

# Developments in Financial White Collar Crime: A UK-US Perspective

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When the American sociologist, Professor Edwin Sutherland, coined the phrase 'white-collar crime' in 1949, it is doubtful that he could have foreseen the explosive use of that term. Now, in the shifting political landscape with both the U.K.'s impending exit from the European Union and the election in the U.S. of Donald Trump, the trans-Atlantic investigation and prosecution of white-collar crime faces an uncertain future. This is a good time to review the enforcement activities in 2016.

As reported here last year, the Serious Fraud Office ("SFO") in the U.K. and the U.S. Department of Justice ("DoJ") have engaged in ever greater trans-Atlantic cooperation in sharing of information between the two countries on matters under common investigation and prosecution. For instance, the SFO recently announced in a unique development that a DoJ lawyer from the criminal division will be seconded to the SFO and the Financial Conduct Authority for a two-year period to assist with cross-border investigations.

The use of advanced technology by investigative bodies and regulators to probe market manipulation in white-collar investigations has also now become *de rigueur*. As markets have become more technology driven, with complex trading platforms such as 'dark pool trading venues', regulators are constantly trying to keep pace.

Prosecution authorities in the U.S. are also stepping up efforts to obtain grand jury indictments (often in secret) against and extradition of foreigners suspected of white-collar offences which violate U.S. law.

This article seeks to briefly summarise developments in bribery, corruption, and market manipulation over the past year and then indicate the new developments as seen through specific instances of economic criminal activity in the U.K. and the U.S.

## I. Bribery/ Corruption/Market Manipulation

In the UK, the Bribery Act 2010 came into effect on 1 July 2011, and it empowers the SFO to prosecute any company or individual irrespective of where the alleged bribery offence occurred if there is a UK connection. In February 2016, construction and professional services company, Sweett Group PLC, was sentenced and ordered to pay £2.25 million as a result of a conviction arising from an SFO investigation into its activities in the United Arab Emirates and elsewhere. The company previously pleaded guilty in December 2015 to a charge of failing to prevent an act of bribery intended to secure and retain a contract with Al Ain Ahlia Insurance Company, contrary to Section 7(1)(b) of the Bribery Act 2010. This is the first UK company to be convicted of the "corporate offence" under Section 7 of the Bribery Act 2010. The company has reportedly been ordered to pay a fine of £1.4m, a £851,152 confiscation amount, and £95,000 in prosecution costs.

In the first Bribery Act conviction by the SFO, Sustainable Growth Group, its subsidiaries, and certain individuals were charged and convicted of making and accepting bribes to further other alleged illegal conduct. The charges stemmed from the selling and promotion of investment products based on "green biofuel" Jatropha tree plantations in Cambodia. The green biofuel products were sold to UK investors on a fraudulent basis in a typical pyramid scheme.

According to the SFO, defendant Gary West, the former chief commercial officer for SAE, took the bribes offered by Stone (an agent of AgroEnergy) in order to inflate and falsify the company's financial records presented to potential investors. West was convicted of two counts under s.2 of the Bribery Act 2010. Defendant Stuart Stone was convicted of two counts under s.1 of the Act – the offence of offering or giving bribes. Whale, the former CEO and chairman, was convicted of non-bribery offences. The offences took place between April 2011 and February 2012. In March 2016, all the appeals had been denied for each of the defendants, who are serving between 6 – 23 years' imprisonment and paying confiscation orders for approximately £1.36 million.

In Scotland, Braid Group (Holdings) Limited is a holding company for various subsidiaries in the freight and logistics business. It reportedly became aware of certain activities relating to two forwarding contracts as regards to one of its subsidiaries. The first contract related to an agreement between a UK employee of Braid and a Braid customer's employee. Apparently, an account was used for unauthorised expenses (personal travel, holidays, gifts, hotels, car hire, and cash) for the customer's employee which was funded by falsely inflated invoices provided to the customer. Braid conducted an internal investigation and then self-reported to the prosecution authorities and apparently accepted responsibility. As a consequence, the company was required to pay £2.2 million as a fine under a civil recovery order, which will be used for community projects in Scotland.

The SFO also announced recently the opening an extensive bribery investigation of Airbus, the aircraft company, allegedly involving misstatement and omissions by third-party contractors in export financing applications. Reacting to the international cooperation necessary for such cases involving cross-border intermediaries, the SFO's director David Green declared, "We have invested real effort in building strong cooperative relations with foreign agencies in key financial centres across the globe. This involves secondments, rolling discussions, exchange of information and coordinated activity. Some commentators seem to regard this as 'not cricket'. To them I would say, get used to it."

## II. Use of Technology

The need for banking compliance teams to conduct IT audits has been highlighted by the recent investigation into whether banks such as Barclays and Deutsche Bank programmed their trading platforms with computer algorithms to rig the massive (£3 trillion/day) foreign exchange (forex) market.

A New York Department of Financial Services (NYDFS) official, Benjamin Lawsky, who allegedly authorised the installation of monitoring programs at Barclays and Deutsche Bank, discovered forex manipulation and the search will now apparently spread to other foreign banks. The algorithms allegedly discovered by monitors installed by the NYDFS are complex equations used to help write computer programmes at Barclays' BARX and Deutsche Bank's Autobahn trading platforms. In a settlement, the NYDFS announced that Barclays was fined a \$635 million penalty. The NY banking regulator acted in a coordinated effort by at least five other regulators around the world, including the DoJ, the SEC, the FCA, and the Hong Kong Monetary Authority.

Bank compliance officers should expect this trend to rise further.

## III. Pursuing Foreigners and Seeking Indictments

American authorities have continued seeking the extradition of individuals charged with market manipulation in banking and securities.

One example of this effort occurred in a 'spoofing' case involving the 'flash crash' trader, Navinder Sarao. According to the DoJ, while sitting in his parents' home in London, Sarao conducted trades in the futures market in Chicago in a manner that he knew was illegal in the U.S. The indictment was unsealed in Chicago and Sarao was arrested and jailed at Wandsworth Prison pending extradition. In November 2016, after losing his appeals, Sarao was extradited to Chicago, where he appeared before a federal district court in an orange jumpsuit and a chain around his legs. He pled guilty and will be sentenced to prison early in 2017.

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More recently, the SFO's prosecution effort for rigging LIBOR rates in the U.S. convicted three former Barclays traders who were reportedly sentenced to between 2 years and 9 months to 6.5 years. Thanks to their extensive emails and texts, securing the jury verdict for conspiracy to rig LIBOR, wire, and bank fraud charges was not difficult. These bankers were based in Barclays' New York office, from where they conducted their illegal market manipulation activities. The SFO's efforts are not over. New prosecutions are scheduled to start in September 2017, when numerous former Deutsche Bank, Barclays and Société Générale employees face allegations they helped to manipulate Euribor, another interest rate benchmark.

## IV. Increased Cooperation Between UK and US Authorities

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Deferred prosecution agreements (DPAs), where prosecutors offer not to prosecute a corporate in exchange for information, payment of fines, and implementing reforms, have been a long-standing feature of American law. While DPAs have been available to English prosecutors since 24 February 2014, the UK's first DPA was achieved on 30 November 2015 between the SFO and Standard Bank. In the second, SFO v XYZ Limited (anonymised), XYZ was a UK SME and a subsidiary of a US company that conducted most of its business in Asia. Between June 2004 and June 2012, XYZ paid bribes through agents to secure many of its contracts (about 38% of the contracts examined by the SFO had been secured as a result of bribery) valued at £6,553,085. On 8 July 2016, a DPA with XYZ was approved by Southwark Crown Court. It should be noted that the DPA regime is applicable in England and Wales; it does not extend to Scotland, where a self-reporting system operates for corporate bribery offences only.

Such cooperation in tactics and investigations assists authorities in the US, where foreign institutions are commercially active and information is needed from the home jurisdictions to further an investigation. The mutual assistance is also beneficial to the UK enforcers because they generally have much fewer resources with which to investigate and bring successful prosecutions.

## IV. Concluding Remarks

Markets must be free of corruption and fraud if its participants are to be treated fairly. The use of technology to uncover criminal conduct, targeting of individuals and seeking their extradition, and greater sharing of information between enforcement agencies are continuing developments which may substantially affect the way white-collar crimes are investigated and prosecuted in the UK. But perhaps the most effective weapon against market manipulation is a robust and resourced watchdog. Whether the U.K. maintains that vigilance in the course of Brexit will be the subject of the next report.

