

Recent AML and Financial Crime Enforcement Actions

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OLD MUTUAL

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Agenda

- Legal and regulatory framework
- UK and international enforcement - cases
 - AML
 - Market Abuse
 - Sanctions
 - Bribery
- FSA enforcement in new regulatory world
- Conclusions and Discussion

Governing Law/Regulation

- Financial Crime legal and regulatory obligations primarily set out in:
- UK
 - Money Laundering Regulations 2007
 - Proceeds of Crime Act 2002
 - Wire Transfer Regulations 2007
 - Various HM Treasury sanctions orders
 - FSMA (Market Abuse) and FSA Handbook
 - JMLSG Guidance
 - UK Bribery Act
- Overseas
 - Various AML, sanctions, bribery, insider dealing legislation
 - Biggest headlines around US sanctions and Foreign & Corrupt Practices Act
 - US Foreign Account Tax Compliance Act coming at us

FSA's Statutory Objectives

- FSA Handbook

- SYSC 3.2
 - Systems and controls to counter the risk that the firm might be used to further financial crime
 - Identify, assess, monitor and manage money laundering risk
 - Comprehensive and proportionate systems and controls

- SYSC 6.3
 - Ensure that MLRO has a level of authority and independence within the firm and access to resources and information sufficient to enable him to carry out that responsibility

FSA's Toolkit for Enforcement

- Prosecution of firm and individuals
- Power to impose Civil Penalties
- Enforcement, notices, fines, injunctions, prohibited activities, withdrawal of authorisation
- EU Arrest Warrants and Co-operation with other regulators, in UK and foreign jurisdictions
- Search, raids and arrests
- Restraint, Confiscation and Asset Freezing

Regulation in Context

“...in a risk-based approach things sometimes go wrong: zero failure is not only impossible to achieve, aiming for it is the opposite of good regulation and a blueprint for fighting money laundering poorly...but if a firm demonstrates that it has put in place an effective system of controls that identifies and mitigates appropriately the risks that it is used for money laundering, enforcement action is very unlikely’.

UK and International Enforcement – Recent Cases

- **AML**

- Alpari (FSA – May 2010)
- Eaglewood (HMRC - Jan 2011)

- **Market Abuse/Insider Dealing**

- Eagle (FSA – May 2010)
- Rollins (FSA - Jan 2011)
- Littlewood (FSA – 2 Feb 2011)

- **Sanctions**

- Royal Bank of Scotland (FSA – August 2010)
- Barclays (DoJ/OFAC – August 2010)
- JP Morgan Chase (DoJ/OFAC – 26 August 2011)

- **Bribery**

- FCPA Investigations (MOJ - Jan 2010)
- Kellogg (SFO – Feb 2011)
- Ball Corporation (SEC - March 2011)
- Willis (FSA - July 2011)
- Xu and Jiang (Chinese SPC – July 2011)
- Note Printing Australia and Securrency Ltd (Australian Federal Police – July 2011)

AML

Alpari UK – May 2010 - FSA

- Alpari (UK) Ltd fined £140k (MLRO £14k) inadequate systems and controls to prevent ML
- Alpari – speculative investment business based around rolling FX spot contracts
- Increased customer base from 400 to 11,500 live accounts mid 2007 to mid 2008. No corresponding expansion of ML compliance controls. Accepted business from high risk jurisdictions, such as Nigeria, without screening for sanctions or PEPs

- Learning points:
 - CDD at account opening, employ appropriate software and employ adequate, proportionate on-going monitoring (sanctions and PEP checking)
 - High Risk Jurisdictions - EDD and country risk assessment tools
 - Thorough risk-assessments

AML

Operation Eaglewood – January 2011 – Met Police

- 33 people convicted of drugs, money laundering and firearms offences
- Use of taxi firm and MSB to launder criminal proceeds
- Led to withdrawal of 500 euro note from UK note wholesalers
- MSB MLRO abused trust of larger MSB to obtain large quantities of 500 euro notes in exchange for UK criminal cash
- Sentenced to 10 years imprisonment (no previous form)

- Learning Points
 - Harsh sentencing where money laundering the primary offence (particularly if the MLRO is at it)
 - MSBs still important link in UK cash laundering chain

Insider Dealing

Rollins – 21 January 2011 - FSA

- Neil Rollins, former senior manager of PM Onboard Ltd, sentenced to 27 months in prison (reduced on appeal) for insider dealing and money laundering
- Knowing his company's worsening financial position, sold shareholding in the company and encouraged his wife to do the same
- When became aware of the FSA's interest moved proceeds to hide his conduct

- **Aggravating Factors**
 - FSA being seen to take action against those who abuse positions of trust
- **Mitigating Factors**
 - Money laundering not the primary offence, more leniency in sentencing (contrast with Frigieri)

Insider Dealing

Littlewood Trio – 2 February 2011

- Littlewood - investment banker at Dresdner Kleinwort, passed price-sensitive information to his wife, who traded in shares ahead of proposed take-overs. Littlewoods and Associate invested £2.15m and made £259,000 profit over a 9 year period
- Convicted of 8 counts of insider dealing and all three received prison sentences
- Learning Points
 - FSA will take up complex and potentially time-consuming cases. 2 year+ investigation (and the associate had to be extradited from the Comoros Islands)
 - Littlewood 4 yrs 3 months sentence reflected his position as the source of the inside information
 - Profits not significant in terms of extent of trade plus his own earnings

Sanctions

Royal Bank of Scotland - 3 August 2010 - FSA

- Fined £5.6m (£8m before discount) for failure to have adequate systems and controls to prevent breaches of financial sanctions
- Failure to screen both their customers and the payments they made/received
- Large number of cross-border payments were not screened
- First fine under 2007 Money Laundering Regs (coincidental?)

- Learning points:
 - Ensure policies are in place across the Group – particular care when transferring responsibilities from one function to another
 - Risk position – sustainable for major international player/sanctioned by senior management?
 - Procedures must be reviewed and monitored regularly
 - Check that software performs as required i.e. Including ‘fuzzy matching’
 - Targeted training
 - Take action to mitigate identified deficiencies in timely manner

Sanctions

Barclays – 16 August 2010 – US Dept of Justice

- Fined \$298m by US authorities for ‘knowingly and wilfully’ violating international sanctions by facilitating US banks transactions with banks in Cuba, Iran, Libya, Sudan and Burma
- Accused of handling money transfers totalling £500m from banks in prohibited countries through its dollar clearance branch in New York between 1995 and 2006
- Learning Points
 - US Government continues to come down particularly hard on sanctions breaches – key area of foreign policy
 - Note extra territoriality
 - Deferred prosecution agreement regarding additional control spend
 - Old news?

Sanctions

JP Morgan Chase – 26 August 2011 – US Treasury/OFAC

- Fined \$88.3m by US Authorities for breaking US embargo laws and trade sanctions between 2005 – 2011 - transactions with Cuba, Iran and Sudan over that time
- Knowingly processed \$178m in unlawful wire transfers for Cuban nationals
- Tipped off by another bank but failed to alert the proper authorities and failed to make changes to systems and controls

- Learning points:
 - Voluntarily self-disclosure and prevention of further transfers would have reduced fine
 - The fine would have been larger but was reduced for co-operation
 - Different approach US/overseas banks?
 - New news?

BRIBERY

DOJ – FCPA Investigations – Multi Company - Jan 2010

- Bribes via 20% "commission" to a sales agent who defendants believed represented Gabon Govt (in fact an FBI agent) in order to win a portion of a \$15 million deal to provide military equipment
- Largest single investigation and prosecution against individuals in the history of DoJ's enforcement of the FCPA
- First acknowledged use of large-scale undercover tactics
- Learning points
- DoJ intensifying its focus on FCPA cases – pushing the envelope (undercover operations)
- Emphasis on regular education of corporate workforce

BRIBERY

MW Kellogg Limited (MWKL) - February 2011 - SFO

- Highlights risks to UK businesses in receiving dividends from subsidiaries, where the payment of the dividends has been funded from profits or revenues generated by unlawful activities
- MWKL agreed order under the POCA providing for the "disgorgement" of £7m in dividends received from an overseas subsidiary that had engaged in bribery
- Self disclosed??

- Learning Points
 - Behaviour prior to Bribery Act
 - SFO encouragement to self-disclose
 - The adequacy of the firm's procedures does not provide protection, if the firm acquires knowledge or suspicion of unlawful activities engaged in by a subsidiary (?)
 - Disclosure under POCA key issue re Bribery Act compliance going forward

BRIBERY

Ball Corporation – SEC – March 2011

- Ball alleged to have bribed to employees of Argentine government to facilitate the importation of prohibited machinery and export of raw materials at reduced tariffs
- Corruption allegedly took place through Ball's Argentine subsidiary Formametal
- Ball accounting personnel were aware of the suspicious payments before they acquired Formametal, Ball failed to take sufficient action to ensure that similar activities did not occur at Formametal after the acquisition
- Bribes totalled only \$106k – settlement \$300k (but other costs!)
- Learning points
 - A company can be liable for bribery by a subsidiary company located in another country
 - Compliance responsibilities and risk arise at the point of acquisition and on-going
 - Tainted income can bring prosecution (even when level of bribery not significant)

BRIBERY

Willis - FSA – 21 July 2011

- Insurance broker fined £6.9m (£9.8 pre discount) for systems and controls failings
- Failed to sufficiently monitor payments totalling over £27m to third parties in Russia and Egypt who helped the company win new business (when??)
- Failed to take appropriate steps to ensure that payments made to overseas third parties were not being used for corrupt purposes, despite repeated warnings about potential corruption in the industry
- Learning points
 - Adequate monitoring of staff to ensure that when an overseas third party is engaged, an adequate commercial rationale had been recorded and sufficient DD carried out
 - Regularly review relationships to confirm whether necessary and appropriate to continue
 - FSA's biggest fine to date in pursuit of its financial crime objective (in relation to bribery)
 - Comparison with the AON in 2009 – Willis put on notice

BRIBERY

Securrency International Ltd – July 2011 – Australia Federal Police

- Offences under the Australian Criminal Code Amendment – Bribery of Foreign Public Officials (cash, prostitutes, school fees etc)
- JV of Reserve Bank of Australia and private company
- Bribes to senior politicians and officials across Africa and Asia in exchange for banknote printing contracts between 1999-2005
- Although Australian laws criminalising bribery of foreign public officials had been in force since 1999, first time they resulted in a prosecution
- Execs arrested

- Learning points
- AB pressure not limited to UK
- Legislation exists in most jurisdictions – question is about enforcement (more common in many jurisdictions now)
- Going after individuals

BRIBERY

Xu and Jiang – Chinese Peoples Supreme Court - July 2011

- Two former vice mayors of cities in East China executed for bribery
- Xu sought and accepted a total of 145 million yuan (about £14m) in bribes and embezzled another 53 million yuan from a state-owned property development firm
- Jiang took bribes, including more than 108 million yuan (£10m) in cash, from property developers

- Learning point
 - Bribery in certain jurisdictions can cost more than prison/fine!
 - Despite reputation to the contrary, Chinese state does take action on corruption

FSA Restructure – Looking Ahead at Enforcement

- In June 2010 the Chancellor announced the government's intention to replace the FSA with the PRA and the FCA
- The government's intention is to establish the FCA as an organisation which will:
 - Intervene earlier to tackle potential risks to consumers and market integrity before they crystallise; and
 - Be tougher with its powers of intervention and enforcement
- In the FSA's report 'The FCA - Approach to Regulation' (June 2011) their 'Credible Deterrence' strategy includes:
 - Higher penalties
 - More criminal prosecutions
 - Focusing more closely on the responsibilities of individuals – particularly 'Significant Influence Function Holders'
- You have been warned

Conclusions

- Increasing regulatory activity and expectation
- Numerous hot topics but particularly sanctions and bribery
- Not a zero-tolerance regime but beware hindsight
- Extra-territoriality of foreign legislation – look out for FATCA
- As ever – firms need to be able to demonstrate understanding of FC risks and effectiveness of proportionate systems and controls
- Keep on top of industry and regulatory developments
- Easier said than done – good luck!