

## CORPORATE CRIME BULLETIN

DECEMBER 2013



Welcome to the eleventh edition of our Corporate Crime Bulletin. This publication is 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. REGULATION

#### a. FCA's Power to Publish Warning Notices – Final Policy Paper

On 15 October 2013, the Financial Conduct Authority (“FCA”) published its final [Policy Statement](#) regarding the publication of information about warning notices (the “Policy”). This is one of the more controversial new powers that the FCA has gained following the reorganisation of the UK’s regulatory architecture earlier this year. It allows the FCA to publicise that it is issuing past, present or future warning notices at an early stage in any enforcement proceedings. Previously, the Financial Services Authority (“FSA”) could not make warning notices public, but instead had to wait until a much later stage in proceedings.

The new Policy is now in force and applies to all warning notices issued on or after 15 October 2013. Therefore, companies and individuals should be aware that information regarding regulatory proceedings that progress towards enforcement are likely to become public much sooner than under the old regime.

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The FCA has to consider it appropriate and fair to publish warning notices in the circumstances of a particular case. The FCA's Regulatory Decisions Committee (the "RDC") will decide whether the FCA should publish a warning notice. In the event that they consider it appropriate to do so, i.e. where the FCA is proposing to censure, fine, suspend or restrict a firm or individual, the RDC will issue a letter notifying the subject of the investigation and the relevant FCA staff of the decision to publish the warning notice.

A key change to this Policy, as compared to the draft circulated earlier this year, is that the FCA is seeking to distinguish between cases relating to firms and those relating to individuals. Central to this Policy is a presumption that it will be appropriate to publish warning notices relating to enforcement proceedings against firms that have been identified as subject to the proceedings. In contrast, the Policy sets out a presumption that warning notices relating to individuals' conduct, whilst setting out details of the conduct in question, will be anonymous. In both cases that presumption is rebuttable depending on the facts of the case.

The FCA has also revisited its approach to determining when the publication of a warning notice might be considered unfair. The FCA requires a person to provide clear and convincing evidence of how any suggested unfairness may arise and the damage that this may cause. Examples of situations where the FCA may consider it unfair to publish a warning notice include where publication could materially affect a person's health, result in bankruptcy or insolvency, a loss of livelihood or significant loss of income, or prejudice criminal proceedings to which the person is a party. The FCA notes that damage to reputation would not in itself suffice without evidence of the harm that might be suffered as a result of such damage. The FCA also notes that its expectation is that it will be more difficult for larger firms to prove unfairness than for smaller firms or individuals, as the FCA considers the relative potential for harm to be greater. Furthermore, arguments about the merits of the warning notice will not be material to publication decisions.

For more details on the impact that the changes to the UK's regulatory architecture are likely to have on enforcement, see our original memorandum published in May 2013: [Enforcement Under The New UK Regulatory Architecture](#).

#### **b. The New National Crime Agency (the "NCA")**

On 7 October 2013, the new NCA became operational. The NCA is a non-ministerial government agency introduced under the Crime and Courts Act 2013.

The Economic Crime Command (the "ECC") is a branch of the NCA which intends to "oversee the law enforcement response to bribery and corruption more broadly". The ECC will work with the Serious Fraud Office (the "SFO"), the City of London Police and the Proceeds of Corruption Unit in the Metropolitan Police Service in order to share intelligence and amalgamate the UK's efforts to tackle serious and organised economic crime. See the next section for more information on the UK's new strategy for tackling serious and organised crime.

Access the NCA website [here](#).

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**c. The U.K.'s New Serious and Organised Crime Strategy Considers U.S. Style Schemes To Incentivise Whistleblowers**

On 7 October 2013, the Home Secretary, Theresa May, published the Serious and Organised Crime Strategy (the "Strategy"). The Strategy is a cross-government structure which identifies the weaknesses in existing policy, sets domestic and international targets, and explains how the government plans to improve efforts by U.K. agencies and communities to tackle serious and organised crime, both domestically and overseas.

The Strategy highlights a desire by the government to make reporting bribery and corruption easier through examining ways to create a single reporting mechanism. At the same time, the Department for Business, Innovation and Skills ("BIS"), the Ministry of Justice and the Home Office are to look into how to incentivise whistleblowing, including through the offering of financial rewards to whistleblowers in line with the Qui Tam provisions of the U.S. False Claims Act. The Strategy notes that such a policy is being considered for cases of fraud, bribery and corruption.

The Strategy described the current government policy on bribery and corruption as "split across Whitehall" and noted that the Home Office will now take a lead role in coordinating all domestic bribery and corruption policy, working with the Cabinet Office and the Department of International Development to align its approach to work on overseas corruption.

The new NCA will lead on the assessment of bribery and corruption by organised crime and issue reports on this theme. Meanwhile, part of the new NCA, the ECC will oversee the response to bribery and corruption more broadly. The SFO will remain the lead agency for complex cases of corporate bribery and corruption and enforcement of the Bribery Act 2010 in relation to overseas corruption. The NCA will coordinate with the SFO as well as with the City of London Police (who deal with domestic corruption) and the Proceeds of Corruption Unit in the Metropolitan Police, which investigates the laundering of proceeds of corruption by politically exposed persons ("PEPs") in the U.K.

The full version of the Government's Serious and Organised Crime Strategy can be accessed [here](#).

**d. Action Plan on U.K. Businesses and Human Rights**

On 4 September 2013, the U.K. Government published the Action Plan on UK Business and Human Rights (the "Action Plan") in response to the UN Guiding Principles ("UNGPs") on business and human rights. The Action Plan sets out the Government's commitment to protecting human rights in business and provides a list of expectations of businesses.

Among other things, the UK Government seeks to implement UK Government obligations to protect against human rights abuse, support UK businesses in meeting their responsibility to respect human rights, and to ensure that the UK Government applies a consistent policy with regard to the UNGPs.

The Action Plan sets out a number of expectations of businesses in relation to human rights. Among others, these include treating human rights requirements as a legal compliance issue, adopting appropriate due diligence policies to identify, prevent and mitigate human rights risks, monitoring and evaluating implementation of such policies, and being transparent about policies, activities and impacts, and reporting as appropriate.

The full Action Plan can be accessed on the [HM Treasury website](#).

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## II. MONEY LAUNDERING

### Joint Money Laundering Steering Group (the “JMLSG”) Receives Approval For Changes to Parts I and II Of Their Guidance

On 18 September 2013, the JMLSG received a letter from HM Treasury approving the changes to Parts I and II of its Guidance for the prevention of money laundering and combating the financing of terrorism. A copy of this letter and the proposed amendments are available on the [JMLSG website](#).

Part I of JMLSG’s Guidance now refers to the revised Financial Action Task Force Standards, published in February 2012, and the draft EU Fourth Money Laundering Directive, published in February 2013. JMLSG has since published its final Guidance to HM Treasury for Ministerial approval; it is also available for use on their [website](#). For more on the JMLSG Guidance please see our [August 2013 E-Bulletin](#) and for more on the Fourth Money Laundering Directive, please see our [April 2013 E-Bulletin](#).

## III. MARKET ABUSE

### Ongoing LIBOR Investigation

In our [August 2013 E-Bulletin](#), we reported on the SFO’s investigation into the manipulation of the London Inter-Bank Offered Rate (“LIBOR”) by Tom Hayes and two alleged co-conspirators, Terry Farr and James Gilmour. The trio appeared in court on 18 December 2013. All three pleaded not guilty to charges of conspiracy to defraud. Tom Hayes’ trial is scheduled to commence April 2015, Terry Farr and James Gilmour’s trial is scheduled to commence September 2015.

## IV. FCA ENFORCEMENT

### a. Catalyst Contravened Regulatory Requirements Worthy of a Financial Penalty of £450,000

On 4 October 2013, the Financial Conduct Authority (the “FCA”) censured Catalyst Investment Group Limited (“Catalyst”) for recklessly misleading investors. Their Compliance Manager, Alison Moran, was also issued a £20,000 fine for failing to act with due skill, care and diligence. Catalyst has been censured as it was unable to pay its fine and was in default. The penalty the FCA would otherwise have imposed was £450,000.

Between 19 November 2007 and 26 May 2010, Catalyst offered bonds issued by ARM Asset Backed Securities SA (“ARM”) to investment intermediaries and independent financial advisers, who in turn promoted and sold them to retail investors. Although Catalyst was aware that ARM had been asked to stop issuing bonds in November 2009, it continued to accept funds from investors without disclosing this position. In doing so, the FCA has stated that “Catalyst showed a reckless disregard for investors’ interests, exposing them to significant risks” and that they “will take tough action against those who fall short of [their] standards.”

Alison Moran received a personal fine due to her failure to ensure that the issues regarding ARM’s licence were properly communicated to investors. Timothy Roberts, the Chief Executive of Catalyst at the time, was fined £450,000 and

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banned from the industry. Andrew Wilkins, a former director was fined £100,000 and prevented from holding senior roles at Catalyst. The FCA found that, by their conduct, both men failed to act with due skill, care and diligence. Roberts and Wilkins have referred the FCA's decision to the Upper Tribunal, which will reconsider the case and may uphold, vary or cancel the FCA's decision. Their notices may be found [here](#).

The notices to Alison Moran and Catalyst can be found in full on the [FCA's website](#).

#### **b. Bentley-Leek Financial Management Limited**

On 18 October 2013, the FCA released its final notice to Bentley-Leek Financial Management Limited (the "Company") and its directors, Mark Bentley-Leek and Mustafa Dervish.

Between 5 March 2004 and 23 November 2010, the directors advised more than 300 clients to invest approximately £35 million in a number of property developments in the UK and abroad, most of which was subsequently lost following the company's voluntary insolvency in November 2009. The UK investments were made through property investment companies of which the directors were shareholders. As such, it was not appropriate for the directors to advise clients to invest in these companies without adequately disclosing the conflict of interest, which they failed to do. Further, from June 2009 onwards, the directors continued to advise clients to invest in the companies, despite being aware that they were in serious financial difficulty and unable to meet their liabilities. They also misled clients about how the investments they recommended were being affected by the economic downturn.

As such, the FCA found that the directors had demonstrated a lack of integrity and competence and were not fit and proper to perform any function in relation to regulated activities.

Mark Bentley-Leek and Mustafa Dervish were both banned from holding any future position at a financial firm and were fined £525,000 and £360,000, respectively. The fines would have been £750,00 and £450,000, respectively, had defendants not cooperated with the FCA at an early stage of the investigation. The notices can be found in full on the [FCA's website](#).

## **V. SANCTIONS**

### **a. Trade Sanctions**

In our [August 2013 E-Bulletin](#) we briefly outlined the new orders by BIS which introduced new reporting requirements. The full Notice 2013/18 is available [here](#).

The online site [SPIRE] for reporting is now live and a trial mode for reporting is available in anticipation of the first reporting period, which commences January 2014. The full Notice 2013/26 is available [here](#).

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## **b. Financial Sanctions**

### **UN Al-Qaida New Conditioned Licences**

On 16 October 2013, HM Treasury issued a notice outlining its power to grant licenses which allow exceptions to the asset-freezing measures under the UN Al-Qaida Asset Freezing Regime and the Terrorist Asset Freezing Act 2010. In order to strike a balance between efforts to obstruct the stream of funds to terrorism and uphold the human rights of designated persons (and others to whom HM Treasury may grant conditional licences). The notice and more details on conditional licences can be found on [HM Treasury's website](#).

### **Extension of the Restrictive Measures Against Belarus**

On 30 October 2013, the Council of the European Union (the "Council") introduced [Implementing Regulation \(EU\) 1054/2013](#). On 18 May 2006, the Council introduced restrictive measures against Belarus after the Belarus authorities failed to meet democratic standards at the time of their presidential elections. The full restrictions can be found in [Council Regulation \(EU\) 765/2006](#). The Council decided to extend the restrictive measures, based on continuing concern for the situation in Belarus, and these will remain in force until 31 October 2014. For further details, please see [HM Treasury Notice](#).

## **VI. BRIBERY AND CORRUPTION**

### **a. SFO Charge UK Based Printing Company and Four Individuals with Corruption Charges**

On 23 October 2013, the SFO charged Smith & Ouzman Limited, two of its directors, an employee and one agent with offences of corruption in Westminster Magistrates Court. Chris Smith, Nick Smith, Tim Forrester and Abdirahman Omar were alleged to have made corrupt payments totaling £413,552 in order to influence the award of business contracts to the Company. The SFO brought the case under Section 1 of the Prevention of Corruption Act 1906. The case has been scheduled to continue in November 2014.

### **b. Transparency International ("TI") Has Reported That It Assessed The UK Coalition Government's Efforts To Tackle Corruption Using A "Scorecard" Methodology**

TI commended the UK's Coalition Government for the enforcement of the Bribery Act 2010 and its compliance with the Organisation for Economic Co-operation and Development Anti-Bribery Convention. The introduction of deferred prosecution agreements was also highly commended. ([please see our longer e-Bulletin on this for details](#)). However, it was recommended that the UK Coalition Government take urgent action to improve UK initiatives which may assist in tackling corruption overseas. TI suggested that information on the beneficial ownership of trusts and companies should be more transparent, and has advised that the Government oversee the implementation and enforcement of Crown Dependencies' policies on anti-money laundering to ensure compatibility with UK policies and procedures. TI's Anti-Corruption Scorecard can be accessed on the [TI website](#).

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