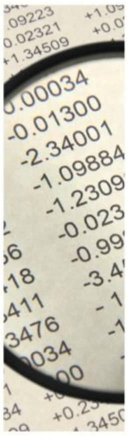
WILLKIE FARR & GALLAGHER (UK) LLP

NEW YORK WASHINGTON PARIS LONDON MILAN ROME FRANKFURT BRUSSELS

CORPORATE CRIME BULLETIN

APRIL 2013



Welcome to the fifth edition of our Corporate Crime Bulletin. This is the fifth publication of a regular corporate crime bulletin covering updates and developments with respect to bribery and corruption, money laundering, sanctions, market abuse, insider dealing and financial crime. Our aim is to keep our clients informed and up-to-date with the current legal and regulatory issues and their practical implications.

I. FRAUD

Investigations

In February 2013, the Serious Fraud Office (the "SFO") launched an investigation into Autonomy following its $11 billion acquisition by Hewlett-Packard ("HP") in 2011. The SFO investigation was to run in parallel with the US Department of Justice's investigation into the acquisition which was opened in November 2012 after HP wrote down $8.8 billion on the value of the deal, attributing more than $5 billion of the write-down to "serious accounting improprieties, disclosure failures and outright misrepresentations".

False documents for borrowing

Archilleas Kallakis and Alexander Williams were found guilty of defrauding banks of millions of pounds between 2005 and 2008. Both had previous criminal convictions for fraud but nonetheless managed to borrow £769 million

U.S. PARTNER CONTACT

- Martin J. Weinstein Biography

U.K. PARTNER CONTACT

- Peter Burrell Biography

U.K. TEAM CONTACTS

- Peter Burrell
  Partner
  T +44 20 7153 1206

- Paul Feldberg
  Senior Associate
  T +44 20 7153 1217

RELATED LINKS

- Our Compliance and Enforcement Practice
- Recent Publications
- Extension of Current Iran Sanctions
- SFO Issues New Guidance
- Deferred Prosecution Agreements Will Come to the U.K.

for property loans and a yacht conversion. The pair used false documents to obtain substantial loans to finance the purchase of what was a mostly commercial portfolio. The transactions were structured so as to exceed the purchase price of the properties. The surplus was then used to fund a lavish lifestyle. The pair operated through the Pacific Group of Companies and used a Hong Kong company, Sun Hung Kai Properties Limited ("SHKP"), to guarantee the loan documents. These documents were forgeries. SHKP launched its own investigation following correspondence with Allied Irish Bank, which had contacted SHKP with its own suspicions. The yacht conversion loan was applied for through the Bank of Scotland, again with false documentation. The yacht turned out to have no resale value and the insufficient work performed on it had left it no longer watertight. Kallakis and Williams were due to be sentenced on 17 January 2013 in Southwark Crown Court; confiscation proceedings are to take place at a later date.

SFO recovers compensation on behalf of deceased fraudster's victims

The Director of the SFO has taken action in the High Court, resulting in an Order that the estate of a convicted fraudster surrender over £64,000, which represented the proceeds of his crimes.

In September 2011 Mr Redmond Johnson, then 66, pleaded guilty to his role in a fraud which netted over £8 million. He and six co-defendants convicted of the fraud were collectively sentenced to nearly 40 years' imprisonment in October 2011. Mr Johnson's sentence was three years' imprisonment, following his agreement to give evidence for the prosecution.

Mr Johnson was taken ill on the day of his confiscation hearing. He was taken to hospital and died shortly afterwards. Consequently, no compensation order was made by the High Court.

SFO investigators linked the bulk of Mr Johnson's estate to his fraudulent activities, and pursued his criminal gains under the Proceeds of Crime Act 2002.

Ongoing fraud investigations of sports retailer JJB

The SFO took over an investigation from the Office of Fair Trading in 2009. Former JJB director, Sir David Jones, has been charged by the SFO with fraud and for making misleading statements to the market. His son, Stuart Jones, is to be tried for the offence of aiding and abetting his father's use of a false instrument. Proceedings are scheduled to begin on 19 April 2013.

JJB's chief executive, Chris Ronnie and his business associate David Ball have been charged with seven counts of fraud and are due to attend trial at Southwark Crown Court on 9 September 2013. The investigation into these individuals' misconduct followed a dispute between JJB and competitor Sports Direct over potential anti-competitive behaviour.

II. LIBOR AND BENCHMARKS

RBS fined £87.5 million for LIBOR manipulation

The Financial Services Authority (the "FSA") has fined The Royal Bank of Scotland plc (the "RBS") £87.5 million for alleged misconduct relating to the London Interbank Offered Rate ("LIBOR") between January 2006 and November 2011.

Whilst the LIBOR issues have been much publicised, the wider "lessons to be learned" for firms is to ensure that the types of "conflict of interest" which the FSA relies on in establishing systems and controls failings in relation to LIBOR do not exist elsewhere within a firm. For example, in LIBOR cases, the FSA has pointed to failures to identify and manage:

- the risk of inappropriate submissions, where derivatives traders sat in close proximity to those responsible for LIBOR submissions and were able to communicate without restriction; and
- the risk that LIBOR submitters, who were also money market traders, would be influenced by the profit and loss of their money market books when making submissions.

III. FINANCIAL SANCTIONS

HM Treasury guidance on current financial sanctions against Iran

HM Treasury has issued guidance to help identify when it is appropriate to apply for prior authorisation and when only prior notification is required, when dealing with Iranian persons, corporate entities, bodies or financial or credit institutions. The guidance is available on the HM Treasury website.

IV. MARKET ABUSE

FSA decision to fine Swift Trade £8 million upheld

The Upper Tribunal (Tax and Chancery Chamber) has upheld the FSA's decision to fine Swift Trade, a non-FSA authorised Canadian company, £8 million for market abuse. In August 2011, the FSA published its decision notice in which it found that Swift Trade had engaged in a form of market manipulation known as "layering" through which a succession of small price movements were induced in a wide range of individual shares on the London Stock Exchange (the "LSE"). The relevant conduct occurred between 1 January 2007 and 4 January 2008. The FSA estimated that Swift Trade made in excess of £1.75 million in profit through trading in this way.

Swift Trade was not a member of the LSE but traded through Direct Market Access ("DMA") providers. The firm argued that the derivative contracts it entered into with its DMA providers (contracts for difference or swaps) were not 'qualifying investments' under the UK market abuse regime. However, this was rejected by the Upper Tribunal, which noted that the derivative orders were placed with DMA providers with the intention that those providers would immediately and automatically match them with hedging orders on the LSE. As a result, the conduct was within the scope of the UK market abuse regime. Following the decision, Tracey McDermott, FSA director of enforcement and financial crime, noted that the FSA expects brokers and DMA providers to monitor their clients' trading activity closely to ensure that it is not abusive and to report suspicious transactions.

V. DEVELOPMENTS IN THE LAW OF CORPORATE MANSLAUGHTER

On 18 January 2013, the Crown Prosecution Service (the "CPS") published its decision to charge Malcolm Fyfield and MNS Mining Ltd with offences under the Corporate Manslaughter Act 2007 (the "Act") following the death of four miners in September 2008 during the course of their employment with MNS Mining Ltd. There have been only three convictions under the Act since it came into force. The CPS concluded that there was sufficient evidence to prosecute Malcolm Fyfield for gross negligence in his role as manager of the company and that it was in the public interest to do so. MNS Mining Ltd, the company, has also been charged with four counts of corporate manslaughter. The allegations state that the way in which the company managed and organised its activities led to the death of the four workers as a result of the company's failure to ensure that proper safety measures were in place. Further guidance on corporate manslaughter can be found on the CPS website.

VI. UPDATES TO ANTI-MONEY LAUNDERING INITIATIVES

The European Commission released its proposals for a fourth money laundering directive on 5 February 2013. The proposals are a response to the Financial Action Taskforce (the "FATF") recommendations made in February 2012 and a review conducted by the Commission on the implementation of the third money laundering directive (the "3rd Directive"). The main themes of the fourth directive (the "4th Directive") are set out below. It is believed that these changes will be incorporated into English law in 2014.

4th Directive – Headlines:

- The threshold for traders in high value goods dealing with cash payments will be reduced from EUR 15,000 to EUR 7,500. Customer Due Diligence will also be needed at this level. The scope of the 4th Directive will include 'providers of gambling services'.
- *Risk-Based Approach*. The directive will require 'obliged entities' to identify, understand and mitigate their risks, and to document and update the assessment of risk they undertake.
- *Simplified and Enhanced Customer Due Diligence*. Entities will be permitted to take simplified measures in those cases where risks are demonstrated to be less, and must adopt enhanced measures where risks are seen to be greater (current provisions within the 3rd Directive were found to be 'overly permissive').
- Due diligence in relation to Politically Exposed Persons (the "PEPs") has been enhanced to include PEPs who are entrusted with prominent public functions domestically, as well as those who work for international organisations.
- *Information on the Beneficial Ownership*. This will require companies, legal entities and trustees to hold information on their beneficial ownership. For legal arrangements, trustees are required to declare their status when becoming a customer. The entities will be required to make this information available to those doing Anti-Money Laundering/Counter-Terrorism Financing (the "AML/CTF") due diligence and to law enforcement agencies.
- *Country Equivalence*. The current provisions of the 3rd Directive require decisions to be made on whether third countries have AML/CTF systems that are 'equivalent' to those in the EU. This will be removed. This information was used for exemptions in certain cases. The emphasis is now on Risk-Based Customer Due Diligence – a proper assessment will need to be done.
- *Administrative Sanctions*. Sanctions will be made available to law enforcement agencies to impose on entities for 'systemic breaches' of the key requirements of the 4th Directive.
- *Data Protection*. The need to strike a balance between allowing robust systems and controls and preventative measures against AML/CTF on the one hand, and protecting the rights of data subjects, on the other, will be reflected in the 4th directive.

Please be aware that all information contained within the bulletin is intended for general guidance only and should not be taken as legal advice. If you believe that you have a corporate crime risk, please speak to your usual contact at Willkie Farr & Gallagher LLP.