

## UK Economic Crime Group Enforcement Update

### Overview

The most significant development at the end of 2012 and the first quarter of 2013 has been the developing international criminal and regulatory investigations into the operation of LIBOR, the 'London Interbank Offered Rate.' The concerted efforts of regulators and law enforcement bodies across the world demonstrates their commitment to uncover and punish market manipulation. Recently, it was reported that US authorities are contemplating an investigation into the fixing of the gold price.

### The FSA

The Financial Services Authority (FSA) will be split in two bodies on 1 April and become the Prudential Regulation Authority and the Financial Conduct Authority. Its enforcement section has been very busy during the past nine months. Regarding LIBOR, it has imposed record fines against The Royal Bank of Scotland (RBS) (£87.5 million, February 2013), UBS (£160 million, December 2012) and Barclays (£60 million, July 2012). All three settlements were part of a globally coordinated deal involving regulators and investigators in the UK, US and other jurisdictions. For the FSA, after having endured some criticism for acting too slowly at the start of the LIBOR scandal, the securing of these substantial fines is a significant success.

The FSA also has been active in its pursuit of insider dealing. It secured its latest convictions in two cases of insider dealing (*R v Richard Joseph and R v Paul Milsom*) in the first quarter of 2013, with the defendants receiving terms of imprisonment of four and two years respectively, along with substantial confiscation orders being awarded or in the process of being sought. These cases bring the FSA's insider dealing convictions to 22, with a further six cases currently awaiting trial.

On 21 March, Martin Wheatley, Chief Executive of the new Financial Conduct Authority (FCA), spoke about the approach that the new City regulator would take under his leadership. He indicated a more hands-on approach, saying that the FCA was much less interested in fostering a "be afraid" reputation among firms in the regulated sector and more focused on using "the full range of tools" at its disposal to "make markets work well." Wheatley was candid in setting out his belief that increasing fine amounts does not alter the behaviour of the biggest financial

### Contacts



**Kathleen Harris**  
+44 (0)20 7786 6100



**Jonathan Dennis**  
+44 (0)20 7786 6220



**Simi Grewal**  
+44 (0)20 7786 6100

institutions, which are able to absorb the cost and ultimately pass it on to their shareholders. Wheatley appeared to indicate that the FCA wanted to bring about real changes in boardroom culture – in particular, by promoting greater individual accountability. Referring to the current payment protection insurance scandal – and perhaps also mindful of criticism that the FSA acted too slowly in response to the LIBOR scandal – Wheatley said that it was *“better to deal”* with problems early and the new FCA would accordingly be *“on the front foot when we see things we don’t like.”* It will be interesting to see how that statement of intent is put into practice throughout the first year of the FCA’s existence.

## The SFO

The Serious Fraud Office (SFO) has assumed responsibility for the investigation of criminal offending in relation to LIBOR manipulation. David Green, the SFO’s director since April 2012, made it plain to Parliament’s Justice Committee in November 2012 that he wished his organisation to be judged in large measure by the success of its LIBOR investigation. The SFO has been awarded additional funding by the Treasury to undertake its investigation.

As well as the evidential and legal difficulties presented by the LIBOR investigation, the SFO faces a challenge to its jurisdiction from US counterparts. On 14 March 2013, the *New York Times* reported: *“U.S. and U.K. in Tussle Over Trader.”* The trader in question was Tom Hayes, former UBS Yen derivatives trader and central target in the transatlantic investigation[s] into the improper manipulation of LIBOR submissions by employees of certain banks who had positions on the Yen derivatives markets. The reported tussle was between US and UK investigators/prosecutors over whose investigation against Hayes would be given jurisdictional primacy.

On 11 December 2012, the SFO arrested Hayes – who resides in London and is a British citizen – along with two others. Hayes was later bailed without charge. The next day, criminal charges of wire fraud were laid in the Southern District of New York by the US Department of Justice (DOJ) and made public the following week. Given the ongoing tensions between the UK and US over extradition, the outcome in this case is likely to attract attention.

The SFO faces civil claims for damages from the Tchenguiz brothers following the decision to drop the criminal investigation into their links with Kaupthing Bank. This decision was made by the SFO after the brothers successfully challenged in judicial review proceedings search warrants obtained against them by the SFO. Judicial review is a legal avenue that gives affected persons the right to challenge the legality of decisions made by UK public bodies, including law enforcement agencies. The civil claims arise from alleged failings in the SFO’s investigation, in particular, the manner in which the now overturned search warrants were sought. The brothers are said to be seeking damages of over £200 million from the SFO.

## GRECO: Fourth Report on the UK Published

The Council of Europe’s anti-corruption body was overwhelmingly positive in its recent evaluation of the UK’s stance against corruption within three of its key institutions: Parliament, the judiciary and the state prosecution service.

The judiciary was said to be *“ranked as the most trusted institution by the public in the United Kingdom, with an untarnished reputation of independence, impartiality and integrity of its members. Nothing that emerged from the current evaluation indicated that there was any element of corruption in relation to judges nor was there any evidence of their decisions being influenced in an inappropriate manner.”* There was little room for improvement identified.

Prosecutors also received praise, with the report's only major recommendation being that more formalized ethics training be put in place.

The report noted that public trust in Parliament was still at a great low and recommended that internal disciplinary procedures should be clarified and that the regulation of Members' contact with lobbyists be tightened up. It will be interesting to see if these recommendations have been acted on when the body reports again in late 2014.