Steuern).

These were based on share transactions that had been carried out off-exchange as part of a short sale. The transactions were executed before the dividend record date when the shares had a claim to the expected dividend (“cum dividend”) and ex-dividend shares were delivered to close out the transaction after the dividend record date. The court was asked to adjudicate whether the share purchaser was entitled to a refund of capital gains tax.

In ruling on this case, the 2nd Senate of the Cologne Finance Court concluded that the share purchaser was not entitled to a CGT refund subsequent to the transaction. In the event of an off-exchange short sale, the court notes, the purchaser of the shares would not become the beneficial owner of the shares [to be delivered at a later date] by concluding the purchase agreement. It was therefore not entitled to offset the capital gains tax withheld and paid in respect of the dividend.

Similarly, the Kassel Fiscal Court, in a ruling of 10 February 2016 (case no. 4 K 1684/14), stated that in an over-the-counter share purchase, “the buyer does not become the owner of the shares for tax purposes at the time when the contract was concluded”. The Court argued that the purchaser could only become the owner for tax purposes when the possession of the shares is transferred [ie at settlement date for the transaction], which in the case in question took place after the date of the dividend distribution.

In a Kassel Fiscal Court ruling of 10 March 2017 (case no. 4 K 977/14), this legal opinion in case 4 K 1684/14 regarding over the counter cum-ex transactions was confirmed also for the case of stock exchange transactions that are settled via a central counterparty.

on two charges of aggravated tax evasion linked to cum-ex schemes.

Alongside these cases, German tax and prosecution authorities continue to investigate more than 1000 businesses and individuals in connection with alleged tax violations linked to cum-ex trading.

In enforcing these actions, there has been cooperation between financial regulators and tax authorities across jurisdictions, particularly within Europe. In September 2021, for example, The Swiss Federal Office of Justice confirmed that it had approved extradition of Hanno Berger, German tax expert and lawyer accused of defrauding the German tax authorities through trading and tax improprieties linked to ‘cum-ex’.

Berger, who has lived in Switzerland since 2012, was handed over to German police in Konstanz at the end of February 2022 and is expected to appear in court in early April according to a statement from German

prosecutors. Berger has repeatedly rejected the charges and opposed his extradition to Germany through his legal representatives.

In France, the tax authorities are also scrutinising a large volume of securities transactions and are currently running investigations into several French banks for cum-cum related transactions. It is unclear at this time whether these investigations will result in criminal proceedings.

In 2018, a criminal complaint was filed by a citizens’ collective relating to allegations of tax fraud in relation to cum-ex trading. This case, which is being investigated by the National Financial Prosecutor (PNF), is currently ongoing. “Owing to the French criminal system, there is no visibility as to what is happening during a preliminary investigation,” says Rahman Ravelli’s Lemasson.

For clarification, France no longer operates a system where withholding tax on dividend payments is reclaimed through presentation of a tax

certificate, issued via a depository bank, to the tax authorities. Consequently, claims against defendants filed in the French courts have targeted alleged cases of dividend arbitrage exercised through 'cum-cum' schemes — and not, as in Germany, the UK, the US and some other jurisdictions, as cases of 'cum-ex' activity. The official position of the French tax authorities is that tax fraud through 'cum-ex' schemes is not supported under French law.

Another difference between France and Germany, notes Lemasson, is that the threshold to establish criminal intent is higher when having to establish criminal tax fraud (under French criminal law) as opposed to criminal tax evasion (under German law). Furthermore, bilateral tax treaties that govern dividend arbitrage trading

in cum-cum scenarios were written some years ago and do not provide clear guidance around the treatment and legality of cum-cum activities.

### Concluding thoughts

While these legal cases illustrate how some tax authorities are stepping up their efforts to recover losses sustained through cum-ex fraud and to prosecute the alleged perpetrators, few jurisdictions appear to have passed substantive legislative changes to eliminate tax loopholes that enable fraudulent WHT reclaim schemes to operate.

The focus to date, rightly or wrongly, appears to be on chasing the fox, rather than securing the chicken house. Both appear to be fundamental

## Cost to the European exchequer of cum-cum trading fraud

Through analysis conducted in partnership with the research network CORRECTIV, the University of Mannheim's Prof Dr Christoph Spengel estimates that [potential tax revenue losses](#) owing to cum-cum transactions in 10 countries amount to €141 billion between 2000 and 2021, according to conservative estimates.

This estimate of the tax revenue loss is based on two approaches. The first is founded on the assumption that a fraction of foreign shareholders improperly avoided the capital gains tax levied on dividends through cum-cum transactions with domestic "intermediate acquirers" either in the form of securities lending or as a sale of the repurchase transaction (p 2)

It chooses an estimate based on a "conservative benchmark" which assumes that 50 per cent of foreign shareholders engage in cum-cum transactions." This, it claims, is based on investigative research by CORRECTIV, along with its discussions with tax authorities and market participants, reinforced by plausibility checks conducted by the University of Mannheim.

A second approach is based on an estimate that 15 per cent of the capital gains tax levied on dividends was improperly avoided through cum-cum transactions. In guiding this assumption, the researchers identify a "very short-term and short-lived increase" in security ownership of domestic banks from close to 0 per cent to a maximum of 15 per cent during the dividend payment period dates for some securities.

Based on these assumptions, the potential tax revenue loss is calculated as either: (i) 50 per cent of dividend payments attributable to foreign shareholders; or (ii) 15 per cent of the total dividend payment, each multiplied by the CGT rate on dividends specified in the double taxation treaty (DTT). The reduced tax rate in DTTs is generally 15 per cent.

Alongside the "conservative estimate", the paper estimates the potential revenue loss if foreign shareholders were not entitled to the reduced DTT CGT rate. This predicts a potential tax revenue loss of between €63 billion (15 per cent of shares are used in cum-cum transactions, applying the DTT CGT rate) and about €235 billion (50 per cent of foreign held shares are used in cum-cum transactions, applying the local CGT rate) for all countries for the 2000 to 2020 period.

if the financial authorities wish to eliminate leakage through cum-ex and cum-cum fraud.

The European Securities and Markets Authority (ESMA), in its September 2020 paper, Final Report On Cum/Ex, Cum/Cum and Withholding Tax Reclaim Schemes, identifies just five EU Member States — Austria, Belgium, Finland, France and Germany — that, at the time of publication, had made such legislative amendments.

In representing persons served with cum-ex charges, defence lawyers have frequently highlighted that cum-ex transactions were common practice — perhaps accepted practice — at the time they were executed. For example, UK law firm Lupton Fawcett states:

“Such activities were commonplace and entered into as part of sensible tax planning. Most parties in cum-ex trades acted on the advice of lawyers and accountants who genuinely believed that they were simply taking advantage of a legitimate legal loophole. In fact, it is arguable that, as tax authorities and governments were aware of cum-ex trading for many years and took no action to stop it, the practice had been accepted.”

Significantly, this firm also notes that “despite the fact that the transactions were not illegal, or carried out dishonestly at the time, the actions of parties involved in cum-ex trading are now coming under increased scrutiny, and a retrospective reanalysis of activity is taking place.” Lupton Fawcett declined our request for additional comment.

The law is often complex in these areas, as Rahman Ravelli’s Salomé Lemasson has observed above — and there are significant differences from one jurisdiction to another in the threshold that must be met to establish criminal intent.

In the UK, fines have been applied to firms by the Financial Conduct Authority for failure to meet anti-moneylaundering requirements and for deficiencies in their financial control frameworks. In May 2021, for example, the FCA fined Sapien Capital, an investment firm that had provided brokerage services to Sanjay Shah’s Solo Capital, for “serious failings of its financial control systems”.

Six months later, the UK financial regulator also fined Sunrise Brokers for “serious financial control failings” that facilitated moneylaundering and fraudulent trading by Solo Capital, which is now in financial administration.

ESMA notes that Denmark has not passed legislative changes specifically targeting WHT reclaim schemes, but since 2015 it has “substantially strengthened its administration of dividend refunds, including a significant staff increase and enhanced procedures”. Furthermore, the Danish Minister of Taxation has announced a legislative change, including a new dividend refund model built on relief at source and a pre-registration procedure (ESMA, *op.cit.*, *parag 57*).

It is perhaps damning that ESMA’s survey of EU national competent authorities (NCAs) provides little evidence of coherent dialogue between policymakers and supervisors around how WHT reclaim fraud is applied and how it can best be monitored and prevented.

The majority of NCAs that responded to ESMA’s questionnaire indicated that they were not aware of any final decision by a public authority declaring the illegality of such schemes, while at the same time they “could not exclude that any such decision may have been taken in their respective Member State” (*parag 69*). “Information on court decisions declaring the illegality of multiple WHT reclaim schemes in the Member States appears to be limited,” says the ESMA report (*parag 68*).

This knowledge gap may be because NCAs do not believe that efforts to detect cum-ex and cum-cum fraud schemes are their responsibility, but rather the responsibility of the national tax authorities.

Notwithstanding, ESMA’s inquiry confirmed that, at the time of publication, no NCA was conducting systematic market surveillance to detect multiple WHT reclaim schemes. Rather, “their market surveillance systems and procedures are focused on the detection of market abuse,” it says. ESMA did note, however, that the UK’s FCA has been given an “extended remit by national law”, through which it can use transaction reporting data and the other regulatory information not only to detect potential market abuse, but also for purposes of detection of financial crimes in a broader sense (*parag 86*).

More broadly, ESMA indicates that it has expanded its analysis of securities lending data to cover all EU Member States. This, it says, is set up particularly to assess the presence of significant variations in securities lending markets across the dates where some Member States passed legislative changes to halt multiple WHT reclaim schemes (*parag 18*). ■



## Fixing the broken rung

*In the second of two articles, Carmella Haswell speaks to women in securities finance and lending to discuss the barriers facing women of colour, historic moments in the industry and how the sector can advance in the fight for diversity and inclusion*

After careful analysis of the priorities facing women in securities lending and finance, a spotlight now shines on banks, securities lending agents, technology companies and other financial institutions, to provide support in the advancement of females in the industry and to become leaders in the charge toward diversity and inclusion (D&I).

In the first part of this article, published two weeks ago in SFT issue 298, leading figures in the securities finance industry analysed the current landscape for women in the sector. Pinpointing the lack of representation for women throughout all levels of the pipeline — particularly within front office roles — participants agreed that with job flexibility amiss, this acted as a deterrent for women.

Arianne Collette, co-founder of Women in Securities Finance (WISF), COO and head of strategy for Reinvestment at Morgan Stanley, comments: “If there is a lack of positive role models and sponsorship in front office positions, then women and minorities will feel less empowered, confident or motivated to reach for or remain in these types of roles.”

Reflecting on the flexibility issue, Elaina Benfield, co-founder of WISF and assistant general counsel at Vanguard, indicates that the main concern is whether people are given the opportunity and tools to thrive in their roles. With different jobs requiring different skill sets to succeed, Benfield explains: “Companies need to understand that inclusion, mentoring and sponsorship are key requirements for any individual to grow and thrive, especially for minorities.”

Collette raised an interesting point in how differently women and men operate in a corporate setting, with women more inclined to keep their heads down and produce quality work in the hope that their efforts are noticed. “From a female perspective, one must prioritise networking, continuously think about career development and speak up. When you ask for opportunities, it gives you information. This knowledge turns into power and provides you control of your career,” Collette advises. “Advancing women in these types of roles needs to be supported from the top of the house.”

To continue tackling the issues women face in financial services, this requires time and dedication. It is inefficient to act through ‘one and done’ strategies, where companies have a single woman on their board and feel this is adequate representation. The 30% Club — a global campaign group acting to increase gender diversity on boards and senior management teams — announced on 14 March their disappointment toward the return of all-male boards to the Financial Times Stock Exchange (FTSE) 350, less than a week after International Women’s Day.

The index had accomplished a 13-month-long period in which all-male boards had disappeared from the entire FTSE 350, according to the 30% Club. The Club has published data from BoardEx, on the number of women across boardrooms and executive committees of firms listed on the FTSE 100 and 350. It revealed that there are 15 all-male executive committees in the FTSE 100 and 97 in the FTSE 350. Additionally, there are eight female CEOs in the FTSE



*“If there is a lack of positive role models and sponsorship in front office positions, then women and minorities will feel less empowered, confident or motivated to reach for or remain in these types of roles”*

Arianne Colette  
Co-founder of Women in Securities Finance & COO  
and head of strategy for Reinvestment  
**Morgan Stanley**

100 and 18 in the FTSE 350. The 30% Club said the “sobering statistics” demonstrated a lack of progress in female representation at the executive level of Britain’s largest companies, despite board representation climbing.

Margaret Harwood-Jones, managing director and global head of financing and securities services at Standard Chartered, remembers often being the only female in the office, on a training course and in management meetings during the early days of her career. “It was very unusual to deal with female clients, particularly on the institutional side, but this has changed dramatically since then,” she says. Standard Chartered now has 14 females as CEOs of the bank’s business, including in some of its most significant countries such as Hong Kong, China, United Arab Emirates and India — something that could not have been said a decade ago.

Evaluating female representation on a regional scale, Ina Budh-Raja, the London chapter lead for WISF, and Jill Rathgeber, co-founder of the group and New York chapter lead, note that there is great representation within roles of all disciplines across the securities finance sector, throughout the WISF chapters. The only regional differences the women could indicate was the accelerated focus on the regulatory community on D&I in Europe.

“In the UK, the Financial Conduct Authority is consulting on D&I and will be actively scrutinising the financial services industry on progress being made on gender and racial diversity. There is quite a laser

focused approach in this region, as part of the broader ESG agenda that is moving very quickly in EMEA and the UK,” explains Budh-Raja, EMEA head of product and strategy, securities finance and markets ESG at BNY Mellon.

### Diversity among women

Representation of women improved across all levels of the corporate pipeline in 2020, but the promotions at the first step up to manager are not equitable, says a McKinsey & Company report. The Women in the Workplace 2021, published in September 2021, analysed the representation of women in corporate America and explores the intersectional experiences of different groups of women at work. The report highlights that women of colour were losing ground in representation at every level of the corporate pipeline. The report says: “The gains in representation for women overall have not translated to gains for women of colour.”

Speaking to SFT, Vanguard’s Benfield comments: “People naturally feel more comfortable with those who are similar to them and, therefore, more likely to hire, mentor and sponsor them.” The WISF co-founder reminds the industry that efforts to break this cycle must be made in order to subdue bias. “Unless there is a conscious and consistent effort to retrain ourselves and to be open minded about different personalities and different types of people, this bias will perpetuate. We need to think and behave differently on a daily basis to effect long-term change.”



*“It was very unusual to deal with female clients, particularly on the institutional side, but this has changed dramatically since then”*

Margaret Harwood-Jones  
Managing director and global head of financing and securities services  
Standard Chartered



Between the entry level and the C-suite, the representation of women of colour drops off by more than 75 per cent. As a result, women of colour account for only 4 per cent of C-suite leaders, a number that the McKinsey report says has not moved significantly in the past three years.

“Studies show that it is in the best interest of companies to have a diverse workforce. Numbers count – especially toward the top because there are virtually none,” adds Benfield.

The report highlights that while all women are more likely than men to face microaggressions that undermine them professionally – such as being interrupted and having their judgement questioned – women of colour often experience these microaggressions at a higher rate. The report reveals that compared with men at the same level, women are doing more to support their teams and advance diversity, equity and inclusion efforts.

Speaking to SFT, Roanna Kim, director of equity finance at RBC Capital Markets, says: “When I entered the industry, I was the perfect candidate for a trifecta bias – I was a young female, visible minority entering into a front office trading role. I often give an example of this when I was once mistaken for an administrative assistant, who was a newcomer to the country at an industry event. There were about four other female veterans in Toronto, who I quickly befriended and leaned on for direction and mentorship.”

As discussed in part one of this article, published in SFT issue

298, there are blanket issues that affect women throughout the securities finance and lending space, such as the new challenges sprouting from post-pandemic life. For example, Rathgeber, director of product and strategy at BNY Mellon, says the financial world is adjusting to the return to office and hybrid working arrangements, along with caregiving dynamics. “Whether we are in the office physically or working remotely, firms should be focused on providing equal opportunities for visibility and leadership, promotion and advancement. We need to make sure that there is a level playing field for everyone,” Rathgeber concludes.

However, women from different groups in society, such as women of colour, face additional barriers. BNY Mellon’s Budh-Raja states that underrepresented groups face systemic barriers across the financial services as a whole, it is not simply reduced to the securities finance sector.

She continues: “I think when you talk about women of colour, what we are really talking about is intersectionality of multiple diversity factors, which in itself increases that delta from what is historically perceived as the norm figure of success in the workplace and particularly in financial services. Inevitably, there are more barriers such as unconscious and conscious biases, which you have to break down and navigate. This intersectionality of several diversity factors means your natural starting point is very much on the outside and you have to work harder to effectively enter the sidelines, but it is not straightforward to penetrate the inner circles of decision making and leadership levels.”



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Elaina Benfield  
Co-founder of Women in Securities Finance  
and assistant general counsel  
**Vanguard**

Budh-Raja adds: “It is challenging and as a woman of colour, my experience is going to be very different to others who might have inherently different multiple diversity factors.” Additionally, Budh-Raja says it is important to look through the lens of D&I to appreciate differences, to embrace and place value on the varied experiences, backgrounds, skills, strengths and character types that a diverse group brings together — this leads to fresh and balanced outlooks to decision-making processes.

### The broken rung

The McKinsey report called to attention the ‘broken rung’ that women face at the first step up to manager. It announced that for every 100 men promoted to manager, only 86 women are promoted. As a result, men outnumber women significantly at the manager level, which means that there are far fewer women to promote to higher levels.

Standard Chartered’s Harwood-Jones explains several barriers facing financial services. These included a weakness in the talent pipeline for female talent, insufficient ability to measure and track progress on this agenda and a lack of business ownership and accountability.

Despite the obstacles, Standard Chartered have been making steps to improve female representation across the firm. The bank’s board is 31 per cent female, an 8 per cent increase from 2016.

In terms of female senior leadership at the bank, referring to managing directors and executive directors, this number has risen to 31 per cent, a five per cent increase from 2016. Additionally, Harwood-Jones reports her own management team to be 40 per cent female. She adds: “We have got to focus on creating an inclusive environment for our people, for our customers and for the communities in which we operate.”

Budh-Raja says BNY Mellon is extremely committed to setting a positive culture. The effectiveness of this lies not in corporate rhetoric or tick-boxing on D&I, but instead drives D&I as a core expectation that is placed on every employee. Female representation within BNY Mellon’s workforce is 41 per cent, with 29 per cent at senior lead level and 27 per cent on the firm’s board.

“Everyone ‘owns’ D&I at BNY Mellon and that is extremely powerful in moving the dial,” explains Budh-Raja. “There is a shared goal to create a level playing field of equal opportunities for everyone — whether it be women or other underrepresented groups — it is not just about diversity, there is a proactive approach to inclusion, with everyone being encouraged to positively ask the question, is every voice who should be in a conversation being included. If not, why not and let’s bring them in.”

The WISF is a renowned organisation, which aims to create a community to foster connections and promote the advancement of women in the securities finance industry and beyond. The group



*“Workplaces that recognise these life challenges, help women navigate through them and enable women to be their authentic selves, will be successful in attracting and retaining female talent”*

Ina Budh-Raja  
EMEA head of product and strategy  
securities finance and markets ESG

**BNY Mellon**

was formed in early 2018 and has since developed into a global organisation with more than 800 members across five chapters, which includes over 100 organisations.

According to WISF co-founder Collette, a core focus for the group is to launch a philanthropic component to its programming. “We are partnering with a local all-girls high school to discuss careers in the securities finance industry,” Collette explains. “The goal is to bring awareness and education of opportunities for females in finance, while establishing positive role models and building a pipeline of younger talent. Additionally, we are planning on partnering with a women’s shelter to help women of the community.”

Opening up about the WISF group’s vision for 2022, co-founder Rathgeber says they want to focus on promoting female retention and advancement in the workplace post COVID-19. The group will put together programming that will provide professional development opportunities for its members. The WISF has discussed adding an advisory board that will give them some outside perspectives in order to continue to make an impact, increase awareness and get fresh ideas for programming.

Speaking on new initiatives for the group, Budh-Raja says the London chapter will launch ‘Grow Your Network’, which is aimed at connecting members across the securities finance value chain in an informal and meaningful way.

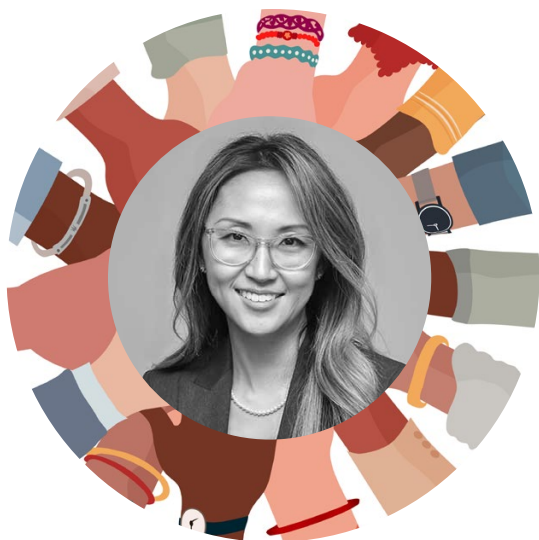
### Growing top talent

Using their experience through the trial and tribulations of facing the financial world as a woman, participants of the sector educate organisations on what solutions would be practical in accelerating the progress toward D&I and growing top talent.

Mandating the level of diversity in firms through targets was a great way to initiate awareness, but it is not the solution to such a complex multi-layer issue, according to the RBC’s Kim. An investigation into unconscious bias, imposter syndrome and emotional intelligence can help better understand how to best support and grow top talent — regardless of gender, race and orientation. Kim continues: “As a parent, I hope that these perspectives extend to our homes, where shifts in mentality are demonstrated from early childhood so that the concept of inequality is contained to our generation and not continued into the future.”

BNY Mellon’s Budh-Raja notes that there is much to be done to create a level playing field for women to advance to leadership levels in financial services. She listed female health and recognising challenges for women at particular stages in their careers as critical focus points.

“If we want to fix the ‘broken rung’ and advance the pipeline of women from junior levels to the board, we cannot ignore those female health challenges or keep them under cover, as has



*“An investigation into unconscious bias, imposter syndrome and emotional intelligence can help better understand how to best support and grow top talent”*

Roanna Kim

Director of equity finance

**RBC Capital Markets**

historically been the case,” explains Budh-Raja. “Workplaces that recognise these life challenges, help women navigate through them so that they can perform optimally in their roles and enable women to be their authentic selves, will be successful in attracting and retaining female talent.

“Unless we recognise and support this challenge, we will continue asking ourselves why successful women are lost to the industry at crucial points in their career journey.”

### Historic moments

Budh-Raja says the introduction by the Bank of England (BoE) of D&I as a best practice theme in the UK Money Markets Code in April 2021, was a key moment for women in the securities finance sector.

“Embedding industry best practice on a permanent basis in this region represents a significant step in moving the dial on D&I and, as co-chair of the Money Markets Code Sub-Committee, I was incredibly privileged to be able to collaborate with the BoE and UK market participants to embed this topic into the Code,” says Budh-Raja.

Another key moment has been the recent commitment by a number of firms and conference organisers to ensure a diverse mix of panellists on any events they host, according to Budh-Raja. “Although it may not always be possible, it’s great that the intention

is now there and it certainly helps to create a level playing field, enabling equal exposure for men and women.”

BNY Mellon’s Rathgeber adds: “Generally speaking, the formation of the WISF has highlighted the importance and the benefits of having a diverse and inclusive workforce. The group has continually promoted that message and has created a platform for women to get more exposure and visibility so that they are seen as leaders, both within the group and across the industry as a whole.”

As the co-lead of the WISF Toronto chapter, RBC’s Kim commends the Canadian city community. She feels fortunate to have grown a career within such a supportive group and proud to see how far the industry has come to recognise diversity. “Having access to a global network of women through a group like the WISF has been a refreshing change to the industry,” comments Kim.

### Key career moments

After a brief career hiatus, RBC’s Kim was inspired to re-enter the securities finance sector by the women who had successfully re-launched their careers through a local programme run by Women in Capital Markets. “It was such a privilege to meet several experienced women in the industry and become part of a well-respected network,” says Kim.

“One of my biggest accomplishments has been launching the Toronto chapter of the WISF. In addition, as vice president of



*“Generally speaking, the formation of the WISF has highlighted the importance and the benefits of having a diverse and inclusive workforce”*

Jill Rathgeber  
Co-founder of Women in Securities Finance Times  
and director of product and strategy  
**BNY Mellon**

the Canadian Securities Lending Association (CASLA) board of directors, I am also able to highlight the importance of recognising diversity and inclusion in our daily practice.” Kim adds.

Similarly, the creation of the WISF has been one of the biggest accomplishments of BNY Mellon’s Rathgeber. “As we are approaching the five-year anniversary of this group, it is amazing to look back and see how far we have come and how much this group has grown from a simple idea that started at an industry conference reception,” Rathgeber notes.

Rathgeber explains that when she began her career in the industry at State Street, she knew nothing about securities finance. A year later, Rathgeber transferred to the securities lending group in an operations role and the rest is history. “I find securities finance to be a relatively niche industry that is always evolving so there is always something to learn. The talented people that I have worked with, the valuable relationships that I have made over the years and all that I have learned in that time is what has kept me in this industry,” she concludes.

Reflecting on her biggest achievements, Standard Chartered’s Harwood-Jones — who has been involved in financial services for more than four decades, 25 years of which have been spent in securities services — recalls a situation, prior to her time with Standard Chartered, in which a bank was on the verge of losing a significant relationship. Despite the obstacle and doubts from colleagues, Harwood-Jones dug deep and salvaged the relationship, which has since prospered incredibly.

“Even as a child, I was somebody that liked to get involved, help out and solve problems,” explains Harwood-Jones. She continues: “When I first started to look at banking, I was very taken with the fact that it is a people business. It is about working with people, solving people’s problems, delivering new solutions and therefore business performance.”

In addition to her perseverance, Harwood-Jones holds a board member position at the International Securities Services Association (ISSA) and is relentless in her effort to attract and develop new young talent into the industry. She currently sponsors straight-to-desk hires, an early leaders programme and international graduate accelerated learning.

BNY Mellon’s Budh-Raja says a real highlight of her career has been

the opportunity to establish the London chapter of WISF and co-lead it from zero to around 350 members in just over two years and during a global pandemic.

“Women in the industry have been looking more intentionally to WISF to grow their connections in the industry more widely in the virtual environment, where they were feeling most challenged — particularly in the early days of the pandemic, faced with multiple work and caregiving role conflicts,” says Budh-Raja. Promoting standards of best practice as a board member of the International Securities Lending Association (ISLA), was an additional accomplishment of hers.

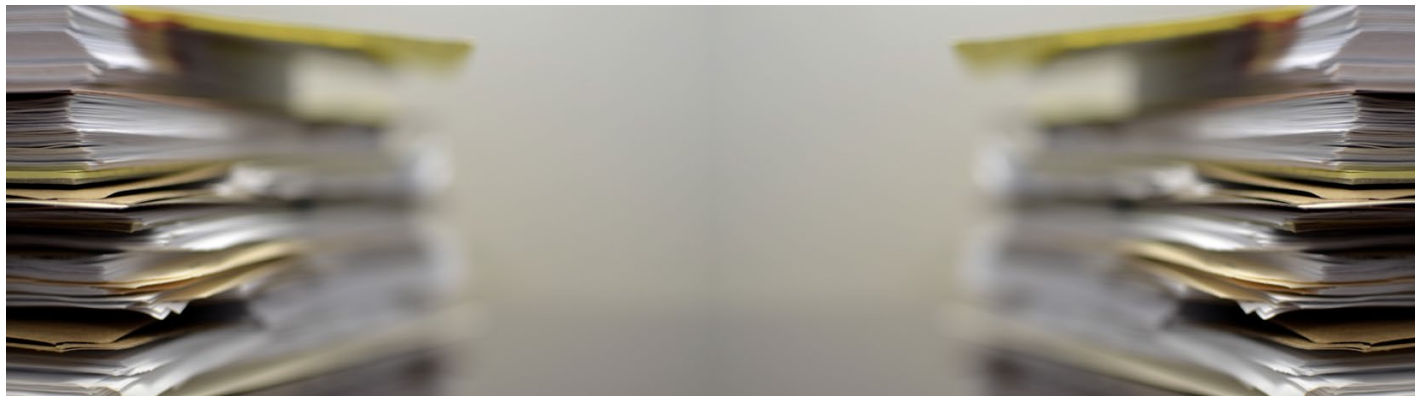
Following the current theme, Budh-Raja attributes her stay in the industry to the fantastic people within it. Despite everyone competing to drive their own businesses forward, she explains that there is a hugely collegiate and collaborative pool of people across the value chain that make it a great industry to be a part of.

Morgan Stanley’s Collette always knew she wanted to work for a large broker-dealer within New York City. “I was interested in the art of business and motivated by the fast-paced nature of finance,” Collette explains. “When I thought about the lack of female representation in sales and trading roles, it was a motivating factor in my decision, rather than a deterrent. I said to myself ‘I know I can do this’.”

Being a 20-year veteran with Morgan Stanley and surviving and thriving through three crises’, is an incredible milestone for Collette. “Being a part of the WISF organisation is a privilege. Having the opportunity to bring the group to market with my co-founders and the full leadership team, and seeing how it has grown organically to create a strong community, is an amazing achievement,” Collette adds.

Echoing this sentiment, Vanguard’s Benfield describes securities finance as an awesome, collaborative and supportive industry. Benfield prides herself on aiding the launch of WISF with her co-founders Collette and Rathgeber, sponsors and chapter leads.

Benfield continues: “Having the courage to relocate my family from Boston to work for Vanguard, to help support its mutual funds and securities finance business, was a big leap of faith. I feel like that was an incredible investment in my family and my career.” ■



## Are You Busy?

*Reflecting on the past 12 months of market data, FIS' David Lewis observes that securities finance is getting ever more complex and busy, generating pressure on margins as work levels rise proportionally faster than revenue generation*

Few would deny that the past few years have been exceptional. Not only was there a global pandemic, but now the spectre of war looms large over Europe, affecting almost every nation on earth in some way. Falling demand for travel, national lockdown orders and wide-ranging impacts to economic activity of all types have affected the global economy in ways many never thought possible. Significant upticks in quantitative easing actions to shore up industries and employment will cast a shadow over economies and national debt piles for years to come.

Even fewer people would have then predicted war, with the impact on fuel and food costs forcing inflation to run rampant, squeezing economies just as they were looking to a post-pandemic recovery. Under normal circumstances, the securities finance and collateral markets revel in volatility as demand for borrowing securities intensifies and speculation on market movements ramps up. Add to that the need to shore up positions with higher quality collateral and the market gets an overall boost. To that end, others have reported a gain in revenues this February compared to last, rising some 2 per cent year-on-year. But are these numbers in line with expectations? Do they correlate with market movements and the frenetic uptick in activity?

One of the original purposes behind the benchmark data services available on the market today was to answer a difficult question for beneficial owners. They needed to know if they were getting the right level of lending

income for their funds and, arguably more importantly, the right income for the risks taken and effort expended. For the past 20 or so years, beneficial owners have been able to benchmark their results against funds like them and the wider market, providing a view of how well they, and their agent, were doing. Similarly, the market participants can do the same exercise themselves and understand how well they are managing their programme and their clients. But what does the entire market benchmark itself against? The only relevant data in that regard is historical performances and, as we all know, the value of your investment can rise and fall.

### Rising loan counts

The last 12 months of data indicates another year of gross revenues well north of US\$10 billion, as shown by Figure 1. But in the same way we look at individual funds and beneficial owners, the overall revenue number is very one dimensional compared to the multi-dimensional world in which securities finance lives. Agent lenders would often describe their programmes as providing good returns by focusing on high quality loans, or those of good intrinsic value, as a means to differentiate themselves in a crowded market. Quality loans are another term for long duration or high utilisation, while higher intrinsic value programmes steered away from cheap general collateral to focus on higher fee or lower rebate higher demand securities, applying the 80:20 rule to income and volume metrics.



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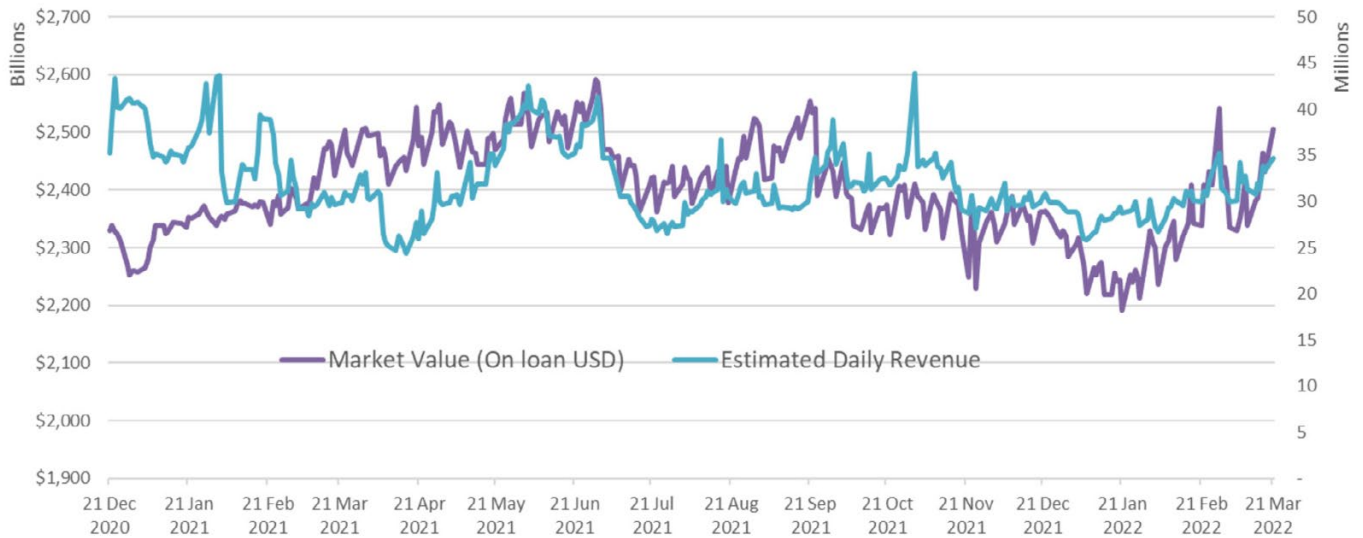
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Figure 1 – Daily revenue and volume on loan, 15 months to date



Source: FIS Securities Finance Market Data

The whole market revenue may have been up in February, following a small dip in January, but what of the other dimensions? In 2020, the average outstanding loan count per day stood at 2.32 million, while 2021 saw averages increase slightly to 2.37 million a day – a rise of around 2 per cent overall. However, 2022 has started fast. The first quarter of 2022 has seen loan counts average 2.71 million per day. This represents an increase of 14 per cent over 2021 and 17 per cent over 2020.

The rise in the number of lent units was even more remarkable, where units is used to describe individual assets (an equity or a bond) across all security types. In 2020, lent units averaged 2.06 billion; 2021 saw this jump to over 3.27 billion. Again, 2022 is pushing activity even higher and 2022 year-to-date shows the number of units on loan averaging just over 4.05 billion per day, a rise of almost 97 per cent compared to 2020 and 24 per cent over 2021.

The intrinsic loan rates earned on these securities have not changed significantly, however. 2020 saw a global average of around 45 basis points. The 15 months to date, as shown in Figure 1, averages out at 49 basis points, barely 10 per cent over where the markets were in 2020, despite the extraordinary market events and significant volatility in asset values between those periods.

The value of lent assets has risen with 2020 seeing an average of

between US\$1.9 trillion and US\$2.0 trillion on loan, while 2021 saw that rise to over US\$2.4 trillion as a daily average. 2022 is seeing those values rise even higher, averaging over US\$2.5 trillion. This is despite the global fall in asset prices at the start of 2022, where, for example, the S&P500 has fallen by around 7 per cent year-to-date. While the rising loan valuations, combined with a steady level in intrinsic rates of around 47 basis points overall, are providing a solid level of income across the market, the other statistics suggest that all the market participants are having to work disproportionately harder to maintain those levels.

A 17 per cent increase in loan count is a more important statistic than it might at first appear. For every additional loan there will be extra settlement, reporting, marking, reconciliation, billing and, potentially, corporate action activity. All these cost money and effort for all concerned, arguably making margins even tighter just as regulation and other costs exert more pressure on the marketplace.

The importance of a coherent technology strategy delivering improved automation and straight-through processing has never been more important. Our market is getting ever more complex and busy, with increasing pressure on margins as work levels rise proportionally faster than revenue generation. Next time you ask someone you know in the securities finance and collateral markets how they are doing, and they say, “Not too bad, busy,” they may just be right. ■



## Latest industry appointments at Clear Street, Morgan Stanley and State Street

### GLMX Technologies, a technology solution for trading money market instruments including repo and securities lending, has announced the appointment of Gareth O'Loughlin and Joseph Russo.

Based in New York, O'Loughlin joins the firm as vice president of engineering, while Russo takes on the role of director of money market sales.

Both hires will support GLMX in its next phase of growth and play a key role in the firm's development of a fully integrated digital ecosystem for trading front-end products.

Prior to his new position, O'Loughlin was chief technology officer for Gagosian, a commercial art gallery, between 2018 and 2022. Previously, he was also vice president of technology for Casper.

O'Loughlin will focus on scaling GLMX's engineering team to accelerate innovation and product development.

Russo brings extensive experience in money markets to the role, having previously held various senior management roles at exchanges and global Tier 1 banks, including CME, BNY Mellon Capital Markets and BBVA.

Most recently, Russo was senior managing director and head of the Americas, Nex Treasury at EBS BrokerTec.

He will be responsible for cultivating client relationships and will provide strategic direction when building new products at GLMX.



### Subbu to head securities finance engineering at Clear Street

Clear Street has announced the appointment of Madhu Subbu to head of engineering, securities finance.

Subbu will lead Clear Street's Securities Financing engineering team at the firm's New York office.

Prior to Clear Street, Subbu was CEO of Enigmach, working to automate over-the-counter markets through the use of combinatorial auction technology, a specific application of mathematical optimisation techniques.

He has also held engineering lead positions at Chainalysis and J.P. Morgan between 2018 and 2021.

Previously, he spent eight years at Credit Suisse where he entered the organisation

as assistant vice president of applications architecture, before becoming engineering lead of collateral optimisation.

Additionally, Clear Street has expanded its engineering team further with the appointment of Emilio Schapira, who becomes engineering lead of clearing, custody infrastructure.

He will lead the clearing, custody, and infrastructure teams after joining the firm from Waze, where he was engineering lead.

The engineering team at Clear Street is building out comprehensive real-time data tools for greater transparency.

The firm reports on a financial industry demand for third-party customisable solutions for diverse functions including trade, execution, financing, clearing, and custody.

## Stephen O'Donnell, head of sales strategy for EMEA at Morgan Stanley, has announced his departure from the investment bank after more than 15 years.

O'Donnell began his career with Morgan Stanley at its Glasgow office in 2006, where he became an analyst within the equity product control division.

He joined the firm's London office in 2008, where he entered the exotic derivatives product control division, before becoming EMEA head of vanilla derivatives product control between 2013 and 2016.

O'Donnell was later appointed vice president and EMEA securities lending COO, prior to achieving his latest role as EMEA head of sales and strategy.

In an online post, O'Donnell says: "After a fantastic 15 and a half years at Morgan Stanley, the time has come for a new challenge. Starting out in 2006 in the finance department in Glasgow seems like a lifetime ago.

## State Street has announced that its digital division, State Street Digital, has added three executives to its leadership team.

Katie Richards joins the firm as global head of operations and Marcus Grubb as global head of product. Both will report to Nadine Chakar, head of State Street Digital.

Additionally, Derren Selvarajah has been appointed product PMO lead for the product strategy team and will report to Grubb.

Based in Zurich, Richards will be responsible for driving the execution of the firm's strategy and developing sustainable and scalable operational solutions.

She brings more than 25 years of experience in developing strategy, delivering digital products and services, leading teams and transforming operational models across business functions.


Richards joins State Street from Cyber Capital, a crypto investment management company, where she was CEO. Prior to this, she held senior positions at Falcon Private Bank, UBS and Credit Suisse.

Grubb will be responsible for developing and driving end-to-end product strategy at State Street Digital's London office. He brings expertise in business acquisition, transformation and strategic business development to the role.

Previously, he was CEO of BlockEx, a provider of white-label asset digitisation and trading technology, between 2020 and 2022. Grubb also served as director of market development and senior advisor for the World Platinum Investment Council and CEO of Swapstream, a derivatives exchange system.

Selvarajah will be based in London, where he brings experience in securities services, wholesale banking, financial markets processing and platforms across asset classes and geographies.

Before joining State Street, Selvarajah worked with Standard Chartered Bank as global head of securities service technology, innovation, digital transformation and delivery. ■



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