The Gathering Clouds

The rise of cyber-related breaches looks certain to continue and financial crime and sanction-enforcement are rarely out of the headlines. As regulators focus on using big data for analytics and abuse detection, regulatory reporting is certain to be given increased prominence, as we see many of the major regulators investing heavily in their own systems and data analytics capabilities.

The seemingly inexorable decline of the public markets, at least in the Western world, in terms of the number of listed companies, means institutional and now retail investors are seeking out opportunities in the private market space. In those less transparent and less liquid markets, where many retail investors may be venturing for the first time, there is clearly potential for investor detriment.

In a world where sustainability has become one of the crucial considerations for investors, governments and their electorates, action by regulators to encourage the long-term health of the financial services industry will become more important. Firms therefore would be prudent to continue their efforts to embed a healthy culture, underpinned by aligned values, behaviours, governance, leadership, and working environments that promote the organisation's long-term success and deliver good outcomes for customers.

Tough enforcement action can be a double-edged sword, especially when it comes to attracting and retaining the top talent in the industry. Financial services is the poster-child of the regulatory enforcement era. With other faster-growing industries increasingly seen as more attractive places to work, financial services has to be careful how it uses personal sanctions. The industry should not create an environment in which people are wary of innovation and make conservative, rather than bold decisions for fear of individual enforcement action. Both regulators and firms have a role to play here: regulators in terms of a delivering a balanced personal accountability framework and firms in creating a safe, open culture that will naturally deter misconduct and will allow the industry to flourish.

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DUFF & PHELPS

Protect, Restore and Maximise Value

About the Global Enforcement Review

Now in its sixth year, Duff & Phelps' Global Enforcement Review provides insights on recent enforcement trends in the financial services industry. This snapshot report provides a summary of penalty amounts globally.

In compiling the research, we draw on Corlytics' RiskFusion Global Enforcement database. Corlytics is the world's leading provider of regulatory risk intelligence to enable organisations to take a data-driven approach to regulatory resource allocation. The firm prioritises and selects penalties for inclusion in the database based on the following criteria:

- Enforcement penalties from high priority financial services regulators
- Enforcement penalties greater than U.S.$1 million or equivalent across all selected regulators
- All enforcement penalties (including those below U.S.$1 million) for firms and associated individuals with assets greater than U.S.$25 billion on the date of the enforcement
- Enforcement penalties cover enforcement actions against both firms and individuals. For individuals, the U.S.$1 million threshold does not apply, rather the scope includes penalties for those selected firms.

CORLYTICS

ABOUT DUFF & PHELPS

Duff & Phelps is the global advisor that protects, restores and maximizes value for clients in the areas of valuation, corporate finance, investigations, disputes, cyber security, compliance and regulatory matters, and other governance-related issues. We work with clients across diverse sectors, mitigating risk to assets, operations and people. With Kroll, a division of Duff & Phelps since 2018, our firm has nearly 3,500 professionals in 28 countries around the world. For more information, visit www.duffandphelps.com.

DUFF & PHELPS

Protect, Restore and Maximise Value

Global Enforcement Review 2019: Snapshot Report

AFTER THE STORM

Trends in Penalty Amounts

2018 was another busy year of enforcement for regulators across the world and the first half of 2019 has shown no sign of that slowing down. Financial crime and sanction-busting continues to grab many of the headlines, with several large fines recorded in the U.S., UK and Australia.

Cyber security and data breaches have risen to the top of the regulatory agenda, seemingly almost overnight. Yet regulators' determination to hold senior individuals to account for their organisations' failings have not yet really materialised in enforcement actions.

Of the large enforcement cases included in our research scope[2], as in previous years the U.S. continues to dominate in terms of penalty amounts and frequency of fines, accounting for 93% (U.S.$16.5 billion) of the total global penalty amount of U.S.$17.5 billion in 2018.

Conduct of business, corporate governance and market conduct remain key areas of focus and activity, with the number of enforcement cases consistently high across recent years. The big LIBOR and FX misconduct cases from 2013/14 are rapidly receding in the rear-view mirror, although the Australian and U.S. authorities and the European Commission continue to issue fines for a variety of benchmark manipulation.

Outside financial crime, other genuinely global themes are more difficult to identify. Many jurisdictions have flagged cyber and data security as an area of focus, but the number of enforcement outcomes is still relatively modest.

Some recent notable actions and jurisdictional regulatory focus areas are outlined below, with trends in fine amounts[2] provided opposite.

1 https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-criminal-charges-against-us-bancorp-violations-bank

2 See back page for scope criteria

UNITED STATES

There were still some big, financial crisis-linked cases being finalised in 2018, in relation to the sale of residential mortgage-backed securities (Barclays – U.S.$2 billion, RBS – U.S.$4.9 billion, Wells Fargo – U.S.$2.1 billion.)

Unicredit (U.S.$1.3 billion) and Standard Chartered (U.S.$1 billion) settled substantial sanction-related cases with U.S. regulators in the first half of 2019, following a similar settlement (U.S.$1.3 billion) for Société Générale in late 2018. U.S. Bancorp was also ordered to pay a penalty of U.S.$528 million by the Attorney for the Southern District of New York for "...wilfully failing to have an adequate AML program and wilfully failing to file a suspicious activity report.[1]"

The Security and Exchange Commission's (SEC) 'Share Class Selection Disclosure Initiative' led to dozens of investment advisers paying significant compensation to their investors; this was for the inadequate disclosure of conflicts of interest related to their sales of higher-cost mutual fund share classes when a lower-cost share class had been available.

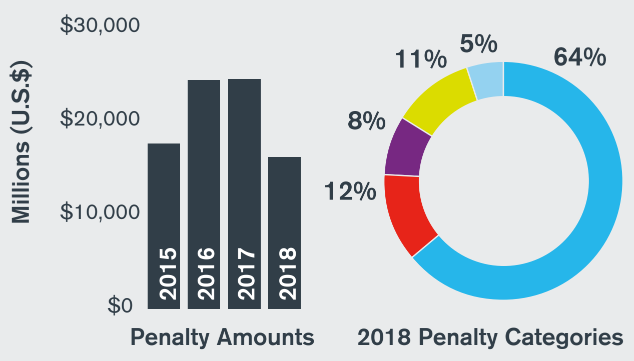
In the cyber security and digital assets space, regulators are upping their game, with the SEC reporting that, as at 30 September 2018, it had 225 cyber-related ongoing investigations (including initial coin offerings and other digital assets). Yahoo!, for example, was fined U.S.$35 million for failing to disclose a large data breach in which hackers stole personal data relating to hundreds of millions of user accounts.

The Commodity Futures Trading Commission (CFTC) meanwhile has been getting good results from its 'Spoofing Task Force', announcing numerous sanctions against firms and individuals during 2018 and early 2019. The CFTC also imposed a large fine (U.S.$22.8 million) for an internet fraud scheme involving off-exchange binary options.

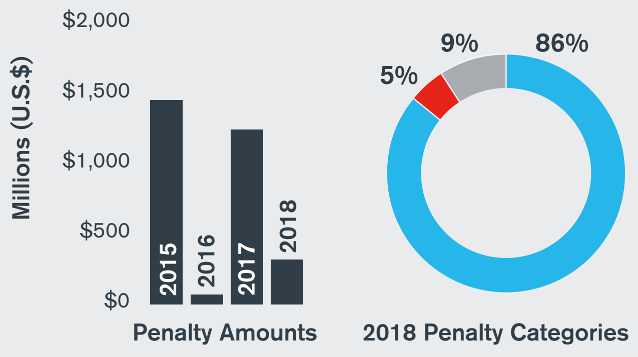
Some significant penalties against firms in relation to dark pools and order routing were also imposed. ITG and Citigroup were fined approximately U.S.$12 million each for separate and distinct breaches that involved providing misleading information about the operation of their dark pool trading venues. Separately, Merrill Lynch was fined U.S.$42 million for misleading customers about how it handled their orders.

Also during 2018 and early 2019, the SEC's ongoing investigations into abusive American Depository Receipts (ADR) pre-release practices has resulted in multiple settlements, with fines totalling more than U.S.$420 million.

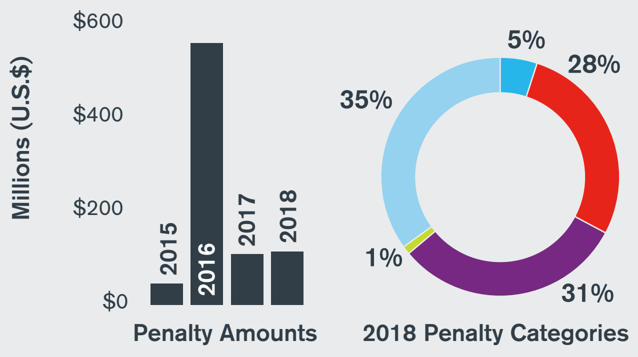
UNITED STATES

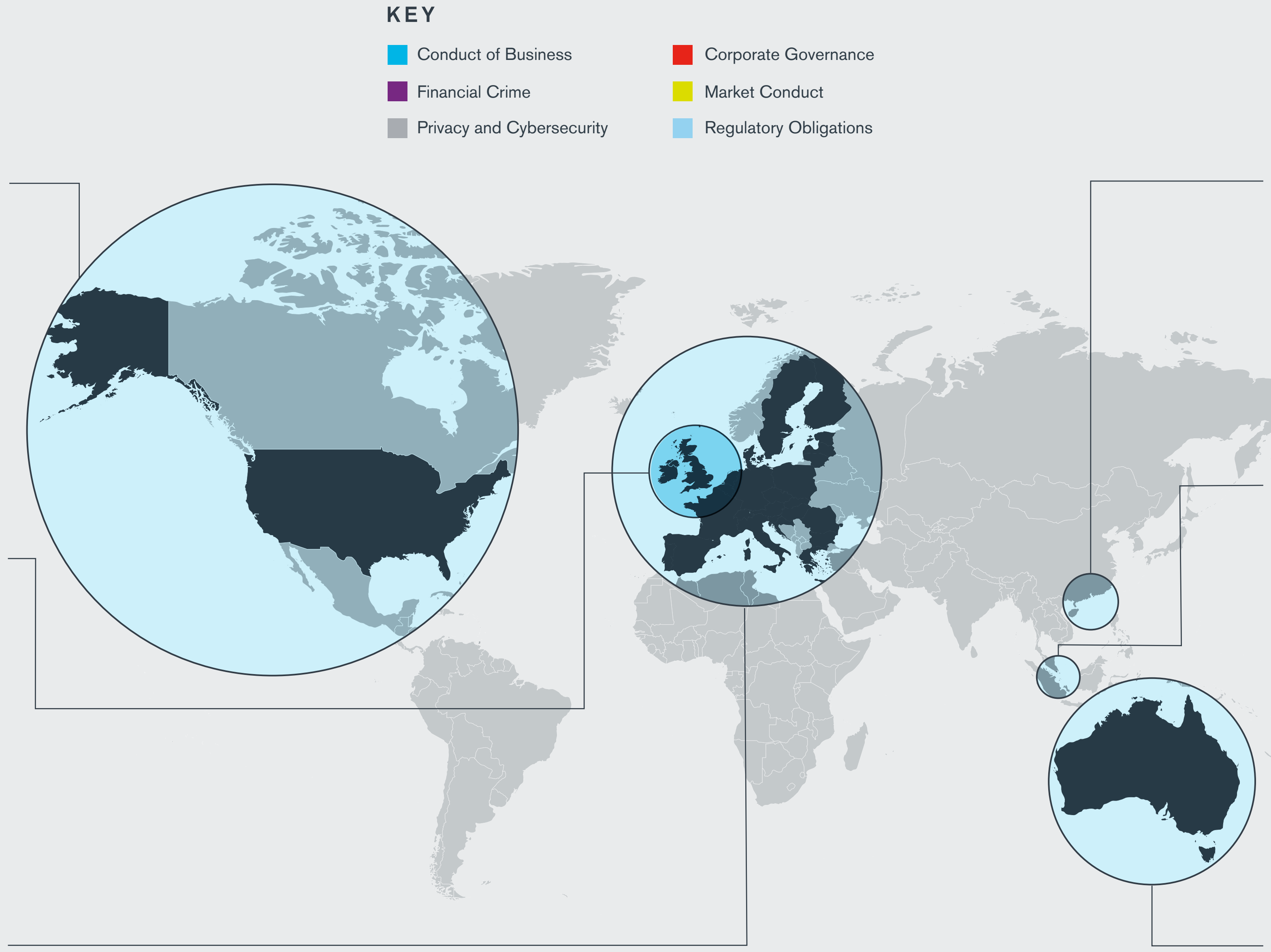


UNITED KINGDOM

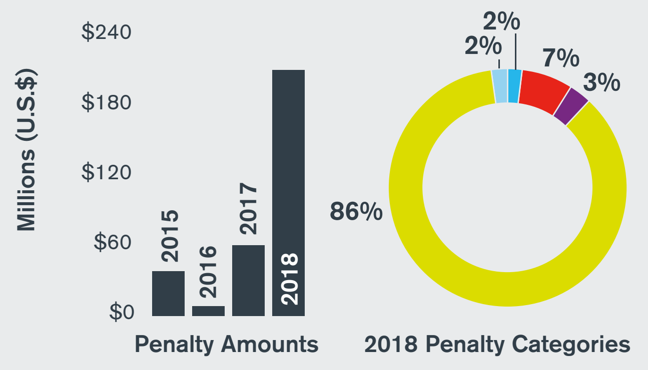


EUROPE (EXCL UK)





HONG KONG



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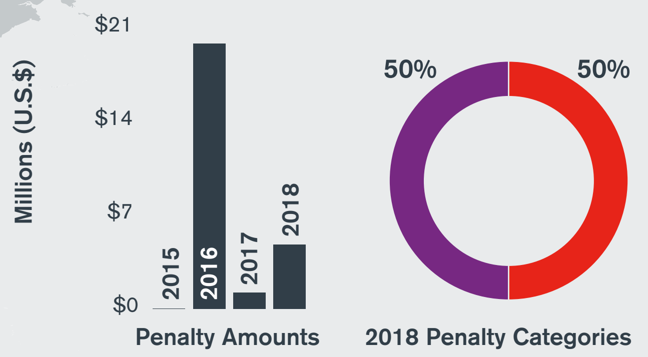
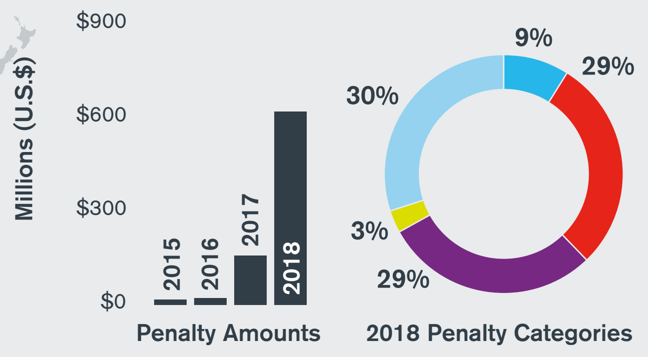


AUSTRALIA



UNITED KINGDOM

The Financial Conduct Authority was relatively quiet from an enforcement perspective in 2018 and early 2019. There were several large fines: two large regulatory transaction reporting cases against Goldman Sachs (£34.3 million) and UBS (£27.6 million); a fine of £102 million imposed on Standard Chartered for AML failings; and Carphone Warehouse fined £29.1 million for insurance mis-selling. Notably, there were few significant fines imposed against individuals in 2018.

EUROPE (EXCL UK)

In Europe meanwhile, the French authorities have concluded some substantive AML/CTF cases, including fines against La Banque Postale (€50 million), CNP Assurance (€8 million) and Western Union Payment Services Ireland (€1 million).

The other European regulator that has been making some noise through enforcement is the Central Bank of Ireland. Permanent TSB was fined €21 million for failing to protect its tracker mortgage customers' best interests. RSA Insurance Ireland paid €3.5 million for breaches relating to a large loss claim and accounting irregularities in general insurance.

HONG KONG

The Securities and Futures Commission (SFC) has been active in its campaign against poor quality work by firms that sponsor stock exchange listings. UBS (which was also suspended as a sponsor for a year), Citigroup, CCB International Capital, Morgan Stanley, Merrill Lynch and Standard Chartered, were all fined for failures when sponsoring, or leading, IPOs in Hong Kong.

The SFC has also acted to sanction poorly controlled algorithmic trading, fining Interactive Brokers Hong Kong Limited and Instinet Pacific Limited.

SINGAPORE

The Monetary Authority of Singapore's (MAS) focus on AML has continued, with substantial penalties issued in 2018 against Standard Chartered Bank (SG$5.2 million) and Standard Chartered Trust (SG$1.2 million) for AML/CTF breaches.

AUSTRALIA

Headlines in Australia in 2018 were dominated the Australian Transaction Reports and Analysis Centre's (AUSTRAC) fine of AU$700 million imposed on the Commonwealth Bank of Australia for AML failings. The Australia Securities and Investments Commission (ASIC) has also been active, fining Westpac AU$35 million for breaching its responsible lending obligations when providing home loans. The securities regulator has also been pursuing benchmarks cases, in this instance the Bank Bill Swap Rate (BBSW), which resulted in sanctions against Commonwealth Bank of Australia and Westpac.