Bulletin 65 October 2013

Butterworths Money Laundering Law

Bulletin Editor
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This Bulletin covers material available from **1 July** to **30 September 2013**.

UK NEWS

HM Treasury

Advisory notice

On 3 July 2013 HM Treasury issued the latest in a series of advisory notices regarding the risks posed by unsatisfactory money laundering controls in a number of jurisdictions.

The advice replaces all previous advisory notices issued by HM Treasury on this subject.

The full text of the notice can be found here: https://www.gov.uk/government/publications/money-laundering-and-terrorist-financing-controls-in-overseas-jurisdictions-advisory-notice

Financial Sanctions

A consolidated list of asset freeze targets designated by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes was updated, it is available (together with later updates) here: https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets

Transparency & Trust discussion paper

On 15 July 2013, Dr Vince Cable, Secretary of State for Business, Innovation and Skills, announced the launch of the Transparency & Trust discussion paper. This sets out a number of proposals aimed at addressing opaque ownership structures and improving the accountability of company directors. The proposed reforms seek to promote growth by improving confidence in the UK as an open and trusted place to invest and do business. Greater transparency and improved trust will mean honest entrepreneurs and investors are more willing to do business in the UK and are not disadvantaged by those who don't play by the rules. The paper may be found here: https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper

FCA

Financial crime newsletter Number 1

In July the FCA published its first Financial Crime Newsletter which may be found here: http://www.fca.org.uk/static/documents/newsletters/financial-crime-newsletter-1.pdf

Guidance Consultation

The FCA published a Guidance Consultation: GC13/3 Examples of good and poor practice in 'Banks' control of financial crime risks in trade finance'

The document may be found here: http://www.fca.org.uk/static/documents/guidance-consultations/gc13-03.pdf

Thematic Review TR13/3 – Banks' control of financial crime risks in trade finance

This report describes how banks in the UK control money laundering, terrorist financing and sanctions risks (collectively 'financial crime risks') in trade finance business and sets out the findings from the recent thematic review.

The report may be found here: http://www.fca.org.uk/static/documents/thematic-reviews/tr-13-03.pdf

Ex-Mortgage Advisor sentenced to two years

On 12 July, at Maidstone Crown Court, following criminal action brought by the FCA, Michael Joseph James Lewis was sentenced to two years in prison on two counts of making/supplying documentation for use in fraud and ten counts of carrying on a mortgage advisory business despite being prohibited from doing so.

FCA fines US based oil trader US $903K for market manipulation

The FCA has fined US based High Frequency Trader, Michael Coscia, US $903,176 (£597,993) for deliberate manipulation of commodities markets.

This is the first time the FCA has taken enforcement action against a High Frequency Trader, and reflects the FCA's objective of enhancing the integrity of the UK's financial markets.

Between 6 September 2011 and 18 October 2011 Coscia used an algorithmic programme of his own design to instigate an abusive trading strategy known as 'layering'.

During this time, Coscia placed thousands of false orders for Brent Crude, Gas Oil and Western Texas Intermediate (WTI) futures from the US on the ICE Futures Europe exchange (ICE) in the UK.

Taking advantage of the price movements generated by his layering strategy, Coscia made a profit of US $279,920 over the 6 week period of trading at the expense of other market participants – primarily other High Frequency Traders or traders using algorithmic and/or automated systems.

Coscia is not a member of ICE or an FCA Approved Person, and traded from the US through a Direct Market Access (DMA) provider. The penalty reflects the serious nature of the deliberate market abuse and the significant impact on ICE, as well as depriving Coscia of the financial benefit derived from this activity.

Tracey McDermott the FCA's Director of Enforcement and Financial Crime said:

> Mr Coscia was cheating the market and other participants. High Frequency Trading and the use of algorithms are an important and commonplace part of the markets nowadays but in this case these techniques were deliberately designed to abuse the market, undermining its integrity. This is unacceptable, which is why we have taken tough action to punish Coscia and deprive him of any benefit he acquired.

Coscia received a 30% discount on the fine by agreeing settlement under the FCA's executive settlement procedures; otherwise Coscia would have been fined just over US $1.15 million (£764K).

The US regulator, the Commodities and Futures Trading Commission (CFTC) and the Chicago Mercantile Exchange (CME) announced that they have imposed fines for similar market manipulation by Coscia on US markets. The FCA has worked closely with ICE, the CFTC and CME to bring this action against Coscia.

Four arrested in FCA insider dealing investigation

Four individuals including three men aged 29, 51, and 56 and one women aged 25 have been arrested in connection with an investigation in to Insider Dealing and Market Abuse.

No individuals have been charged. The arrests are not linked to any other on-going insider dealing investigation.

Insider Dealing is a criminal offence that is punishable by a fine or up to 7 years imprisonment.

FCA fines compliance officer and broker whose actions enabled market abuse to be committed in October 2010

The FCA has fined David Davis, senior partner and compliance officer of Paul E Schweder Miller & Co, £70,258, and Vandana Parikh, a broker at the same firm, £45,673, for failing to act with due skill, care and diligence in the period leading up to the illegal manipulation of the closing price of securities traded on the London Stock Exchange (LSE) by Rameshkumar Goenka, a Dubai based private investor, in October 2010.

Goekna was fined $9,621,240 (approximately £6 million) by the Financial Services Authority (FSA) on 11 November 2011 for market abuse. It was the largest fine imposed by the FSA on an individual.

In April 2010 Goenka was introduced to Parikh to execute trades in Gazprom and Reliance securities in LSE closing auctions. A series of conference calls took place during which Goenka asked whether the closing price of Gazprom Global Depository Receipts (GDRs) could be raised by placing strategic orders. Parikh explained the impact that the size and timing of various orders might have on the closing price. However, although the matter progressed, an unforeseen announcement about Gazprom caused the price to drop unexpectedly on the intended trading day and the proposed trading was abandoned.

The FCA has concluded that Parikh failed to act with due skill, care and diligence by explaining the process of manipulation to Goenka without recognising the risk that this posed and without proper challenge or enquiry as to his intentions. Further, although Parikh speculated that Goenka had a related structured product she did not discuss this possibility with her compliance officer. The FCA has imposed a penalty of £45,673 on Parikh.

In October 2010 Goenka took the knowledge gained during the Gazprom preparations and used this as the basis for a successful strategy to illegally manipulate the closing price of Reliance and enabled him to avoid a loss of $3.1m on a related structured product. Parikh suspected but did not know that Goenka had an underlying structured product. Parikh informed Davis that she had concerns about the proposed Reliance trading with the result that Davis became involved and monitored the trading.

Although Davis was not aware of Goenka's desire to manipulate the price nor that he in fact held a linked structured product, he was aware of sufficient information to constitute clear warning signals and failed to take preventative steps before authorising the trades.Furthermore, Davis did not report the trading as suspicious after the event.

The FCA has concluded that Davis failed to act with due skill, care and diligence by failing to challenge the instructions for Reliance and by failing to refuse to accept the orders to trade. Davis held senior management positions at Schweder Miller and was responsible for compliance oversight. The FCA has withdrawn his Significant Influence Functions (SIF) and prohibited him from holding those functions in future. The FCA has imposed a penalty of £70,258.

Tracey McDermott said:

> The FCA's actions against the two persons whose actions or lack of, assisted Goenka make it clear that every individual involved in a chain that leads to trading must proactively challenge suspicious behavior and ensure it is reported.The collective failure of Parikh and Davis to recognise the warning signs and react accordingly meant they unwittingly enabled his manipulation to take place.

> All approved persons have a duty to help the FCA in its fight against market abuse, and must be vigilant in spotting, challenging and reporting market abuse. That did not happen here. Instead, Goenka's manipulative strategy was allowed to proceed unchallenged. This falls far short of our expectations of approved persons.

FCA decides to fine Tariq Carrimjee in relation to market abuse committed by Rameshkumar Goenka in October 2010

The FCA has published a Decision Notice for Tariq Carrimjee of Somerset Asset Management LLP in relation to assisting Goenka.

Carrimjee has referred his Decision Notice to the Upper Tribunal (the Tribunal) where he and the FCA will each present their case. The Tribunal will then determine the appropriate action for the FCA to take. The Tribunal may uphold, vary or cancel the FCA's decision. The Tribunal's decision will be made public on its website.

The Decision Notice to Carrimjee, which reflects the FCA's view of what occurred and how the behaviour is to be characterised, states that the FCA has decided to fine Tariq Carrimjee £89,004 and ban him from performing any role in regulated financial services for recklessly assisting Goenka in his plan to manipulate Gazprom and Reliance securities in 2010.

The FCA considers that Carrimjee introduced Goenka to a firm of brokers for the specific purpose of trading in the LSE closing auctions; he then participated in discussions about trading and assisted with arrangements for the trading. The FCA further considers that Carrimjee did so despite suspecting that Goenka held structured products related to the trading and despite suspecting that the objective of Goenka's plan was to secure the price of Gazprom and Reliance securities at a false or artificial level.

The FCA considered that the fine and the prohibition sought reflect the serious nature of the actions set out in the Decision Notice and should act as a deterrent to other market participants.

Carrimjee held Significant Influence Function (SIF) positions at Somerset at the relevant time and was responsible for compliance oversight. The FCA therefore considered his conduct to be particularly serious.

The FCA has, in addition to the Carrimjee Decision Notice, published two Final Notices also in relation to the Goenka market manipulation.

FCA fines Guaranty Trust Bank (UK) Ltd £525,000 for failures in its anti-money laundering controls

The FCA has fined Guaranty Trust Bank (UK) Ltd (GT Bank) £525,000 for failings in its anti-money laundering (AML) controls for high risk customers between May 2008 and June 2010.

These failings are particularly serious as they affected customers based in countries associated with a higher risk of money laundering, bribery or corruption, including accounts held by politically exposed persons (PEPs).

GT Bank, a subsidiary of Nigerian Guaranty Trust Bank PLC, opened an office in London in May 2008 offering retail and wholesale banking products and services to private, corporate and institutional clients.

The FCA's predecessor, the Financial Services Authority, reviewed GT Bank's controls as part of a thematic review into banks' management of money-laundering risks in 2010. The review of GT Bank raised significant concerns and after further investigation, the FCA found that GT Bank failed to establish effective AML policies and procedures when they established their UK operations. This included failures to:

- Assess or document potential money-laundering risks posed by higher risk customers.
- Screen prospective customers against sanction lists or databases of PEPs.
- Obtain and/or document senior management approval to establish a business relationship with PEPs.
- Establish the purpose and intended nature of prospective customers' accounts or the sources of higher risk customers' wealth or funds.
- Review the activity of higher risk customers' accounts and check that the information they held on these customers was up to date.

As a result, GT Bank was not able to fully understand or assess their higher risk customers' activities. This breached FCA Principle 3, which requires firms to take reasonable care to organise and control their affairs responsibly and effectively, and a number of rules on systems and controls.

Tracey McDermott said:

> Banks are at the front line in ensuring the proceeds of crime do not enter the UK financial system. GT Bank's failures were serious and systemic and resulted in an unacceptable risk of handling the proceeds of crime.
>
> Regardless of whether firms are well established or new to the industry they must ensure that they have systems and controls to manage money laundering risk.
>
> The FCA will continue to focus on potential money laundering risks, in line with our objectives to protect and enhance the integrity of the UK financial system and will be 'intensive and intrusive' taking action where serious issues are identified.

GT Bank settled at an early stage of the investigation and qualified for a 30% discount on its fine. Without the discount the fine would have been £750,000.

HMRC

Trust or Company Service Providers Registration Guidance updated

Following a consultation with the relevant trade body HM Revenue & Customs is amending the Registration Guide for Trust or Company Service

Providers (TCSPs) to clarify who is liable for registration. The updated guidance may be found here: http://www.hmrc.gov.uk/mlr/mlr9c.pdf

Anti-Money Laundering Supervision factsheets

HMRC has published three new fact sheets:

- **Money Laundering Regulations 2007 – An Introduction,** see: http://www.hmrc.gov.uk/mlr/mlr234.pdf
- **Money Laundering Regulations 2007 – Visits,** see: http://www.hmrc.gov.uk/mlr/mlr235.pdf
- **Money Laundering Regulations 2007 – After Registration Guide,** see: http://www.hmrc.gov.uk/mlr/mlr236.pdf

OFT

OFT fines Cardiff-based surveyors

The OFT has imposed a £3,300 penalty on Cardiff-based surveyors, Stephenson & Alexander Limited for carrying on estate agency business after 31 January 2010 without being registered with the OFT, a breach of the Money Laundering Regulations 2007.

The penalty follows repeated warnings by the OFT advising the business of the need to register.

Kate Pitt, OFT Deputy Director of Anti-Money Laundering, said:

> The regulations are designed to detect, deter and disrupt financial crime by reducing the chance that legitimate businesses are being used for money laundering. Any estate agent that breaches the regulations risks enforcement action.

The company had until the end of July to appeal.

London-based estate agent fined

On 21 August 2013 the OFT imposed a penalty of £2,000 on London-based estate agent Eden Estates (London) Limited for carrying on estate agency business after 31 January 2010 without being registered with the OFT. This is a breach of Regulation 33 of the Money Laundering Regulations 2007.

SFO

Gyrus Group Limited and Olympus Corporation

Criminal proceedings by the Serious Fraud Office have commenced against two companies by written charge.

Gyrus Group Ltd, a UK subsidiary of Olympus Corporation, and Olympus have been charged with offences of making a statement to an auditor which was misleading, false or deceptive, contrary to section 501 Companies Act 2006. Gyrus Group faces four charges and Olympus faces one charge.

The alleged offences are said to have taken place between April 2010 and March 2011 and arose from a global fraud case for which Olympus Corporation was prosecuted in Japan.

Brokers charged in LIBOR investigation

Terry Farr and James Gilmour, former brokers at RP Martin Holdings Limited, have been charged with offences of conspiracy to defraud in connection with the investigation by the Serious Fraud Office into the manipulation of LIBOR.

Terry John Farr (41 years) and James Andrew Gilmour (48 years), of Essex were arrested on 11 December 2012 (along with Tom Hayes) by officers from the SFO and City of London Police. They attended Bishopsgate police station where they were each charged by City of London Police, James Gilmour with one count of conspiracy to defraud, and two counts of the same offence for Terry Farr. They will appear before Westminster Magistrates Court at a later date.

The SFO's investigation into the manipulation of LIBOR continues.

Four charged in 'bio fuel' investigation

Four men connected to Sustainable AgroEnergy plc have been charged with offences of conspiracy to commit fraud by false representation and conspiracy to furnish false information, contrary to section 1 of the Criminal Law Act 1977, in connection with the investigation by the Serious Fraud Office into the promotion and selling of 'bio fuel' investment products to UK investors. The value of the alleged fraud is approximately £23m and the offences are said to have taken place between April 2011 and February 2012.

NCA

Updated list of Ancillary Orders

The NCA (previously SOCA) has published updated information on individuals who are subject to Ancillary Orders.

These include Serious Crime Prevention Orders, Financial Reporting Orders and Travel Restriction Orders, all of which are designed to frustrate criminals both in and out of prison. Restrictions might include use of only one mobile phone, possessing no more than £1000 in cash, surrendering passports and providing financial information at regular intervals.

Career criminals often regard prison as an interruption which rarely marks the end of their involvement in organised crime. This is why SOCA has a policy of lifetime management. Once a criminal is on SOCA's radar they will stay on it.

SOCA rigorously enforces these orders and takes action if people breach the terms. By publishing data on criminals who are subject to these orders SOCA want to make it easier for other organisations and the public to report breaches.

Publication of orders is considered carefully and on a case by case basis. Those judged to meet the right criteria appear on the SOCA website.

NCA rebranding of SAR Online

On 7 October, the National Crime Agency (NCA) replaced the Serious Organised Crime Agency. It will also take over the running of the UK Financial Intelligence Unit.

The SAR Online service will be rebranded to reflect the new NCA identity, though the functionality and layout will remain the same. Users will be able to access the website and their SAR Online accounts as normal.

From 7 October, SAR Online will be accessible from the NCA website: www.nationalcrimeagency.gov.uk.

Bribery Act

Vatican extends anti-corruption rules

Financial Times, 9 August 2013: The financial surveillance of the Vatican will be strengthened and broadened, according to a statement from the Vatican's spokesman. The new decree will extend the current economic compliance rules to all structures of the Church's administration. A 2012 review by the EU provided a mixed assessment of the Vatican's financial regulation, following a probe by the Italian government into alleged money laundering and corruption at the Vatican bank.

Other Financial Crime News

Scrap Metal Dealers Act 2013

A tougher regulatory regime is to be introduced for scrap metal dealers, in an effort to deal with the plague of metal theft that has hit power cables, church roofs and railways across the country. The Scrap Metal Dealers Act 2013 (SMDA 2013) will come into force on 1 October 2013, ushering in a new local authority licensing regime for dealers and introducing several new offences.

Money laundering convictions

A man has been convicted of two counts of money laundering through a fraud carried out by his wife against her employers. Andrew Baker's wife, Anne, pleaded guilty at Southwark Crown Court to false accounting, admitting she submitted £1.2m worth of false invoices to her employers, the Princess Grace Hospital in London, where she worked as a radiologist between 1998 and 2012.

Serious Organised Crime Agency v Turrall and others

The Serious Organised Crime Agency (SOCA) alleged that specific property held by the defendants was recoverable property for the purposes of Part Five of the Proceeds of Crime Act 2002. A court had previously ruled that service of the claim form could be dispensed with in relation to the first and second defendant, and the third and fourth defendants had indicated that they would not contest the claim. SOCA was required to prove that the specific property had been either obtained by funds resulting from unlawful conduct or could otherwise be traced back to funds obtained from unlawful conduct. The Administrative Court was satisfied that, in the circumstances of the case, the identified property was recoverable and therefore made the civil recovery order as requested.

Counterfeit drug peddler has £5,599,003.78 confiscated

Peter Gillespie, a man who is currently serving an eight year prison sentence for fraud and money laundering offences relating to the large scale infiltration of the legitimate supply chain with counterfeit cancer, blood and psychosis medicines, was ordered to pay £5,599,003.78 by way of confiscation at Croydon Crown Court on 4 July 2013. If he fails to pay within six months he will face a further eight year prison sentence on top of the one he is already serving.

Mr Gillespie was convicted of fraud and money laundering offences in April 2011 and since that time law enforcement agencies have been trying to trace the proceeds of his offending and seize them.

Gillespie has consistently refused to disclose where he has put the money gained through his offences. The North West Regional Asset Recovery Team (NW RART), a specialist police team, conducted an enquiry on behalf of the Medicines and Healthcare products Regulatory Agency (MHRA) to find the money resulting in yesterday's order being made.

Head of the NW RART, DCI Paula Parker said:

> This order shows that there is no hiding place for criminals, or for the proceeds of their offending. No stone will be left unturned in searching for the proceeds of crime or in securing long prison sentences for those who hang on to them.

Acting Head of Enforcement, Nimo Ahmed said:

> The granting of this order demonstrates the MHRA's on-going commitment to ensuring that those responsible for endangering public health with the sale and supply of fake medicines will not benefit financially from their criminality.

R v Austin

The Court of Appeal, Criminal Division, dismissed the defendant's appeal against his conviction for conspiracy to conceal the proceeds of criminal conduct and conspiracy to convert the proceeds of criminal conduct. The court found that the trial judge had not acted incompatibly with the defendant's right to a fair trial under art 6 of the European Convention on Human Rights by resolving an abuse of process application without appointing special counsel to advance his interests in circumstances where the judge had read two unredacted judgments handed down in the course of the earlier appeal in relation to a different charge.

Money launderer sentenced for breaching crime prevention order

A convicted money launder has been handed a suspended prison sentence after pleading guilty to breaching a Serious Crime Prevention Order (SCPO). Thenveer Hussain was convicted of money laundering in 2009 following an investigation by the Serious Organised Crime Agency (SOCA) and jailed for 27 months. An SCPO prevents him from using a phone not registered with SOCA, but Mr Hussain was discovered with a number of unregistered phones and SIM cards in February 2012.

Mr Hussain pleaded guilty at Sheffield Crown Court and was given an eight month sentence, suspended for two years, and a four month curfew order.

Anti-piracy unit launched by City police

An anti-piracy unit designed to tackle cyber-crime will be launched by the City of London Police, with financial backing from the Department of Business, Innovation and Skills. The Department will provide £2.5m to the City police over two years and the unit will target organised criminal gangs operating outside the UK who make millions from content streaming sites or the sale of counterfeit goods.

The unit will not target individuals downloading illegal music, City police commissioner, Adrian Leppard, said. Instead, the unit will attempt to cut the content streaming sites' financial support, by depriving them of their main sources of revenue; namely, advertising and the sale of fraudulent goods.

Once an illegal site is found, officers will target its advertisers and providers of payment systems to immediately end their involvement with the illegal site. Those that do not do so immediately could be at risk of supporting money laundering.

FATF

Mutual Evaluation of Ireland: 11th Follow-up Report

This follow-up report provides an overview of the main changes made to the AML/CFT system in Ireland since the adoption of its mutual evaluation report in June 2006. In June 2013, the FATF recognised that Ireland had made significant progress in addressing deficiencies identified in its mutual evaluation report and decided that the country should be removed from the regular follow-up process.

G20 support for FATF's work on fighting money laundering and terrorist financing

G20 Finance Ministers and Central Bank Governors met in Moscow on 19–20 July 2013. In their final communiqué, they reiterated their commitment to FATF's work, in particular the identification of high-risk jurisdictions with strategic anti-money laundering/countering the financing of terrorism deficiencies.

INTERNATIONAL ROUND-UP

US prosecutors looking to seize property derived from tax fraud

It was reported by the Financial Times that US prosecutors are looking to seize New York property used by a Russian criminal organisation to launder funds derived from an elaborate $230m tax fraud. Switzerland, Lithuania, Latvia and Estonia have also opened local criminal investigations related to the fraud. In addition to the $23.7m worth of assets that have just been frozen in the US, an additional $20m worth of assets have been frozen in Switzerland.

Consultation: Sound management of risks related to money laundering and financing of terrorism

The Basel Committee has published its proposed 'Sound management of risks related to money laundering and financing of terrorism' for consultation. The proposed guidelines take into account the recommendations put forward in February 2012 in the report 'Financial Action Task Force International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation'. The consultation closed on 27 September 2013.

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