GIR KNOW-HOW SECURITIES & RELATED INVESTIGATIONS

# Italy

Pietro M Fioruzzi, Andrea Mantovani and Bernardo Massella Ducci Teri
Cleary Gottlieb Steen & Hamilton LLP

OCTOBER 2018

GIR INSIGHT

# Regulatory environment

## 1 What are your country's primary securities or related law enforcement authorities?

The Italian securities and exchange commission (Consob) and the public prosecutor are the primary enforcement authorities in Italy in regard to securities or related law.

The Insurance Supervisory Authority (IVASS) and the Bank of Italy also have a role (although more limited) in the enforcement of certain securities and related law. They work closely with both Consob (including on the basis of ad hoc memoranda of understanding) and the public prosecutor.

Additionally, the European Securities and Markets Authority (ESMA) is tasked, inter alia, with fostering supervisory convergence across the European Union and directly supervising credit rating agencies and trade repositories (see chapter on European Union).

The following remarks focus on the activities of Consob and the public prosecutor.

Consob is responsible for regulating and supervising financial markets, enforcing securities laws and issuing the related administrative sanctions.

The public prosecutor is the authority in charge of enforcing criminal law, including those securities law provisions that provide for criminal sanctions.

## 2 What are the principal violations or legal issues that the securities or related law enforcement authorities investigate?

Consob's and the public prosecutor's investigative and sanctioning powers concern the following main areas:

- insider trading and market manipulation;
- issuers of securities (eg, public offers of securities, takeover bids, disclosure of price sensitive information, accuracy of financial statements, disclosure of significant shareholdings and shareholders' agreements in public companies, and proxy solicitations);
- broker-dealers and asset managers (eg, licensing, prudential, organisational and reporting requirements, significant shareholdings, conduct of business rules and conflicts of interests);
- stock exchanges and other trading venues as well as central depository systems; and
- credit rating.

Investigative powers and activities of Italian enforcement authorities are heavily influenced by European legislation on securities and derivative markets, such as Regulation (EU) 2014/596 (the Market Abuse Regulation) and Directive 2014/57/EU (the Market Abuse Directive). In this specific respect, while Consob already adopted certain amendments aimed at making Consob's Regulations consistent with the immediately applicable provisions of the Market Abuse Regulation, the Italian legislature has yet to adopt provisions aimed at implementing both the Market Abuse Directive and (not immediately applicable provisions of) the Market Abuse Regulation. In particular, the Italian Parliament has delegated the task of implementing these pieces of EU legislation to the government, which is still in the process of adopting the relevant provisions. In May 2018, a draft of the relevant Legislative Decree was sent to the Italian Parliament for the relevant parliamentary committees to express their opinions on the text of the bill, which were delivered in July 2018.

## 3 If there is more than one authority involved in a securities or related investigation, how is jurisdiction allocated? What is the interplay between the securities regulator and the public prosecutor?

Consob is in charge of securities investigations that concern violations subject to administrative sanctions, while the public prosecutor is in charge of securities investigations that concern violations subject to criminal sanctions.

Consob's and the public prosecutor's respective jurisdictions are thus formally independent. However, (i) Consob has a general duty to inform the competent public prosecutor of any facts it ascertains within its supervisory activities that may constitute a criminal offence and (ii) with respect to market abuse violations, the Italian Legislative Decree No. 58 of 24 February 1998 (TUF) sets forth a broader duty of mutual cooperation between public prosecutors and Consob, including, inter alia, exchange of information, documents and data, as well as sharing reports on investigations.

Importantly, certain violations (eg, insider trading and market manipulation) are subject to both criminal and administrative sanctions. This "double sanctioning" system has recently been subject to scrutiny by both European and Italian judges, insofar as it may give rise to potential issues of violation of the double jeopardy principle, which is recognised under the

European Convention on Human Rights (ECHR), the Charter of Fundamental Rights of the European Union (Charter of Nice) and the Italian Constitution (see also Recital 23 of the Market Abuse Directive).

In Grande Stevens v. Italy (2014), the European Court of Human Rights (ECtHR) found that such a "double sanctioning" mechanism violated the double jeopardy principle. However, in subsequent judgments (eg, A and B v. Norway, judgment of 15 November 2016, applications Nos. 24130/11 and 29758/11), the ECtHR provided a narrower interpretation of the double jeopardy principle in connection with the double sanctioning mechanism, holding that there is no violation of such principle in case dual proceedings are conducted against an individual for the same conduct, provided that such proceedings are closely connected to each other in substance and in time. In a judgment on 6 December 2016, the Court of Milan applied (in our view, with an excessively broad approach) the criteria set forth in the more recent ECtHR case law to a market manipulation case and stated that the application of both criminal and administrative sanctions was not a violation of the double jeopardy principle.

In the meantime, also based on the principle established in the ECtHR Grande Stevens decision, in late 2016 the Italian Court of Cassation had requested preliminary rulings from the Court of Justice of the European Union (ECJ) aimed at clarifying whether article 50 of the Charter of Nice (interpreted in the light of article 4 of Protocol No. 7 to the ECHR, the relevant ECtHR's case-law and national law) precludes the possibility of trying a person in administrative proceedings for market manipulation behaviour for which he or she has already been criminally convicted by a decision that would ordinarily have the force of res judicata. In March 2018, the ECJ rendered its judgment, holding that article 50 of the Charter of Nice precludes "national legislation which permits the possibility of bringing administrative proceedings against a person in respect of unlawful conduct consisting in market manipulation for which the same person has already been finally convicted, in so far as that conviction is, given the harm caused to the company by the offence committed, such as to punish that offence in an effective, proportionate and dissuasive manner" (ECJ, Judgment of 20 March 2018, Garlsson real estate SA et al. v. Consob, Case C-537/16; see also, ECJ, Judgments of 20 March 2018, Enzo Di Puma v. Consob and Consob v. Antonio Zecca, joined Cases C-596/16 and C-597/16; and Luca Menci, Case C-524/15).

While this issue is still far from being finally settled, the ECJ judgments are very important and will likely have a significant impact on the current Italian "double sanctioning" system for insider trading and market manipulation. This appears to be all the more so considering that – unlike the ECHR (which is not part of EU law and whose application is thus not immediate because Italian judges cannot merely disapply Italian laws that they deem to violate ECHR's provisions, but must ask the Italian Constitutional Court to declare them unconstitutional) – article 50 of the Charter of Nice is part of EU law and binding on all member states "when they are implementing Union law" (article 51(1) of the Charter of Nice). Accordingly, as the ECJ held, "[t]he ne bis in idem principle guaranteed by article 50 of the [Charter of Nice] confers on individuals a right which is directly applicable in the context of a dispute" relating to market abuse rules (ECJ, Garlsson real estate SA et al. v. Consob, cit.) and Italian judges may directly disapply Italian rules that breach the provisions of the Charter of Nice.

## 4 Do the securities or related law enforcement authorities have investigatory powers? Can they bring administrative, civil or criminal proceedings?

Consob can avail itself of extensive investigatory powers, including the power to:

(i) interview, or request information, data, or documents from any person informed about the facts under investigation;
(ii) request existing telephone records;
(iii) request telephone traffic records;
(iv) carry out searches;
(v) carry out on-site inspections;
(vi) access certain information and data collected by public administrations, including tax records and banking records; and
(vii) seize those assets that can be subject to confiscation.

Powers under point (ii), (iv) and (vii) above can only be exercised upon the authorisation of the public prosecutor. Such authorisation is required also to exercise powers under (ii) and (v) in relation to entities not subject to Consob's supervision.

Failure to comply with Consob's requests is a violation subject to administrative sanctions and may amount to a criminal offence.

Consob is only entitled to bring administrative proceedings. In fact, (i) securities-related criminal proceedings can be brought only by public prosecutors, and (ii) civil claims for damages can be brought only by the persons who directly suffered the damage (however, with respect to market abuse violations, Consob is entitled to bring civil claims aimed at obtaining compensation for damage caused to the market's integrity within the context of criminal proceedings).

Compared to Consob, public prosecutors have greater powers during investigations. For instance, only public prosecutors can apply precautionary measures and order wiretapping.

### 5 Are regulatory or criminal securities and related investigations public? Under what circumstances?

Both Consob's investigations and criminal investigations are secret and information relating thereto may generally not be disclosed to any persons until the investigation is terminated.

As to Consob's administrative proceedings, information on the investigation is made available to the investigated party (but not to the public) when Consob has sufficient facts to bring a case, and a formal letter of charge is sent to the investigated person. Moreover, excerpts of the final sanctioning decisions, which normally include a summary of the relevant findings, are generally published on Consob's bulletin. When so required under the law, Consob also reports the penalties it applies to ESMA (see question 12).

As to criminal proceedings, investigations are secret until the end of the preliminary investigations (except for certain limited acts that the person under investigation has a right to assist in, which are therefore disclosed only to that person but not to the public). Third parties may file a petition with the public prosecutor or the court (depending on whether the investigation is, respectively, ongoing or closed) to access the investigation file. Access may (totally or partially) be granted only to parties that have a qualified interest, which is to be assessed by the public prosecutor or the court. The decision denying access is not subject to challenge. Leakage of information concerning an ongoing investigation to the press is quite common.

### 6 Are regulatory or criminal securities and related investigations targeted at the company or the individuals involved, or both?

Whether the investigations are targeted at the legal entities or at the individuals involved depends on the specific facts under investigation.

Administrative sanctions can be imposed on both legal entities and individuals, while criminal sanctions can be imposed only on individuals. However, for certain crimes (including insider trading and market manipulation), quasi-criminal sanctions – that, for breaches of securities law, include monetary sanctions and confiscation of the profits arising from the breach – may be imposed on legal entities under Legislative Decree No. 231/2001. Legal entities may shield themselves from such sanctions if certain requirements are met, including the implementation of a compliance programme adequate to prevent crimes similar in nature to the one that was committed and the establishment of an independent and autonomous internal body having the power to supervise such implementation prior to the relevant crime being committed.

Pursuant to Legislative Decree No. 231/2001, compliance programmes must, inter alia:

(i) identify the activities that, when performed, may give rise to crimes or facilitate their commission;
(ii) set forth, with reference to the activities referred to in (i) above, protocols governing procedures for making and executing decisions;
(iii) set forth such procedures for managing financial resources as may be necessary in order to avoid the commission of crimes;
(iv) set forth reporting duties with respect to the supervising body;
(v) set forth disciplinary measures in the case of violations of the compliance programme; and
(vi) provide adequate measures, processes and procedures to allow employees to report possible crimes.

Whether a compliance programme adopted by a company does shield the company from administrative liability is subject to a case-by-case analysis by criminal courts.

## Investigation procedure

### 7 How do the securities and related law enforcement authorities typically begin an investigation?

No formal procedure is set forth by Italian law for the beginning of an investigation by Consob or the public prosecutor.

Consob typically begins an investigation when it becomes aware of possible administrative violations of securities laws while exercising its supervisory activities or through the reporting of private parties. Alternatively, Consob may begin an investigation on the basis of reports made by public prosecutors.

In this respect, while, in principle, any person may inform Consob of possible breaches of securities law, the TUF specifically provides, inter alia, that:

- investment firms, asset managers, broker-dealers and stock exchanges must report to Consob any transaction that may reasonably constitute a market abuse violation and have in place appropriate measures to allow their personnel to report to Consob any violations of the applicable rules (see question 11);
- in respect to issuers, both external and statutory auditors must report to Consob irregularities that they have found during their activities. Similar rules apply to external and statutory auditors of investment firms, asset managers and broker-dealers; and
- public prosecutors are requested to report to Consob any information relating to the possible commission of market abuse violations.

Similarly, public prosecutors begin an investigation when they become aware of possible criminal violations of securities laws. Public prosecutors' investigations on securities law breaches are often prompted by information received from Consob, which is under a duty to report to the public prosecutor possible crimes detected while exercising its supervisory powers (see question 3).

## 8 What level of suspicion of wrongdoing is required for the securities or related law enforcement authorities to begin an investigation?

Under Italian law, there is no express minimum level of suspicion of wrongdoing required to initiate an investigation.

## 9 May the securities or related law enforcement authorities conduct dawn raids? Does this depend on the nature and seriousness of the allegations?

Yes, Consob can conduct dawn raids, but it needs the authorisation of a public prosecutor when the dawn raid involves body searches, onsite searches, or onsite inspections (not involving any searches) concerning persons not subject to Consob's supervision (see question 4). The decision to carry out dawn raids normally does not depend on the nature and seriousness of the allegations.

## 10 Must the findings of a company internal review be reported to the securities or related law enforcement authorities? When and under what circumstances?

There is no general provision requiring a company that carried out a spontaneous internal review to voluntarily disclose the findings of potentially unlawful conduct to Consob. The company may, however, decide to do so if it is aware that an investigation is ongoing and wants to take a cooperative approach with Consob. In carrying out internal reviews as well as in deciding whether to disclose the findings, companies will need to take into account, inter alia, (i) Consob's power to request companies to provide documents or information – including documents or information relating to the internal review – (see question 4), (ii) external and statutory auditors' duty to report irregularities to Consob (see question 7), and (iii) the issuers' general obligation to disclose inside information to the public.

## 11 Are whistleblowers a frequent source of information for securities and related investigations?

There is no official information on how frequently Consob's investigations benefit from information from whistleblowers, so it is not possible to estimate how often whistleblowers are used.

In any event, the relevance of whistleblowing in Consob's investigations is likely to increase in the near future. Implementation of Directive 2014/65/EU (the MiFID II Directive) by Legislative Decree No. 129 of 3 August 2017 led to the introduction in the TUF of a comprehensive regulation of whistleblowing (both internal and external) in the financial market sector. Regarding external whistleblowing, Consob must ensure confidentiality and protection from retaliatory or discriminatory conduct for whistleblowers. Administrative sanctions are provided for in case of non-compliance with the legislative provisions concerning whistleblowing.

In January 2018, Consob adopted procedures that employees of the supervised entities can use to report to Consob alleged violations of securities laws, including, pursuant to Directive 2015/2392/EU, violations of the Market Abuse Regulation.

## 12 Describe the typical phases of a securities or related investigation in your country.

Consob's proceedings typically consist of the following stages:

(i) During the investigation stage of the proceeding, the relevant Consob office exercises its investigation powers (as described in question 4) to ascertain the facts and assess possible breaches of securities law. The investigation phase

does not follow a formal path, and the investigated persons are not entitled to participate in or defend themselves in this stage of the proceeding and are not even informed of the existence of the proceeding.

(ii) Within 180 days (360 if the investigated person is based abroad) from ascertaining an alleged violation of securities laws, the competent Consob office for the investigation (different from Consob's Sanction Office) must serve upon the investigated person a formal letter of charge describing, inter alia, (a) the supervisory and investigation activities carried out by Consob, (b) the alleged violations, (c) the unit responsible for the proceeding, and (d) the defence powers available to the investigated party. The sanctioning proceeding should be completed within 200 days starting from the 30th day following service of the letter of charge.

(iii) Within 30 days from the service of the letter of charge (this term can be extended up to additional 30 days upon request), the person under investigation has the right to exercise a series of defense activities, including: (i) filing a statement of defence and the related documentation with Consob's Sanction Office, (ii) requiring a hearing before Consob's Sanction Office to deliver oral arguments, and (iii) accessing the files of the proceeding (including the investigation). Notwithstanding the defendant's right of defence, the defence activities, in the sanctioning proceeding, are carried out pursuant to the principle of fair cooperation between the parties and Consob. Therefore unnecessarily excessive, irrelevant or disordered exhibition of documents by the parties shall be evaluated by Consob as a negative element in assessing the degree of cooperation.

(iv) After the exercise of the defensive activities described above, Consob's Sanction Office evaluates all the evidence, information and documents of the proceeding and, if it needs further information, may request from the competent Consob's office responsible for the investigation (or to any other Consob office whose support is useful for the case) a report on the defence activities carried out by the investigated person. The report is served upon the investigated person, who may reply within 30 days.

(v) Consob's Sanction Office has to complete its evaluation, and must send Consob's Board its final report on the case, stating its reasoned conclusion on the existence of the alleged violation and the type and amount of the sanction (if any) to be applied, at least 35 days before the 200-day period under (ii) above elapses. (In the above-mentioned report, Consob's Sanction Office, in the event of non-significant breaches of law, may formulate a reasoned proposal for removing the alleged breaches, as an alternative to the administrative pecuniary sanctions and, furthermore, can set out the measures that have to be adopted for removing those breaches. In such cases, if the measures adopted were such as to remove all the breaches, Consob's Sanction Office takes that into account in its reasoned proposal to the Consob's Board for resolution of the proceedings.)

(vi) The final report by the Consob's Sanction Office is served upon the investigated person (provided that he, she or it exercised his, her or its right to either file a statement of defence or being heard under (iii) above). The investigated person has the right to reply within 30 days. The principle of fair cooperation between the parties and Consob described under (iii) above applies to this reply, as well.

(vii) Consob's Board reviews all the documentation of the case and, if it needs further information, may request an additional report to the Sanction Office, to which the investigated person may reply. After that, the Consob's Board rules on the existence of the breach by either issuing a sanctioning decision or dismissing the case.

(viii) The decision of Consob's Board may be challenged by the defendant before the Courts of Appeals within 30 days (or 60 days if the defendant is based abroad) from the date it is communicated to the defendant.

(ix) An excerpt of the sanctioning provision is published in the Consob Bulletin after the decision has been notified to the person concerned. Such excerpt must contain, at least: (a) the sources of law that form the basis of the sanctioning proceeding, (b) the alleged facts and the breach of law, (c) a short indication of the proceeding's acts, and (d) Consob's Board decision], with the indication of the person sanctioned, the relevant breach, the type and the severity of the imposed sanction, and the criteria on the basis of which the sanction was determined. In some circumstances (eg, if the publication is disproportionate, puts at risk market stability, or prejudices ongoing investigations), Consob may decide to order that such publication be anonymised, be postponed or excluded altogether. Consob also informs ESMA of the sanctions it applies, as provided under EU laws.

## 13 What are the mechanisms by which a securities or related law enforcement authority may cooperate and coordinate with authorities outside your jurisdiction?

The cooperation mechanisms with foreign authorities are generally provided for under either (i) international – either bilateral or multilateral – memorandums of understanding with one or more of those authorities (a list of which may be found here http://www.consob.it/web/area-pubblica/cooperazione-internazionale), or (ii) EU securities law that governs its relationship with authorities of other EU member states. Some of the most important examples of those instruments are:

(i) The OICV–IOSCO multilateral memorandum of understanding of May 2002 revised in May 2012 (the OICV–IOSCO MoU), entered into among the securities law authorities of more than 100 states and provides several cooperation mechanisms between them in connection with the enforcement of various kinds of securities law provisions (including market abuse prohibition, offer and sale of securities, reporting requirements and regulation on financial intermediaries, investment companies, investment funds, markets managers, and clearing or settlement operators). In particular, under the OICV-IOSCO MoU, the signatory authorities shall provide each other with the fullest assistance possible to secure compliance with the above-mentioned securities law provisions, including by: providing information and documents held in the files of the requested authority, obtaining information and documents from third parties, and taking statements or testimonies under oath.

(ii) The ESMA multilateral memorandum of understanding of 29 May 2014 (the ESMA MoU), entered into by 33 securities law authorities, requires the signatory authorities to provide each other the fullest assistance possible in investigation, supervision, and enforcement activities relating to securities and financial markets laws. In particular, under the ESMA MoU, the requested authorities shall give access to documents of any persons, request information from any person, carry out on-site inspection or other investigation activities, provide records of telephone conversations or other communications held by investment companies, and provide data traffic records.

(iii) The multilateral memorandum of understanding, concluded in April 2018 by the European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) on cooperation, information exchange and consultation with the EFTA Surveillance Authority, establishes practical arrangements between the ESAs and the EFTA Surveillance Authority in relation to the adoption of acts by the EFTA Surveillance Authority on product intervention, breach of European Economic Area law, action in emergency situations, mediation, as well as on the adoption of specific opinions, effective within the EEA-EFTA states.

(iv) The Market Abuse Regulation mandates that all securities law authorities of EU member states cooperate with each other in investigation, supervision and enforcement activities relating to, inter alia, market abuse prohibition, issuers' disclosure requirements, internal dealing and dissemination of investment recommendations. In particular, EU securities law authorities shall exchange information as well as carry out on-site inspections or other investigation activities upon request of other EU securities law authorities. The requested authorities may choose to carry out the requested investigation activities by themselves, allow the requesting authority to participate in such investigation activities or allow the requesting authority to directly carry out those activities.

(v) The Consob–SEC memorandum of understanding of 3 May 1993 (the Consob–SEC MoU) provides several cooperation mechanisms between Consob and SEC in connection with the enforcement of securities law concerning market abuse, the obligation on issuers to disclose inside information and regulatory duties applicable to financial intermediaries, investment funds, market managers, clearing houses, and other securities market operators (including duties relating to handling, transmitting, and executing orders, managing securities portfolios, settling securities transactions, safeguarding customer securities, and complying with financial or operational requirements). Under the Consob–SEC MoU, the two authorities shall provide access to each other to the information in their respective files, request information or documentation from any person, and carry out on-site inspections and other investigation activities.

Cooperation mechanisms are also set forth in Directive 2014/91/EU on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, which was implemented in Italy in 2016. Judicial cooperation in criminal matters is governed by European rules, and bilateral or multilateral treaties. Regarding the EU context, Legislative Decree No. 108 of 21 June 2017 implemented Directive 2014/41/EU that, by replacing the "letters rogatory" with a single instrument called the European Investigation Order, provides faster and more efficient means to carry out investigations and obtain evidence in other member states.

## 14 Will a securities or related law enforcement authority take into account findings by a law enforcement authority outside your jurisdiction in the course of its investigation?

Under Italian law, there is no limitation for Consob to take into account findings of foreign enforcement authorities in the course of its investigations. However, in order to issue a letter of charge and a sanction, Consob should, in principle, make its own ascertainment and assessment of the facts and should not rely exclusively on how facts have been evaluated by foreign authorities.

## Document production

### 15 What can the securities and related law enforcement authorities require to be produced as part of an investigation? Do the powers of a regulator differ from those of the public prosecutor?

Consob may require production of: any information, data (including personal data) or documents from anyone who may be informed of the facts or from any other governmental body, existing telephone records or telephone traffic records; as well as data and information included in tax registry office records, national register of accounts and deposits, national register of money-laundering operations and Bank of Italy's central credit register.

Consob's powers concerning document production resemble those attributed to the public prosecutor. However, in Consob's investigations, requests for documentation have a central role, while searches have, in principle, a residual scope of action and seizures may be applied to only a limited list of assets. On the other hand, in criminal investigations, the public prosecutor generally relies on searches to obtain the relevant documentation.

### 16 Will a litigation hold or will other instruction to preserve documentation need to be issued? When?

Under Italian law, there is no specific provision allowing or governing litigation holds. However, a litigation hold is by all means advisable. An indirect protection of the documentation relevant for a Consob's investigation may be granted by law provisions that sanction the obstruction to Consob's supervisory functions and, under certain circumstances, the destruction or concealing of documents.

### 17 Can the securities and related law enforcement authorities request the production of materials protected by attorney-client privilege or work-product doctrine? Can the securities and related law enforcement authorities use protected materials if it obtains them from third parties?

Legal privilege protects communications exchanged with external counsel and other materials concerning the defence. While communications with external counsel cannot be seized (or otherwise controlled), other materials concerning the defence cannot be seized only when they are still under the control of counsel (and, thus, privilege is waived if they have been delivered to the client or third parties). Authorities may request documents covered by legal privilege, in which case the addressee must assert the privilege. Inspections and searches at the office of external counsel are normally prohibited unless specific requirements are met. Furthermore, external counsel have the right not to testify on matters that they have become informed of because of their professional activities. Disputes over privilege between the authorities and addressees of requests are adjudicated by courts.

Materials obtained in breach of these rules cannot be used by the authorities.

These rules apply to both Consob's and criminal investigations. Despite these rules, the sense of the community of lawyers is that the protection granted by legal privilege in Italy is, as a matter of fact, low.

### 18 How is confidential information or commercially sensitive information treated by the securities and related law enforcement authorities?

See question 5. The law does not provide for a specific standard of protection for confidential or commercially sensitive information possessed by the authorities.

### 19 Can the target of a document request exercise a right not to produce?

The target of a document request does not have the right not to produce, unless the document is covered by legal privilege (see question 17).

### 20 Do any data privacy or bank secrecy laws restrict the production of materials to a securities or related law enforcement authority in your jurisdiction? An authority outside your jurisdiction? May the company under investigation provide personal or bank customer data on a voluntary basis?

Consob is allowed to request the communication of materials that may contain personal data protected by privacy law (see question 4). Restrictions set forth by privacy law can be avoided by foreign authorities when they can seek the cooperation of Consob under the international cooperation mechanisms described in question 13 to obtain materials containing personal data.

Legislative Decree No. 51 of 18 May 2018 implemented Directive 2016/680/EU on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data and, inter alia, contains provisions regarding transfers of personal data to third countries or international organisations.

With respect to voluntary production of documents protected by privacy law, as a general rule – and subject to certain requirements depending on each case – persons may use third parties' personal data when this is necessary to pursue their legitimate interest to defend their rights (either in Italy or abroad) without obtaining those third parties' consent and (when the data is not collected directly from the data subjects and the requirements under article 14.5 of Regulation EU 2016/679 are met) even without individually informing them of the data processing.

As far as bank secrecy is concerned, there is no specific provision regulating the matter. Insofar as information in the possession of banks concerns names and other data allowing the identification of clients, employees, or any other natural person, such information falls within the broad definition of "personal data" protected by privacy law and therefore is subject to the same considerations set out above with respect to the use of personal data.

### 21 Are there any data privacy, bank secrecy or other laws that restrict where documents or other communications may be stored or reviewed for the investigation?

The target of an investigation must not store documents and other communications protected by data privacy law outside the European Union, unless certain requirements are met (eg, the persons to whom the data relate consent to the data transfer outside the European Union or the transfer abroad is necessary to defend a right in court).

Similarly, securities and related law enforcement authorities must not store documents and other communications protected by data privacy law outside the European Union, unless the requirements set by Legislative Decree No. 51 of 18 May 2018 (which implemented Directive 2016/680/EU) are met (eg, when appropriate safeguards to protect personal data exist or the transfer of the personal data is necessary for the prevention of an immediate and serious threat to public security).

### 22 Are the securities and related law enforcement authorities able to obtain documents from outside the country?

Consob's jurisdiction is in principle limited to Italy. However, under international cooperation mechanisms mentioned in question 13, Consob may seek the assistance of foreign securities law authorities in order to obtain documents from outside the country (see question 13 for additional details).

## Witness interviews

### 23 Will the securities and related law enforcement authorities conduct witness interviews? If so, will the interviews be on the record? Will the interviews be made public?

Consob and the public prosecutor may conduct witness interviews of any person who may be acquainted with the facts. Minutes of the interview must be drafted and must be signed by the witness. With the exception of this communication to the witness him or herself and to the additional limited disclosure mentioned in question 5, the interview and its minutes are covered by professional secrecy and cannot be communicated to any person not involved in the investigations. However, it is possible that they are summarised or quoted in the sanctioning decision issued by Consob, which would be public. Consob may order that its sanctioning decisions are published with redactions to delete the names of individuals mentioned therein when publicity of such names appears to be disproportionate with respect to the seriousness of the facts. The rationale of courts' decisions is published with redactions aimed at hiding the names of individuals or entities mentioned therein (access to full text is governed by the same rules governing access to the investigation file – see question 5).

### 24 Can witnesses exercise a right not to testify? Will any adverse inference be drawn if they do so?

Witnesses are entitled to abstain from testifying (before both Consob and the public prosecutor) only in the limited cases in which such an abstention is allowed under the Italian Code of Criminal Procedure, including if the witnesses are close family members of the person under investigation, are requested to testify on matters covered by professional, confessional or office privilege (including privilege granted to lawyers, journalists, physicians and clergymen), or are requested to testify on matters covered by public office privilege or state secrecy privilege. In such cases, no adverse inference against the party under investigation may be drawn.

### 25 Do witnesses receive separate counsel? Who provides counsel for witnesses?

There are no specific provisions under Italian law governing, prohibiting or mandating legal advice to witnesses in the context of Consob or criminal investigations. Counsel may be present when witnesses are interviewed by Consob, and are not present when witnesses are interviewed in the context of criminal investigations. As a general rule, counsel are appointed by the individuals who need advice.

## Advocacy

### 26 Can the target of a securities or related investigation challenge the investigation in court while the investigation is ongoing?

Targets of securities or related investigation are not entitled to challenge the investigation while it is ongoing.

### 27 What opportunity will there be to respond to a securities or related law enforcement authority's theories or allegations prior to the authority bringing charges?

During the investigations, there may or may not be opportunities to respond to the theories or allegations of the authorities. The opportunity to respond to the theories or allegations generally arises when public prosecutors apply or request the court to apply preventive measures against the target of the investigation. The target of the investigation, in any event, may ask to be heard and file statements and documents.

In criminal investigations, the target of an investigation has the right to be heard by the prosecutor after the investigation is completed or if precautionary measures are applied.

As regards Consob's investigations, see question 12.

### 28 What form does the advocacy with a security or related law enforcement authority typically take?

The right of defence may be exercised in several forms (filing of statements and documents, examination of the file of the authorities to the extent it is accessible, etc), none of which may be deemed typical. Informal communications with the authorities are frequent and may play a significant role. Specific forms are required to challenge certain specific orders issued during the investigation phase (such as, for example, preventive seizure orders).

As specifically regards Consob's proceedings, see question 12.

### 29 Are statements or advocacy positions taken by an investigated party during the investigation process deemed admissions and binding in future proceedings? Would such statements be made public?

Statements by the investigated party (which has the right to abstain from answering questions made by the authorities) and advocacy positions may be deemed admissions. They are not formally – but may as a matter of fact and depending on the circumstances be – binding in future proceedings.

A party's statements and advocacy positions are not made public, but it is possible that they are summarised or quoted in the sanctioning decision issued by Consob. Consob may order that its sanctioning decisions are published with redactions to delete the names of individuals mentioned therein when publicity of such names appears to be disproportionate with respect to the seriousness of the facts. The rationale of courts' decisions is published with redactions to delete the names of individuals

or entities mentioned therein (access to the full text is governed by the same rules governing access to the investigation file – see question 5).

## Timing

### 30 What is the limitation period for charges for securities and related violations?

The limitation period is five years for violations that are not crimes. For crimes, the limitation period is equal to the longer of (i) the maximum penalty applicable for the crime and (ii) six years for felonies or four years for misdemeanours.

### 31 When does the limitation period begin to run?

The limitation period generally begins to run from the day on which the violation is committed.

### 32 What can suspend the running of the limitation period? Can the securities and related law enforcement authorities request a tolling agreement?

For violations that are not crimes, the limitation period starts to run again from the beginning every time Consob serves on the offender an act aimed at ascertaining a violation or issuing a sanction (including the letter of charge and the sanctioning decision).

For crimes, the limitation period starts to run again from the beginning under specific circumstances, including when the authorities serve on the offender certain orders identified under the law (generally those that apply preventive measures or raise charges), provided that in no event the limitation period may be extended for more than 25 per cent of the original period (eg, if the original limitation period is six years, the limitation period cannot exceed 7.5 years even if multiple interrupting events occur).

Under specific circumstances – which are less common than those that cause the limitation period to start running again from the beginning and include, for example, letters rogatory and the defendant's counsel "legitimate impediment" – the limitation period may also be suspended.

Tolling agreements are not allowed. The person under investigation may, however, waive the limitation period after such period has expired.

### 33 How long does a securities or related investigation typically take?

There is no public information on the average duration of Consob's investigations. The investigation stage of the proceeding prior to the notification of the letter of charge (see point (i) of question 12) usually takes from two to 18 months, while the following stage from the notification of the letter of charge to the issuance of the final decision by Consob (see points (ii)–(vii) of question 12) should inormally not exceed 230 days.

The public prosecutor must complete the investigations within six months and can be authorised by the court to continue the investigations for a maximum of (depending on the nature of the crime allegedly committed and the complexity of the investigation) three additional six-month periods.

## Resolution

### 34 What is the process for closing an investigation if the investigation does not reveal a violation of securities or related laws? Will the securities or related law enforcement authorities provide written confirmation that the investigation is closed without action?

If the competent Consob's office closes the investigations before sending a formal letter of charge, it dismisses the case without informing the investigated party that the investigation was initiated and subsequently dismissed. If, however, the competent Consob office delivers a letter of charge and starts a formal sanctioning proceeding, the person under investigation will be informed of Consob's Board's decision dismissing the charges.

The public prosecutor must, at the end of the investigation, request the court to allow the case to either proceed to trial or be closed. If the public prosecutor requests the court to allow the case to be closed, the court may approve the request, order further investigations, or order the public prosecutor to proceed with formal charges to be discussed in a hearing (at the end of which a decision on whether to proceed to trial will be taken).

## 35 How will the resolution or settlement process be initiated?

Consob's resolution proceedings relating to charges of securities law violations start when the Consob Sanction Office serves upon the investigated person a letter of charge (see point (ii) of question 12).

For criminal investigations, the resolution process starts when, at the end of the investigation, the public prosecutor requests the court to allow the case to either proceed to trial or be closed.

There is no provision under Italian law allowing Consob to enter into settlement agreements with persons under investigation.

However, with respect to breaches of certain limited securities law provisions (which do not include, inter alia, market abuse and other major securities law offences) investigated by Consob, the offender may discretionally elect (without Consob's consent) to settle the violation by paying an amount equal to twice the minimum penalty provided for under the applicable sanctioning provisions, within 30 days from the delivery of the letter of charge, provided that the offender did not avail himself of this option in the previous 12 months. Additionally, if the offender's violation did not cause significant damage or danger, Consob may discretionally elect (without the offender's consent) not to apply the sanctions provided for under the applicable sanctioning provisions, but to order him to remove the breaches by carrying out specific actions within a specific period of time. Failure to comply with Consob's order would result in the application to the offender of the sanction provided for the initial breach being increased by up to one-third.

Crimes that would be punished with monetary sanctions or imprisonment for a period not longer – based on the particulars of the case and a one-third reduction – than five years (insider trading and market manipulation would generally be covered) can be settled during the investigations through a plea bargain. The plea agreement must set forth a penalty to be applied to the target of the investigation, is entered into by and between the target of the investigation and the public prosecutor, and is subject to scrutiny by the court. The court assesses, inter alia, whether the penalty is adequate in light of the circumstances of each case.

## 36 Who decides whether to proceed with charges and what charges to select?

The Director of the Consob Investigating Unit in charge of the investigation and Consob's General Director are jointly competent to decide whether to proceed with formal charges and to select the charges to proceed with.

In case of criminal investigations, the public prosecutor decides whether to proceed with charges and what charges to select. The choice of the public prosecutor is subject to scrutiny by the court. If the public prosecutor asks the court to allow the case to proceed to trial, the court may order the case to be closed, approve the request and amend the charges, or order further investigations. Also, the request to allow the case to be closed is subject to scrutiny by the court (see question 34).

## 37 What factors would a securities or related law enforcement authority consider in selecting charges and the severity of any penalty or fine?

To select charges to proceed with, Consob shall identify the factual and legal elements of the case and evaluate which sanctioning provision (if any) would apply when those elements are present.

If Consob's officers conclude that there are elements sufficient so as to believe that a violation was committed, they have a duty to bring charges and cannot refrain from doing so.

Only with respect to breaches of certain limited securities law provisions (which do not include, inter alia, market abuse and other major securities law offences), Consob's officers must evaluate whether those breaches caused damage to the investors' protection, to the market for corporate control, to the financial markets or to the exercise of its supervision activities, and, if this is not the case, they cannot proceed with charges. However, also in this case, the decision not to bring charges is not discretionary upon Consob's officers, but is a duty when they have ascertained that the above-mentioned circumstances occurred.

As to the severity of the penalty, the Consob Sanction Office and Consob Board shall take into account several factors when respectively proposing and applying sanctions, including: the severity and duration of the breach, the degree of liability of the offender, the financial capacity of the offender, the profits gained or losses avoided by the offender, the damage caused to third parties, the level of cooperation of the offender with Consob and previous breaches of securities law by the offender after the breach itself, in order to avoid its repetition in the future.

With respect to the amount of penalties, the Consob Sanction Office and Consob Board shall refer to the relevant turnover, using the offender's annual turnover for the last financial year in which the financial statement has been approved. The means of calculating the relevant turnover are in an annex attached to the Consob Regulation on Sanctioning Proceedings.

Similar principles apply in case of criminal violations.

## 38 What remedies can the securities or related law enforcement authorities consider? How are penalties calculated?

A broad range of remedies is available for breaches of securities law provisions. The main remedies (that, depending on the specific breach and the circumstances of each specific case, may be applied either jointly or severally) are:

- imprisonment of the offender (only for crimes);
- monetary sanctions against the offender;
- disqualification of the offender from maintaining or taking offices as a member of the management or supervisory board of asset managers, broker-dealers, stock exchanges, audit firms, issuers or companies belonging to the same group of issuers or of other private companies;
- in case of market abuse violations, disqualification of the offender from owning a significant shareholding in asset managers, broker-dealers and stock exchanges;
- in case of market abuse violations, an order to asset managers, broker-dealers, stock exchanges, issuers and audit firms not to avail themselves of the services of the offender;
- in case of market abuse violations, suspension of the offender from exercising his or her professional activity;
- in general, disqualification of the offender from exercising specific professions, businesses or jobs that require an authorisation from public administration if he committed the offence exploiting his or her profession, business or job;
- in case of market abuse violations committed in the interest of or for the benefit of a company, monetary sanctions against the company in which the offender works as a director, manager, legal representative or employee (see question 6);
- confiscation of the profits made by the offender, the products of the violation and the goods and assets used to commit it;
- in case of market abuse violations, compensation for the damages caused to the markets as a result of the violation;
- in limited cases, as an alternative to the above penalties, order for the offender to remove the breaches by carrying out specific actions within a specific period of time (see question 35);
- disclosure to the public of the sanctioning decision; and
- in the case of minor breaches which are no longer effective, as an alternative to monetary sanctions, Consob may apply the penalty of a public disclosure of the breach committed and of the identity the offender.

As to the calculation of penalties, see question 37.

## 39 Do illegal profits have to be disgorged, and if so, how are they determined?

Profits made by the offender as a result of securities law violations and the products of such violations have to be disgorged. Profits consist of the economic benefit or advantage gained by the offender as a direct result of the offence; products consist of the things that were created, manufactured, modified or purchased through the offence (eg, securities in the case of insider trading offences).

If it is not possible to confiscate the above-mentioned profits or products (eg, because they have been destroyed, sold, lost or moved outside the jurisdiction), money, goods or other assets having a value equal to them can be confiscated.

## 40 Can criminal charges be brought against companies in your jurisdiction for violations of securities and related laws?

As described in question 6, criminal charges can be brought only against natural persons under Italian law. However, under Legislative Decree No. 231/2001, companies can be charged with 'quasi criminal' liability when crimes such as insider trading or market manipulation are committed in their interest or for their benefit by their directors, managers, legal representatives or employees (in such cases, sanctions for the company would be monetary, profits arising from the offence would be confiscated and the judgment would be published). Additionally, criminal courts may request companies to pay an amount equal to the penalty inflicted to their directors, managers, legal representatives or employees who committed a crime in breach of their duties or in the interest of the company and failed to pay the relevant penalty.

Although liability under Legislative Decree No. 231/2001 is considered administrative in nature, infringements are investigated by public prosecutors and adjudicated by criminal courts, in parallel with the prosecution of the individuals' related crimes and in accordance with the code of criminal procedure.

## 41 Will the securities and related law enforcement authorities provide a reduced penalty for cooperation? What standard will the authority use when taking into account any cooperation?

The cooperation of the offender is one of the factors that must be taken into account when determining the amount of the penalty to apply (see question 37). Standards to be followed are not expressly established.

## 42 Are deferred prosecution agreements or non-prosecution agreements permitted?

Deferred prosecution or non-prosecution agreements are not permitted.

## 43 Will a court need to approve the settlement agreement with a securities or related law enforcement authority?

See question 35.

## 44 If a settlement occurs, will an admission to certain facts or wrongdoing be required?

Only plea agreements are admitted under Italian law.

## 45 Can the findings or decisions of the securities or related law enforcement authorities be administratively appealed? Appealed to a court?

Yes, the offender has the right to challenge the findings of Consob's Investigation Office, the findings of Consob's Sanction Office and the decision of Consob's Board. In particular:

- the findings of the competent Consob's Investigation Office (as described in the letter of charge) may be administratively challenged by the investigated party before Consob's Sanction Office in the first stage of Consob's sanctioning proceedings (see points (iii) and (iv) of answer 12);
- the findings of Consob's Sanction Office (as described in its conclusions to the Board) may be administratively challenged by the investigated party before Consob's Board in the second stage of Consob's sanctioning proceedings (see points (v) and (vi) of answer 12); and
- the sanctioning decision by the Consob's Board may be appealed by the offender before the competent Court of Appeals (see points (vii) and (viii) of answer 12).

In criminal cases, decisions issued by the court of first instance are generally challengeable before the Court of Appeals, while decisions issued by the Court of Appeals may be challenged before the Court of Cassation but only on certain specific grounds (in any event, the Court of Cassation only deals with matters of law and does not carry out a reassessment of the underlying facts).

## 46 If a decision can be administratively or judicially appealed, what are the consequences of an adverse decision on appeal? What are the consequences of a positive decision on appeal?

The Court of Appeals is entitled to review all aspects, in respect of both law and fact, of Consob's decision, assess de novo if the offence was committed and if the imposed penalties were proportionate, and modify Consob's decision accordingly. In particular, as a result of its full jurisdiction review, the Court of Appeal may:

(i) establish that the factual and legal conclusions and the amount of the penalties set forth in Consob's decision are correct, and therefore dismiss the appeal and confirm Consob's decision;

(ii) establish that all or part of the factual or of the legal conclusions set forth in Consob's decision are not correct, and therefore annul all or part of Consob's decision; and/or

(iii) establish that the amount (or duration) of the penalties set forth in Consob's decision is not correct, and therefore reduce the amount (or duration) of such penalties.

The decision of the Court of Appeals can be further challenged before the Court of Cassation but only on certain specific grounds. However, the Court of Cassation's review is limited to matters of law and does not deal with issues of fact. If it upholds the appeal, the Court of Cassation may either finally resolve the dispute itself (if it can do so based on what is in the court's file) or remand the case to the Court of Appeals for a new assessment (whose new decision could again be challenged before the Court of Cassation).

As to criminal cases, the review conducted by the Court of Appeals and the Court of Cassation (ie, full de novo assessment by the Court of Appeals and more limited review by the Court of Cassation) does not differ from that just described.

## Collateral consequences

### 47 What are some of the collateral consequences to a resolution or settlement with a securities or related law enforcement authority?

As mentioned in question 38 above, securities law offences may cause, inter alia, disqualifications of the offender from maintaining or taking offices as a member of the management or supervisory boards of companies, from owning a significant shareholding in supervised companies or from undertaking specific activities, professions, businesses or jobs.

### 48 What are some of the collateral consequences to a conviction or the imposition of liability by a court?

The collateral consequences substantially correspond to those applicable by Consob.

### 49 Can private securities or related legal claims proceed parallel to investigations by securities and related law enforcement authorities?

Private securities or related claims may generally proceed parallel to investigations by Consob and the public prosecutor. However, rules on evidence in civil proceedings set forth deadlines by which documents and information need to be produced or alleged, and this may make it difficult to use information and documents that emerged at the end of the investigations in the context of civil proceedings started during the same investigations.

### 50 What effect will findings by an authority in another jurisdiction have in private proceedings?

Findings by authorities in other jurisdictions would not be binding on Italian courts. Italian courts would evaluate the findings according to their careful assessment.

### 51 Can private plaintiffs obtain access to the files or documents the securities or related law enforcement authorities collected during the investigation?

Private parties may obtain access to Consob's investigation file only when the request is made by the person under investigation for the purpose of defending himself in the relevant Consob sanctioning proceeding (see, eg, Decisions of the Italian Constitutional Court Nos. 460/2000 and 32/2005, and Decision of the Administrative Court of Lazio No. 13562/2005).

As mentioned in question 5, in criminal investigations, private parties that have a qualified interest may file a petition with the public prosecutor or the court (depending on whether the investigation is, respectively, ongoing or closed) to access the investigation file.

In recent cases, access has been granted to shareholders of a company under investigation who are interested in assessing potential civil claims against the company.


## Pietro M Fioruzzi

Cleary Gottlieb Steen
& Hamilton LLP


Pietro M Fioruzzi is a partner based in the Milan office of Cleary Gottlieb Steen & Hamilton LLP. Mr Fioruzzi's practice focuses on advising international and Italian corporate clients and investment banks on a wide range of disputes.

Mr Fioruzzi represents clients in internal investigations as well as before Italian courts with regard to capital markets, corporate and regulatory matters. He assists clients in investigations and matters related to coordinating investigations by administrative authorities and compliance by administrative and supervisory boards with their corporate governance obligations. He also advises public Italian companies as to board structure and practice and special committees, as well as on compensation and benefit matters.

Mr Fioruzzi joined the firm in 1997 and worked in the New York office until 1998, when he moved back to Italy to the firm's then newly opened Rome office. He was resident in the Rome office from 1998 through 2001, when he helped open the Milan office, and became a partner in 2006. Mr Fioruzzi graduated with honours from the State University of Milan law school in 1993 and received an LL M degree from Harvard Law School in 1997. He spent the 1996 academic year as a visiting scholar at the University of Munich. Prior to joining the firm, he worked at the law firm of Professor Pier Giusto Jaeger until spring 1995.

Mr Fioruzzi is a member of the Bars in Milan and New York. He is a native Italian speaker and is fluent in English and German.


## Andrea Mantovani

Cleary Gottlieb Steen
& Hamilton LLP


Andrea Mantovani is an associate based in the Rome office of Cleary Gottlieb Steen & Hamilton LLP.

Mr Mantovani's practice is primarily devoted to corporate law and litigation. He has extensive experience in the practice of domestic and international litigation. Additionally, he regularly advises clients on variouscontractual, corporate and compliance matters, including in connection with internal investigations and investigations carried out by public authorities. Mr Mantovani also assists clients in the area of personal data protection, including in the context of supervising authorities' investigations as well as regarding the design and implementation of global data protection compliance programmes.

Mr Mantovani graduated, summa cum laude, from "Roma Tre" University and obtained a PhD in corporate law from the International Doctoral School of Law and Economics "Tullio Ascarelli". He received an LLM degree from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar.

Mr Mantovani is a member of the Bars in Rome and New York.


## Bernardo Massella Ducci Teri

Cleary Gottlieb Steen & Hamilton LLP


Bernardo Massella Ducci Teri is an associate based in the Rome office of Cleary Gottlieb Steen & Hamilton LLP. In 2016 and 2017, he was resident in the Washington, DC, office.

Mr Massella Ducci Teri's practice mainly focuses on corporate and bankruptcy law, as well as EU and Italian banking and financial regulation, with significant experience in litigation and enforcement matters including cross-border regulatory investigations and white-collar criminal proceedings relating to alleged breaches of banking and financial regulation. Mr Massella Ducci Teri has authored several articles on banking, corporate and bankruptcy law, published in Italian primary law reviews and has recently co-authored an article titled "The Reform of Bank Creditor Hierarchy in the EU", published by Revue de Droit Bancaire et Financier. He is also active on the blog Cleary Enforcement Watch.

Mr Massella Ducci Teri graduated with honours from Università degli studi di Roma Tor Vergata (recipient of the Sebastiano e Rita Raeli graduation award). He earned his LLM in banking and financial law at the Boston University School of Law, Morin Center for Banking and Finance (recipient of the Dennis S Aronowitz Award for Academic Excellence in Banking and Financial Law as first of the Class of 2009) and his PhD at Università degli studi di Roma Tor Vergata.

Mr Massella Ducci Teri is a member of the Bars in Rome, New York and Washington, DC.

# CLEARY GOTTLIEB

Since our founders established Cleary Gottlieb in 1946 with the simultaneous opening of offices in New York and Washington, DC, followed by opening the Paris office just three years later, we have been a pioneer in the globalisation of the practice of law. Organised and operated as a single, integrated global partnership (rather than a US firm with a network of overseas offices), the firm now has 1,200 lawyers from more than 50 countries in 16 offices located in major financial centres around the world. The diversity of our practice and lawyers provides clients with clear solutions for their most complex problems, anywhere in the world. In recognition of the firm's strong global practice and its success in multiple jurisdictions, Cleary Gottlieb received Chambers and Partners' inaugural International Law Firm of the Year award.

Our renowned global crisis management group, which includes experts from the various jurisdictions in which we have offices in the fields of white-collar defence, securities enforcement and internal investigations, advises and defends the world's leading financial institutions and multinational corporations and, in certain cases, their senior employees, in a broad range of sensitive regulatory and criminal matters, including investigations involving securities fraud, insider trading, accounting fraud, allegations of bribery, false claims, bid rigging, antitrust, money laundering and banking law and sanctions violations. With established and integrated practices in the United States, Europe, Asia and Latin America, we are unmatched in our ability to provide a comprehensive and coordinated approach to cross-border enforcement matters.

Via San Paolo 7
20121 Milan
Tel: +39 02 72 60 81

www.clearygottlieb.com

**Pietro M Fioruzzi**
pfioruzzi@cgsh.com

**Andrea Mantovani**
amantovani@cgsh.com

**Bernardo Massella Ducci Teri**
bmassella@cgsh.com