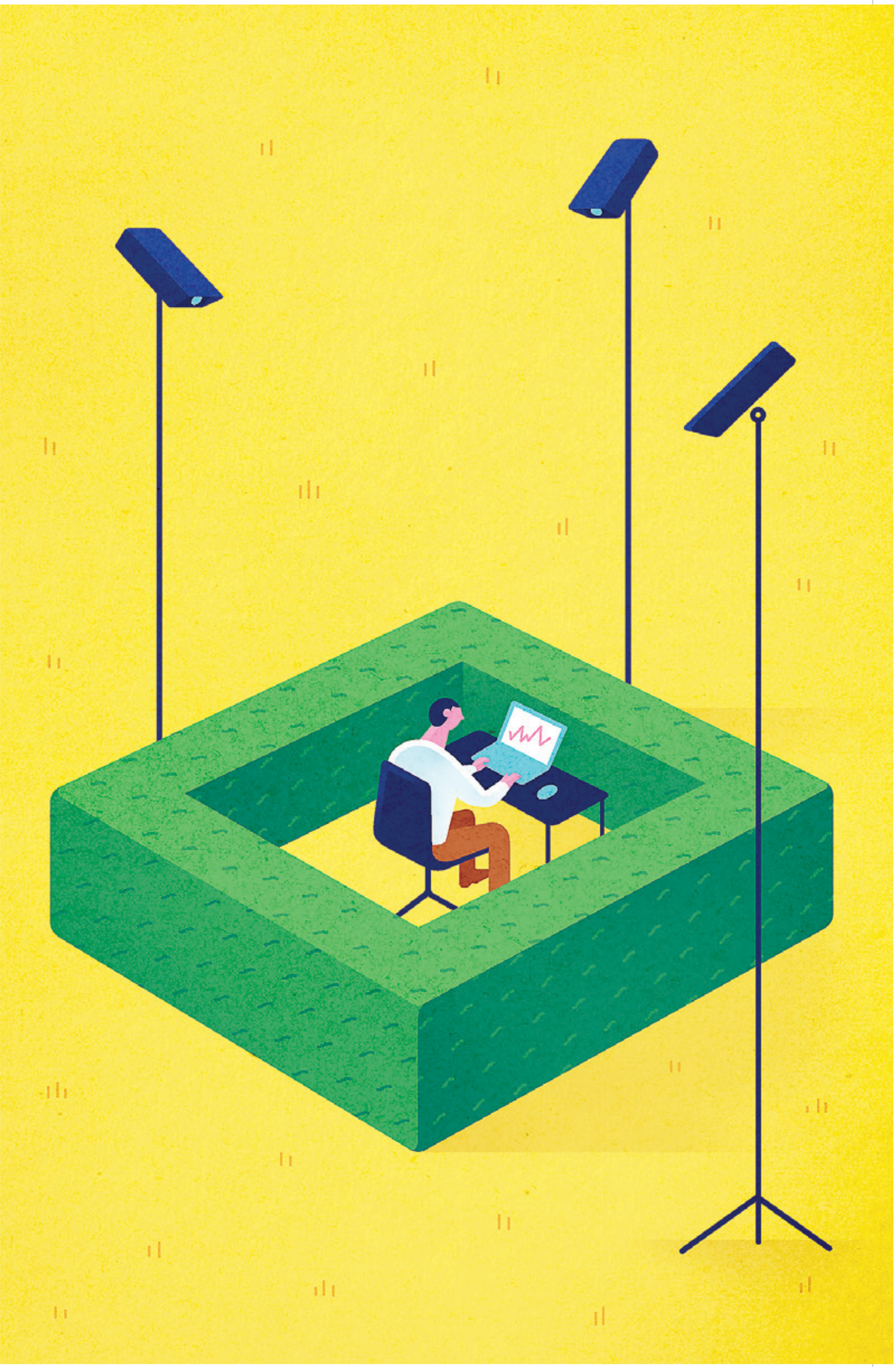
UpFront

IN FOCUS

THE 360-DEGREE VIEW



JESSE LEFKOWITZ

The government crackdown this summer on two high-profile hedge fund firms and their leaders, Steven Cohen of SAC Capital Advisors and Philip Falcone of Harbinger Capital Partners, delivered a resounding warning to the industry. To continue to thrive, hedge fund firms need a serious commitment by senior management to ethics and lawful behavior.

But adapting to the heightened regulatory environment and navigating gray areas that exist around insider trading laws pose challenges to many market participants.

"There will always be gray areas," says Todd Harrison, a partner in the white-collar criminal practice at Patton Boggs, a legal and lobbying powerhouse in Washington. "These laws have been on the books for a long time, but the facts and circumstances change. What is considered to be 'material' and what is 'nonpublic' will always depend on a very fact-specific analysis."

One trip wire revolves around the interpretation of the so-called mosaic theory. In its public statements the Securities and Exchange Com-

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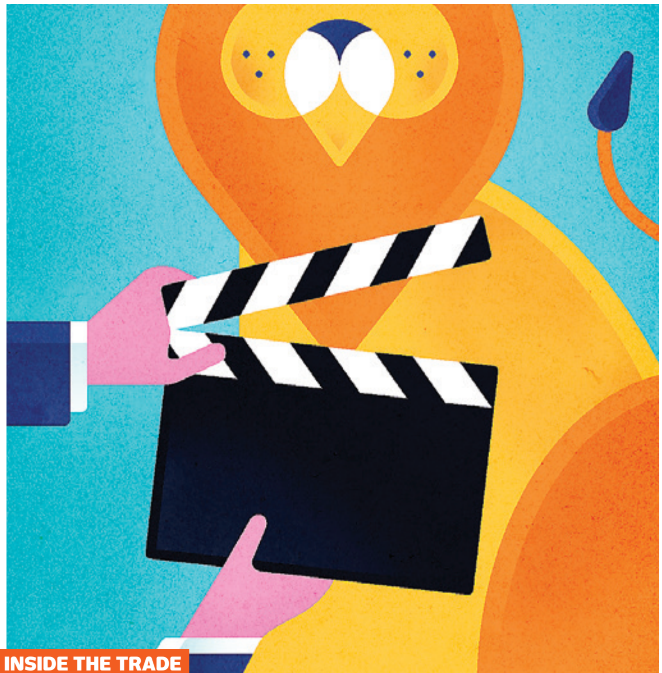
mission acknowledges that investors can "assemble pieces of nonpublic and immaterial information into a mosaic that reveals material conclusion."

The key tenet to the mosaic theory concerns the aggregation of information. An analyst is less likely to get into trouble if he or she can develop a "view" based on multiple sources. In the new environment analysts need to demonstrate that a view is based on information compiled from public sources — such as Bloomberg and reports from the federal government and industry, along with reputable university research — in conjunction with published reports by companies and conversations with company sources and subject experts. Analysts will have to show they've taken a 360-degree approach, cross-referencing data and discussions. In its insider trading charges against SAC, the government maintains that the firm's competitive intelligence was mainly derived from a single "insider" with access to nonpublic information.

Much has changed in the world since the insider trading laws were created in 1934. Although the SEC and federal judges have developed a more contemporary version over the years, more public forums to educate market participants about the complex web of compliance issues may be overdue.

—Amy Poster

Amy Poster is director for risk and regulatory services at New York–based C&A Consulting and a former senior adviser to the U.S. Treasury Department. Before her role at Treasury, she was global risk controller for credit products at Credit Suisse Group.



INSIDE THE TRADE

MGM'S BLOCKBUSTER PUBLIC OFFERING: COMING SOON?

Hollywood studio Metro-Goldwyn-Mayer has been keeping hedge fund managers on the edge of their seats for three years with a big coming attraction: an initial public offering. New York–based Anchorage Capital Group is MGM's largest shareholder, with a 30 percent stake. Also awaiting the IPO are Highland Capital Management in Dallas and New York–based Solus Alternative Asset Management and Davidson Kempner Capital Management.

Their patience has everything to do with triple-digit returns to date and the expectation that an IPO could bring the share price higher still. Most of these fund managers bought into MGM's debt and traded it for equity after the company went bankrupt in 2010. The stock, which trades over the counter, was hovering at about $60 a share in September, up from $38 at the end of 2012. Carl Icahn, who was MGM's biggest stakeholder before Anchorage stepped in, must be kicking himself for selling his 25 percent stake back to the company last year for $33.50 a share.

"There's a reason we've come close to tripling our investment in MGM since it emerged from bankruptcy," says David Tawil, a co-founder of New York–based fund Maglan Capital, a three-year-old upstart that manages $60 million and has about 20 percent of its capital invested in MGM. "We're up close to 200 percent since we invested."

Tawil remains convinced that MGM is very much aligned with the interests of its institutional stakeholders. Indeed, the seven-member board includes two hedge fund executives: Anchorage CEO Kevin Ulrich and Highland president James Dondero. With MGM on its current winning streak, Tawil doesn't mind waiting for the IPO. "As long as we're seeing sequential growth, we're thrilled," he says.

—Leah McGrath Goodman

SAY WHAT!?

"FROM MY PERSPECTIVE AS A CLIENT, THIS BRAVE NEW WORLD OF DODD-FRANK FOR 'CLEARED' DERIVATIVES HAS BEEN FANTASTIC. FANTASTIC."

Kenneth Griffin of Citadel, discussing derivatives reform. (via *Financial Times*)

"CARRIED INTEREST? ARE YOU KIDDING ME? WHAT A JOKE. I MEAN, CURRENT INCOME IS CURRENT INCOME. THAT THING SHOULD HAVE GONE AWAY YEARS AGO."

Stanley Druckenmiller, discussing the economy. (via Bloomberg TV)

"THE DELL BOARD, LIKE SO MANY BOARDS IN THIS COUNTRY, REMINDS ME OF CLARK GABLE'S LAST WORDS IN *GONE WITH THE WIND*. THEY SIMPLY 'DON'T GIVE A DAMN.'"

Carl Icahn, in a letter to shareholders announcing he won't block Michael Dell's plan to take his computer company private.

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