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CORPORATE CRIME BULLETIN

APRIL/MAY 2015

Welcome to the fourteenth edition of our Corporate Crime Bulletin. This is a regular publication covering updates and developments with respect to white-collar crime, regulation, sanctions and other areas of relevance. Our aim is to keep our clients and lawyers informed and up-to-date with a digestible overview of current legal and regulatory issues.

I. REGULATION

a. Merrill Lynch International fined £13.2m by FCA for failures in transaction reporting

On 22 April 2015, the FCA imposed a fine of £13,285,900 on Merrill Lynch for incorrectly reporting over 35,000 financial market transactions, and failing to report over 121,000 transactions between November 2007 and November 2014. The FCA places emphasis on accurate and timely transaction reporting in order that it can better detect insider dealing and market manipulation.

The fine is the highest to date for transaction reporting failures, reflecting the serious nature of the misconduct and the failure over several years to ensure that adequate systems and controls were in place to prevent the misconduct from occurring. Merrill Lynch's history of transaction reporting failures before 2007 also contributed to the unprecedented level of the fine.

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 3580 4702
- Rita D. Mitchell
  U.K. Partner
  T +44 20 3580 4726
- Paul Feldberg
  Associate
  T +44 20 3580 4734

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The overall fine was reduced by 30% on account of the agreement to settle at an early stage of the investigation. Details of the final notice can be found here.

b. Bank of New York Mellon fined £126m by FCA for failing to comply with Custody Rules

On 15 April 2015, the FCA fined The Bank of New York Mellon London branch and The Bank of New York Mellon International Limited £126m for failing to comply with the Custody Rules. The Custody Rules exist in order to protect assets in the event of a firm's insolvency so that they can be quickly and easily given back to clients.

c. Restrictions and a £2.1m fine imposed on the Bank of Beirut for misleading the regulator

On 5 March 2015, the FCA fined the Bank of Beirut £2.1m after it repeatedly gave misleading information in respect of the Bank's financial crime systems and controls. In addition, the FCA prevented the Bank of Beirut from acquiring new clients from high risk jurisdictions for 126 days.

Two individuals, a former compliance officer and an internal auditor, were also fined £19,600 and £9,900 respectively for not responding to the FCA openly when addressing the regulator's concerns about the Bank's efforts to mitigate financial crime risk. Details of the final notices can be found at the following:

Final Notice 2015: Bank of Beirut (UK) Ltd

Final Notice 2015: Anthony Rendell Boyd Wills

Final Notice 2015: Michael John Allin

II. BRIBERY, CORRUPTION & MONEY LAUNDERING

a. SFO sets out its view of 'Cooperation' for the purpose of a DPA

At the Global Anti-Corruption and Compliance in Mining Conference 2015, the Serious Fraud Office ("SFO") set out what it would look for in terms of cooperation from a corporate entity wishing to be considered for a Deferred Prosecution Agreement ("DPA"). Ben Morgan, Joint Head of Anti Bribery and Corruption at the SFO urged corporates to engage with the SFO early, "*if you find out about a problem I think it is overwhelmingly in your best interests to engage with us early and to do so fully, honestly and with integrity*". Mr. Morgan said the SFO had already issued invitation letters to a number of entities to enter into DPA negotiations. He stated that what was expected of corporates was set out in the DPA code but added "*where suspicions of corrupt activity arise, we do not require you to carry out internal investigations; investigation is our job. And while we do understand that up to a point you will need to do some work to look into allegations of bribery, we find internal investigations that 'trample over the crime scene' to be unhelpful … We don't expect you to keep us in the dark while you carry out extensive private investigations and some months or even years later present us with a package of your findings*".

Mr. Morgan said that the SFO expected corporates to engage with the SFO early, and to work with the SFO as "*we investigate, not to rush ahead and, whether intentionally or not, complicate the work we need to do. This is, we appreciate, to some extent a departure from the way things used to be and the way certain practices have built up in other jurisdictions, but we make no apology for that*". The message for corporates wishing to be considered for a DPA is that the SFO expects to be engaged at any early stage of any internal investigation. In light of this stated approach, the merits of engaging with the SFO at the outset of an internal investigation will need to be carefully considered. The full text of Ben Morgan's speech can be found here.

b. UK corruption charges for former Alstom Director

On 12 May 2015, the SFO brought further charges in relation to its investigation into Alstom Network UK Ltd. Jean-Daniel Lainé was charged with two offences of corruption contrary to s.1 of the Prevention of Corruption Act 1906 and two offences of conspiracy to corrupt contrary to s.1 of the Criminal Law Act 1977. Mr. Lainé was a Senior Vice President of Ethics and Compliance, and a director of Alstom International Limited. The matter has been sent for trial at Southwark Crown Court.

c. Prison sentence after guilty plea in corruption case

On 11 May 2015, Graham Marchment pleaded guilty at Southwark Crown Court to three counts of conspiracy to corrupt relating to his involvement in a scheme by which payments were obtained in return for the supply of confidential information about oil and gas projects in Egypt, Russia and Singapore. Mr. Marchment pleaded guilty after four co-conspirators were found guilty at trial. He was sentenced to two-and-a-half years imprisonment.

d. $400m frozen by Swiss Attorney General as part of Petrobras bribery investigations

The Swiss Attorney General ("OAG") has frozen $400m of assets as part of its investigations into alleged corruption at Brazil's state-owned oil company, Petrobras, of which $120m has been released for repatriation after agreements were concluded with two account holders.

Nine individuals are being investigated by the OAG after the Money Laundering Reporting Office received around 60 reports concerning "*suspicious transactions*" that may relate to corruption at the Brazilian company. According to the OAG, over 300 accounts at over 30 Swiss banks have been identified that were "*apparently used to process the bribery payments under investigation in Brazil*".

III. FRAUD

a. Fraud sentence extended by four years

On 12 May 2015, Brian O'Brien, who was convicted for his involvement in a £4m fraud in April 2014, was sentenced to four more years by Westminster Magistrates Court for failing to pay his confiscation order. In April 2013, Mr.

O'Brien was ordered to pay £364,938.53 in confiscation to which a four year default sentence was fixed. The judge said that there had been "*no evidence of any attempt to pay*" and duly activated the default sentence.

b. Guilty plea entered by creator of Ponzi scheme

On 23 March 2015, David Gerald Dixon, who created a Ponzi scheme that caused significant losses for investors, pleaded guilty to fraud offences at Southwark Crown Court.

Mr. Dixon dishonestly induced victims to invest in two companies that they believed to be a risk-free syndicate offering potentially large rates of return. However, the scheme was a means by which Mr. Dixon appropriated the investors' funds before moving to Malaysia, where he was arrested in September 2014 and extradited to the UK.

c. Former chief executive banned and fined £450,000 for financial wrongdoing

On 13 March 2015, the FCA imposed a £450,000 fine on Sam Kenny, the former chief executive of Gracechurch Investments Limited, and barred him from holding a position in financial services.

Mr. Kenny was found to have offered unsuitable advice and used pressure and misrepresentation to mis-sell stocks to contracting parties. He also failed to cooperate with the FCA's investigation by: withholding a requested call recording; providing his lawyers with false dates of committee meetings; and misleading investigators about the company's conflict of interest practices. Details of the final notice can be found here.

d. Imprisonment following FCA prosecution

On 6 March 2015, Phillip Boakes was sentenced to 10 years' imprisonment after pleading guilty to a number of offences of fraudulent trading, as a result of which investors lost over £3.5m.

IV. MARKET ABUSE

a. £35,212 fine for insider dealing

Kenneth Carver has been fined £35,212 as a result of trading with inside information provided to him by a family friend who worked at Logica Plc. Mr. Carver bought 62,000 shares in Logica shortly before its share price rose by 59.8% after an announcement that the company would be acquired at a significant premium by CGI Inc. Mr. Carver sold his shares, making a profit of £24,206.70.

Mr. Carver's family friend, who provided the inside information, was sentenced to 10 months' imprisonment on 27 March 2015 after pleading guilty to insider dealing. Details of the final notice can be found here.

b. Former senior trader fined and imprisoned for insider dealing after FCA prosecution

On 19 March 2015, Julian Rifat, former senior execution trader at Moore Europe Capital Management LLC, was sentenced to 19 months' imprisonment, fined £100,000, and required to pay costs of £159,402 in relation to offences of insider trading.

Mr. Rifat, who pleaded guilty, provided an associate with inside information, obtained during the course of his employment, who then used the information to trade for their joint benefit.

The prosecution is the third to arise out of Operation Tabernula, a major FCA investigation into insider dealing.

V. OTHER

a. Court rejects FCA appeal over its improper identification of a JPMorgan Chase employee

On 19 May 2015 the Court of Appeal rejected an appeal by the FCA that the Respondent had been improperly identified by the FCA in various notices issued to JP Morgan Chase. Before the FCA issues a notice it must give any third party, who may be identified and prejudiced by the details contained in the notice, the right to make representations about the publication of the notice. In this case, the Bank employee was not named but the court held that if the notice contained material "*such as would reasonably in the circumstances lead persons acquainted with the claimant/ third party, or who operate in his area of the financial services industry..to believe as at the date ...of the Notice that he is a person prejudicially affected by matters stated*", then he should be afforded the third party rights set out in section 393 of the Financial Services and Markets Act 2000. The Court of Appeal held that the wording of the notices had identified the Respondent through a reference to his job description, the FCA should therefore have afforded the Banker the right to make representations prior to its publication. The reported case can be found here.

b. SFO right to exclude lawyers from a Section 2 interview upheld by the High Court

The High Court refused to allow three employees of GlaxoSmithKline Plc ("GSK") to judicially review the SFO's refusal to let them use GSK's lawyers in a Criminal Justice Act 1987, Section 2 interview. The SFO interviews individuals under Section 2 to obtain information, the interviewee must answer questions but the answers cannot be used against the interviewee (except in limited circumstances). The court noted that there was nothing in the relevant statutory wording that gave an interviewee the right to have legal representation in such an interview. Further, the SFO's Operational Handbook allowed the SFO to refuse an interviewee the presence of a legal adviser in an interview "*with good reason*". The Claimants argued that they had a right to be represented by solicitors of their choice. The SFO considered that the presence of GSKs' lawyers in the interview could be prejudicial to its investigation. The court considered this to be a good reason. The SFO is currently in the process of revising its policy governing the interviews it conducts and it will be interesting to see, in light of this case, whether the SFO gives itself greater scope to refuse to permit the attendance of lawyers in both s.2 and PACE interviews. The reported case can be found here.

c. FCA fines former director of Network Financial Group and prohibits him from performing compliance oversight function

On 13 March 2015, the FCA imposed a fine of £33,800 on the former Compliance Director at Network Financial Group, Mr Stephen Bell. The FCA found that the compliance systems and controls for which he was responsible, especially those relating to the recruitment, training, monitoring, identification and assessment of risks, and control of its appointed representatives and customer-focused advisers, were systemically weak in terms of both design and execution. The final notice can be found here.