GIBSON DUNN

September 22, 2016

2016 MID-YEAR UNITED KINGDOM WHITE COLLAR CRIME UPDATE

To Our Clients and Friends:

This alert follows on from our inaugural 2015 Year End UK White collar Crime Update. The continuing pace of development, enforcement and change has encouraged us to produce this update on a bi-annual basis.

As before, this update covers developments in a number of key fields:

i) developments relevant to the white collar crime sector as a whole

ii) bribery and corruption

iii) fraud

iv) financial and trade sanctions

v) money laundering

vi) competition

vii) insider dealing and market abuse

Each of these sections is broken down into sub-sections (see the hyperlinked table of contents below).

Table of Contents

---

1. Developments Relevant to the White Collar Crime Sector as a Whole

Data leaks – Panama Papers and Unaoil

Some measure of the current regulatory tone, the planned reforms and legislative developments result, from the controversy arising from the so-called "Panama Papers" and related press reporting. On April

4, 2016, it was reported that 11 million documents had been leaked from the Panamanian law firm Mossack Fonseca. This was not the first such data leak. Shortly before the first Panama stories emerged the Monégasque company Unaoil – also discussed further below – was the subject of a data leak, and other offshore leaks have taken place over the last few years. Most recently 1.3m files from the Bahamian Company Registry have been leaked.

Panama, however, saw the swiftest response. On April 7, it was reported that the FCA had contacted 20 banks imposing a deadline of April 15 for the banks to report to the FCA on any links they had to Mossack Fonseca. In a *Freedom of Information Act* response the FCA has since confirmed that, in fact, the FCA had contacted 64 firms, all of which responded.

It may be anticipated that criminal prosecutions and other enforcement action may result, in a number of jurisdictions, from the information contained in the Panama Papers.

Consultation on new offence of failure to prevent economic crime

As we reported in our 2015 Year End UK White collar Crime Update, on September 28, 2015, the British government announced that it would not proceed with the creation of a new strict liability offence of failure of a commercial organization to prevent economic crime. In the wake of the Panama Papers, however, this decision was reversed. On May 12, 2016 the government announced a consultation on this new offence. This consultation has not yet been commenced.

Failure to Prevent Tax Evasion

On July 10, 2016 the consultation period closed in relation to a proposed new corporate offence of failure to prevent the criminal facilitation of tax evasion. This proposed offence is closely modelled on the section 7 offence under the *Bribery Act* with a company being liable if its "associated person" has facilitated tax evasion and it either did not have "prevention procedures" in place designed to prevent tax evasion, or it can show that it was reasonable to have no such procedures in place.

The government's current proposal is to have a separate but similar offence in relation to foreign tax evasion.

Deferred Prosecution Agreements

The first half of 2016 has seen the UK's second deferred prosecution agreement ("DPA"). This was in relation to an unnamed company (named only as XYZ Limited) and will be discussed in detail below in the section on *Bribery Act* enforcement.

There continue to be questions and uncertainties over the extent and speed of co-operation that will be required by the prosecuting authorities to secure a DPA. There also continue to be questions asked as to the financial benefit, or otherwise, of a DPA.

As noted in our 2016 Mid-Year Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs), and as discussed further below in the section of financial sanctions,

the DPA regime is to be extended to cover financial sanctions offences under the *Policing and Crime Bill* that is currently before Parliament.

David Green QC and the future of the SFO

On February 9, 2016 the SFO announced that its Director, David Green QC, had been given a two year contract extension.

Since then, the upheavals in British politics have resulted in Theresa May becoming Prime Minister. This may precipitate a period of uncertainty for the SFO as May, while Home Secretary, attempted to abolish the SFO on a number of occasions.

SFO's approach to legal privilege and representation in internal investigations

On June 6, 2016 the SFO issued new guidance on the *Presence of interviewee's legal adviser at a section 2 interview*. This guidance continues the thread of the SFO seeking to diminish the prospects of legal privilege and advice interfering with an investigation, and follows on from the decision in *R (on the application of Jason Lord & others) v Director of the Serious Fraud Office* [2015] EWHC 865 (Admin), discussed in our 2015 Year End UK White Collar Crime Alert.

The *Guidance* states that a lawyer "*will be allowed to attend the interview if the case controller believes it likely they will assist the purpose of the interview and/or investigation*" (emphasis added). It is the case therefore, that SFO policy gives discretion to the SFO itself as to whether a person being interviewed will be able to have a lawyer attend. This *Guidance* is significant and timely as the number of interviews conducted by the SFO went from 129 in 2014 to 177 in 2015.

In addition the *Guidance* states that a lawyer must give undertakings to the SFO that they owe no duty of disclosure "*to any other person (natural or legal) who may come under suspicion during the course of the investigation, including the interviewee's employer*". If the lawyer cannot give such an undertaking "*they are unlikely to be allowed to attend the interview*".

Further, the *Guidance* places restrictions on what the lawyer may and may not do during the interview:

> "*If a particular lawyer is allowed to attend the interview, it will be on the agreed understanding that certain ground rules apply. They may, if they are able to, advise the interviewee in the event that any matter of legal professional privilege (LPP) arises. Otherwise, they must not do anything to undermine the free flow of information which the interviewee, by law, is required to give. It is the duty of the interviewer to ensure that this rule is observed. In the event of any perceived infraction, or obstruction of the interview process generally, the lawyer will be excluded from the interview*".

While it is possible to sympathise with the SFO's desire to have unimpeded conduct of its investigation, the restrictions on access to legal advice for those being interviewed by the SFO will not be welcome in all quarters.

Modern Slavery Act 2015

On July 31, 2016 the British government published its *Modern Slavery Act Review*, covering the first 12 months of the act. This made 29 recommendations for further and better reporting, training and prosecution. It also noted that 289 offences were prosecuted during 2015 of which 27 were under the *Modern Slavery Act* itself and 262 under the pre-existing human trafficking legislation.

April 2016 also saw relevant companies issue their first slavery and human trafficking statements pursuant to section 54 of the *Modern Slavery Act*. Under section 54, commercial organisations that supply goods or services and have a total turnover of £36 million or more are required to issue publically a board-approved slavery and human trafficking statement that details "*all the actions*" the company has taken to eliminate slavery and human trafficking from their business and supply chain during the financial year.

2. Bribery and Corruption

The significant uptick in corporate enforcement under the *Bribery Act* seen in the latter part of 2015 has continued in the first half of 2016 with two further instances of concluded enforcements against corporations. In this context it can be noted that Scotland's Crown Office and Procurator Fiscal Service has once again extended its self-reporting amnesty program for another year until June 2017.

Enforcement: Bribery Act

Bribery Act section 7 – the corporate offence of failing to prevent bribery

Braid Logistics (UK) Limited

Following close behind the **Brand-Rex** settlement (reported in our client alert on the Standard Bank deferred prosecution agreement), **Braid Logistics (UK) Limited** ("**Braid**") is the latest company to enter into a civil settlement with Scotland's Civil Recovery Unit under the just-mentioned amnesty program run by Scotland's Crown Office and Procurator Fiscal Service. Under the terms of the agreement with the Scottish authorities Braid will pay the Crown £2.2 million, its total gross profit resulting from the unlawful conduct.

Having become aware of potentially improper activities in relation to two freight forwarding contracts in 2012, Braid voluntarily made a self-report to the Crown Office accepting responsibility for contraventions of both the section 1 (paying a bribe) and section 7 (failing to prevent an associated person from paying a bribe) offences under the *Bribery Act*. Only limited information has been released on the corrupt payments that were subject to this self-report as the authorities are considering whether to prosecute the individuals involved.

In relation to the first contract, what is known is that a Braid employee and the employee of a customer agreed a scheme whereby unauthorised expenses incurred by the customer's employee were funded by the dishonest inflation of invoices provided to that customer. The expenses included personal travel, holidays, gifts, hotels, car hire and cash. During the investigation into this contract, separate bribery

concerns in relation to a profit sharing arrangement with a director of a second customer were discovered. Under this arrangement the profit achieved on services provided to the customer was split in return for orders continuing to be placed with Braid.

XYZ Limited

On July 11, 2016, the SFO announced that it had concluded the UK's second DPA with a company named only as **XYZ Limited**, a wholly-owned subsidiary of a US parent company named only as **ABC Companies LLC**.

XYZ Limited is described in the *Serious Fraud Office v XYZ Limited* (Case no. U20150856) as a "*small to medium sized enterprise ("SME") which between June 2004 and June 2012 was involved, through its controlling minds, in the offer and/or payment of bribes to secure contracts in foreign jurisdictions*". Further it was held that "*in total, of 74 contracts which were ultimately examined, 28 are said to be "implicated"*"", and that these contracts represented 15.81% of XYZ's turnover and 20.82% of its gross profit during that period.

In 2012 the parent company instituted a new global compliance program which resulted in the discovery of the bribes. An internal investigation was launched and the company self-reported to the SFO and then continued to co-operate. The company is unnamed because of "ongoing criminal proceedings" against individuals related to the company.

The offences were a mixture of giving corrupt payments under the *Prevention of Corruption Act*, as well as the section 1 and section 7 offences under the *Bribery Act*.

Under the terms of the DPA (which is to last between 3 and 5 years), XYZ must:

- disgorge gross profits of £6,201,085, and seek no reduction in taxes already paid in relation to those profits;
- pay a penalty of £352,000; and
- its Chief Compliance Officer must make an annual report to the SFO on the company's compliance with the *Bribery Act* and other applicable anti-corruption laws.

The first and third of these bullets are unsurprising. It is typical for a company convicted of a corruption or bribery offence to have to disgorge the entirety of its improperly-won gross profits, while some sort of reporting (even if not through a formally-appointed external "Compliance Monitor") is also common.

What is noteworthy is the very small size of the financial penalty. As the judge noted the "*starting point for a financial penalty"* in this case under the *Sentencing Guidelines* would have been £16.4m, and then a discount applied to that figure for an early guilty plea. In this instance, however, the court held that XYZ was on an "*economic knife edge*" and that any higher level of penalty would force the company into insolvency. As it was the £352,000 penalty represented the entirety of the company's unencumbered cash and the maximum it could pay without going insolvent. As a further step towards trying to avoid

insolvency, ABC (the US parent company) voluntarily agreed to pay £1,953,085 as part-payment of the disgorgement. This sum represented the dividends it had received from the impugned contracts.

This second DPA is, therefore, a model of the application of judicial discretion; a balancing act between sufficient punishment for the wrong doing in circumstances where the company was of limited means, and rewarding the self-reporting but ensuring the continued survival of the company.

The judge himself was keen to stress two points that followed from the leniency afforded to XYZ. Firstly:

> "*… it is important to send a clear message, reflecting a policy choice in bringing DPAs into the law of England and Wales, that a company's shareholders, customers and employees (as well as all those with whom it deals) are far better served by self-reporting and putting in place effective compliance structures. When it does so, that openness must be rewarded and be seen to be worthwhile*".

The second point was to stress that a parent company that structured itself with a bribe-paying impecunious subsidiary would be dealt with harshly:

> "*any evidence that a parent company has set up a subsidiary as a vehicle through which corrupt payment may be made so that the company can be abandoned in the event that the payment comes to light is likely to lead to prosecution of the parent company under s. 7(1) of the Bribery Act 2010. The onus will then pass to the parent company to establish the defence under s. 7(2) of having in place adequate procedures designed to prevent associated persons from undertaking bribery. A pre-existing plan to behave corruptly through the subsidiary would obviously be treated as a seriously aggravating feature*".

> *Enforcement: Bribery Act sections 1-2 – giving/receiving bribes*

Sentences of 20 months and 3 years were handed down to **Saeed Shakir** and **Muzaffar Hussain** for offering a bribe of £500, and a promise of a further payment to a local government official in the UK. These were the eleventh and twelfth convictions of individuals under the *Bribery Act*. If nothing else this demonstrates the continuing appetite of the British authorities to prosecute individuals for fairly small-scale acts of bribery.

> *Sarclad Limited - individuals*

The SFO's investigation into Sarclad Limited, rumoured in 2015 to be a candidate for the UK's first deferred prosecution agreement, has led to charges being brought against former director **Michael Sorby** and former sales manager, **Adrian Leek**. Mr Sorby and Mr Leek appeared before Westminster Magistrate's Court on February 25, 2016 charged with one count of conspiracy to bribe under section 1, and also one count of conspiracy to corrupt contrary to section 1 *Prevention of Corruption Act 1906*.

This was the first time that a person or company has been charged under both the pre-*Bribery Act* legislation and the *Bribery Act* itself. The charges relate to financial inducements allegedly paid to secure

contracts for Sarclad Limited over a lengthy period both before and after the coming into force of the *Bribery Act*.

Aisha Elliot and Stephen Oates

On September 21, 2016 it was reported that **Aisha Elliot and Stephen Oates** had each been charged under the *Bribery Act*. The former with offering a bribe (section 1) and the latter for receiving a bribe (section 2). No information has been released as to the scale of the alleged bribe. Mr Oates worked at an insurance company and Ms Elliot worked at a claims management company. The cases were brought by the City of London Police's Insurance Fraud Enforcement Department. The next hearing is scheduled for October 20, 2016.

Gary West and Stuart Stone

As reported in our 2014 Year End FCPA Update, in December 2014 the SFO secured its first convictions under the *Bribery Act* of **Gary West** and **Stuart Stone**. On July 29, 2016, the SFO announced that it had secured confiscation orders against the two defendants. Gary West was ordered to pay £52,805 and Stuart Stone was ordered to pay £1,141,680.

Enforcement: Prevention of Corruption Act 1906

Because there is no statute of limitations for most criminal offences in the U.K., enforcement under the pre-*Bribery Act* legislation has continued, and will do for some time. Indeed, the period since the introduction of the *Bribery Act*, while seeing, until recently, only limited enforcement action under that Act, has been marked by unprecedented levels of enforcement under the pre-existing corruption offences.

Former manager of Securency PTY Ltd convicted of corruption offences

On May 11, 2016, following a joint investigation by the Serious Fraud Office and the Australian Federal Police, **Peter Chapman**, a former manager of **Securency PTY Ltd** was convicted of four counts of making corrupt payments to a foreign official contrary to the *Prevention of Corruption Act*. Mr Chapman was acquitted of two further counts.

Mr Chapman was convicted of paying bribes, totalling US$205,000 to an agent of Nigerian Security Printing and Minting PLC, to secure orders for the purchase of reams of polymer substrate from Securency. Following Mr Chapman's conviction he was sentenced to two and a half years imprisonment.

Simon Davies and Robert Gillam

At a hearing on June 16, 2016, **Simon Davies** and **Robert Gillam** each pleaded guilty to the making of a corrupt payment in 2009 of £122,000 to **Robert Gannon**, a U.S. citizen who pleaded guilty to related charges in the U.S. in November 2015. The payment was made in return for confidential information in relation to a £5m contract to supply bomb disposal equipment in Afghanistan. Sentencing is awaited. The allegations were first raised in a report by the Special Inspector General for Afghanistan

Reconstruction, and saw the FBI and the UK authorities closely collaborate. For instance, Robert Gannon, after his arrest by the FBI agreed to assist the City of London Overseas Anti-Corruption Unit with the prosecution of Davies and Gillam.

Four convicted in relation to corruption of a member of the Royal Household

On August 9, 2016 the second of two trials concluded resulting in convictions of three individuals and the guilty plea of a fourth for offences of conspiring to give and receive corrupt payments. **Ronald Harper** was a member of the British Royal Household entrusted with overseeing the award of works contracts. He accepted payments from **Christopher Murphy** and **Aseai Zlaoui** on behalf of one company, and **Stephen Thompson** on behalf of a second company in return for awarding them contracts. Sentencing is scheduled for September 28, 2016.

Enforcement: Ongoing Foreign Bribery Prosecutions

F.H. Bertling Limited

On July 13, 2016 the SFO announced charges against **F.H. Bertling Limited**, and seven individuals (**Peter Ferdinand**, **Marc Schweiger**, **Stephen Elmer**, **Joerg Blumberg**, **Dirk Jürgensen**, **Giuseppe Morreale, and Ralf Peterson**). The charges relate to an alleged conspiracy to "*bribe an agent of the Angolan state oil company, Sonangol, to further F.H. Bertling's business operations in that country*". The offences are alleged to have taken place in 2005 and 2006.

[Withheld]

GlaxoSmithKlein

The SFO's investigation into **GlaxoSmithKlein**, announced in May 2014 is still ongoing. In April 2916 it was reported that GlaxoSmithKline is conducting an internal investigation into the conduct of staff in Yemen. The relevant allegations are that a number of staff of GSK's Yemen subsidiary also held paid positions at the health ministry and had used these to influence purchasing decisions and increase sales of GSK's products.

This follows the reported distribution of a hold notice related to the SFO and DOJ investigations into GSK, to employees in Yemen in March 2016. This notice required the preservation of documents relating to payments to health care providers and government entities, the concurrent employment of GSK personnel by government and the breast cancer drug Tykerb.

Enforcement: Ongoing Foreign Bribery Investigations

Airbus

On August 8, 2016 the SFO announced that it was opening a criminal investigation into "*allegations of fraud, bribery and corruption in the civil aviation business of* ***Airbus Group****. These allegations relate to irregularities concerning third party consultants*".

The opening of the investigation followed Airbus self-reporting to UK Export Finance (the government body that provides state-backed export finance guarantees) that it had failed to notify UK Export Finance about the use of third-party agents. UK Export Finance then referred Airbus to the SFO in April of this year.

Eurasian Natural Resources Corporation / Eurasian Resources Group

On September 9, 2016 it was reported that the SFO had conducted further interviews in this ongoing investigation. The reported interview was of the company's former head of African operations. This follows an application by the SFO to the government for so-called "blockbuster" funding for this investigation.

Unaoil

On July 19, 2016 the SFO announced that it was conducting an investigation "*into the activities of **Unaoil**, its officers, its employees and its agents in connection with suspected offences of bribery, corruption and money laundering*". The references to both "bribery" and "corruption" suggests that the SFO is contemplating offences under both the *Bribery Act* and the earlier legislation. This follows the SFO making a mutual legal assistance request to the Monégasque authorities and the raid of Unaoil's premises and the homes of its directors in Monaco. The allegations against Unaoil relate to claims of corruption and bid-rigging in the global oil and gas industry. Unaoil came to the attention of authorities in a range of jurisdictions as a result of press reports drawing on a massive document leak.

Soma Oil and Gas

On August 17, 2016 **Soma Oil and Gas Holdings Limited** lost its attempt to have the SFO's investigation of it terminated. It had sought to judicially review the SFO's decision arguing that the continuing investigation posed an "*existential threat*" to the company as it would be unable to enter into certain contracts while the investigation was ongoing.

The SFO resisted the application arguing that there was a new strand of its investigation "*in respect of serious criminality*" which only came to light in December and which required the investigation to continue. Documents put before the court indicate that the SFO had raided Soma's office and the home of its CFO in July 2015, and had "*reviewed 50,000 documents, 20,000 e-mails, interviewed three directors as suspects, and questioned five witnesses*".

The case is of interest with regard to the method chosen for trying to end the SFO's investigation, and also for the contrasting approach to insolvency taken with XYZ Limited described above.

Enforcement: Domestic Bribery and Corruption

R v Alexander & others

Trial against six defendants commenced on September 5, 2016. Three of these – **Stephen Dartnell**, **Kerry Lloyd**, and **Simon Mundy** are charged with conspiracy to give corrupt payments in connection

with the purchase of agreements by KBC Lease (UK) Limited and Barclays Asset Finance from Total Asset Limited.

Richard Moxon and Peter Lewis

The IT director of an NHS trust – **Peter Lewis** – is due to stand trial in November of this year on one count of receiving a corrupt payment. A co-defendant – **Richard Moxon** – pleaded guilty at a hearing in March.

Lynden Scourfield, Mark Dobson, David Mills, Michael Bancroft

On September 12, 2016, the trial of the above men for corruption offences and six others, charged with various fraud and money laundering offences began at Southwark Crown Court. The defendants had all been arrested and charged in 2013 with the pre-trial process being very drawn out. The alleged offences relate to dealings at the Reading Branch of the former Halifax Bank of Scotland.

Mutual Legal Assistance: the U.K. Working with Foreign Governments

In response to a *Freedom of Information Act* request, the SFO confirmed in January 2016 that it received 68 mutual legal assistance requests during 2015. Many of these are not made public, but information on others does become public and can be highlighted below.

Nigeria/USA

The recent Court of Appeal decision in *Blue Holdings Pte Limited v National Crime Agency CA* [2016] EWCA Civ 760 concerned issues of English disclosure law, but the underlying case concerned a mutual legal assistance request from the United States to the UK in relation to assets that allegedly represent the proceeds of frauds committed by the former Nigerian President, General Abacha and his associates. The case turned on an application by the Defendants to have disclosed to them the mutual legal assistance request sent by the US Department of Justice. The application for disclosure was refused.

On September 1, 2016 the Nigerian and UK governments signed a Memorandum of Understanding covering the repatriation of stolen assets to Nigeria. The Memorandum signals a continuing effort to co-operate between the two governments with repatriated funds to be used within the budget of the government of Nigeria for projects designed to aid access to justice and the poorest segments of society.

Kenya

As discussed below in relation to money laundering, on February 25, 2016 **Windward Trading Limited** pleaded guilty to four charges of money laundering before the Royal Courts of Jersey. As part of the sentence £3,281,897.40 and $540,330.69 were confiscated.

Following the confiscation the UK Government has announced its intention to return the ill-gotten funds for the benefit of the Kenyan tax payers. In line with UK policy, the money will be applied towards social development projects.

In a similar move the funds confiscated from **Smith & Ouzman Limited** (which as set out in our 2014 Year End FCPA Update was found guilty of making corrupt payments under the *Prevention of Corruption Act* and then later sentenced in early 2016) will also be sent to Kenya. Following discussions with the Kenyan Ethics and Anti-Corruption Commission, the British government has agreed that the KSh 52m will be used to purchase ambulances in Kenya.

Tanzania

Similarly the British government has transferred to Tanzania $7 million paid by **Standard Bank** under its deferred prosecution agreement entered into in 2015.

Bermuda introducing its own Bribery Act

The Bermudan Attorney General announced on May 20, 2016 that Bermuda plans to introduce new legislation to modernize its laws on bribery and corruption. The new act will be based on the UK's *Bribery Act*, and will create four new offences modelled on sections 1, 2, 6 and 7 of the *Bribery Act*. As reported in our 2012 Year-End FCPA Update Bermuda's announcement follows the Isle of Man adopting its own *Bribery Act*, and follows the publication of a UK white paper in June 2012 through which the UK Government stated that it "expected" the British overseas territories, including Bermuda, to implement anti-corruption legislation reflecting the OECD Convention.

3. Fraud

Enforcement

Saunders Electrical Wholesale Ltd

On February 8, 2016, the SFO obtained convictions against two individuals, **Michael Dean Strubel** and **Spencer Mitchell Steinberg** for conspiracy to defraud in connection with a London based Ponzi scheme. A third individual, **Jolan Marc Saunders** pleaded guilty to one count of conspiracy to defraud and one count of acting as a director while disqualified. The three men had induced wealthy individuals to invest significant sums (in some cases millions of pounds) in an electrical supply business which purported to be a supplier to blue chip hotel chains. The actual trade carried out by the business concerned was significantly below the levels portrayed to potential investors. On May 24, 2016 Mr Saunders was sentenced to seven years imprisonment for conspiracy to defraud with one year to run concurrently for acting as a director of a company while disqualified, Mr Strubel was sentenced to seven years imprisonment and Mr Steinberg was sentenced to six years and nine months imprisonment.

Foreign Exchange

On March 15, 2016, the SFO formally announced that it was closing its investigation into allegations of fraudulent trading in the forex market. In its statement the SFO explained that it had been unable to identify sufficient evidence to meet the test required to bring a prosecution under English law. The investigation had been commenced in July 2014 after the FCA had referred material to the SFO.

Tata Steel

On April 8, 2016, the SFO announced that it has opened a criminal investigation into the activities of Speciality Steels which is a business unit of **Tata Steels (UK) Ltd**. The investigation has been underway since December 2015. On the same day the UK's Daily Telegraph newspaper reported that police officers are investigating allegations that certificates setting out the composition of products were falsified and nine employees have been suspended. The company had referred itself to the SFO following an internal audit. The *Daily Telegraph* also noted that there is a separate trading standards investigation underway.

Football apprenticeships

The SFO has charged six men in connection with the SFO's investigation into **Luis Michael Training Ltd** which is alleged to have claimed payments from several further education colleges for training and football apprenticeships that were never provided. On May 4, 2016 the six men appeared a Westminster Magistrates Court, all six were charged with one count of conspiracy to commit fraud by false representation under s. 1(1) of the *Criminal Law Act 1977*, five individuals were charged with a further count under the same section and one individual was also charged with one count of fraud under s. 1 of the *Fraud Act 2006* and of using a false instrument under s 3 of the *Forgery and Counterfeiting Act 1981*.

Bank of England Liquidity Auctions

In our 2015 Year End UK White collar Crime Update we reported that the SFO had opened an investigation into the **Bank of England**'s liquidity auctions carried out during the financial crisis in 2007 and 2008. In August 2016 Bloomberg reported that the SFO will decide whether to pursue charges by the end of the year and that the SFO is in the process of conducting interviews. The investigation relates to the operation of the Bank of England's Extended Collateral Long-Term Report Operations in 2007 and its Special Liquidity Scheme in 2008. Both schemes allowed banks to swap assets for liquidity funding. Bloomberg has reported that the SFO's investigation centres around whether officials at the Bank of England had told lenders the level at which they should bid in liquidity auctions.

Tesco Supermarkets

On September 9, 2016, the SFO announced that it was charging **Carl Rogberg**, **Christopher Bush** and **John Scouler** each with one count of fraud by abuse of position contrary to sections 1 and 4 of the *Fraud Act 2006*, and one count of false accounting contrary to the *Theft Act 1968*. The three individuals were employees of Tesco's Supermarkets, and the alleged activity occurred between February 2014 and September 2014. The SFO's press release added that the investigation into the company was ongoing.

Confiscation orders

The SFO continues to pursue confiscation orders and to seek significant penalties in the event of default of payment. On April 19, 2016, **Jeffery Revell-Reade** was ordered to pay a confiscation order of £10,751,000 within three months failing which he will face an additional prison sentence of 10 years for

default of payment. Mr Revell-Reade is currently serving an eight year and six months prison sentence following his conviction in connection with one of the UK's largest ever boiler room schemes.

A further individual, **Anthony May** who is currently serving a seven years and four months prison sentence was ordered to pay £250,000 within three months. If he defaults on payment he will be subject to a further three years imprisonment.

On June 17, 2016, **Richard Clay** and **Kathryn Clark** were ordered to pay a total of £562,766.07. Both Mr Clay and Ms Clark are currently serving sentences for fraud under the *Fraud Act* (and in Ms Clark's case forgery) having defrauded investors through Arck LLP, a company which created and marketed financial products. Mr Clay will be subject to a default sentence of 18 months if he fails to pay and Ms Clark to a default sentence of six months.

4. Financial and Trade Sanctions

BREXIT

The result of the June 23, 2016 UK referendum to leave has introduced a very significant degree of uncertainty to the legal and political landscape in the UK. The country's financial sanctions landscape will not be immune to changes, many currently unforeseeable, as a result of Brexit. Other than the standalone UK terrorist asset-freezing powers provided for by the Terrorist Asset-Freezing Act 2010, the UK's sanctions regimes currently derive from EU law.

As a result, there will inevitably be changes in this area in the coming years. We will, of course, maintain a watching brief on behalf of our clients. In the interim, we can make the following observations:

- Until the United Kingdom actually leaves the EU, EU law remains in force and the UK is obliged to give effect to EU legislation (including sanctions legislation) whilst it remains a member state. This will remain the case even after Article 50 TEU, the clause which governs exit from the EU, is triggered. What happens after the UK leaves the EU will need to be resolved as part of the negotiations on the UK's departure. If such negotiations involve no such resolution, the EU treaties, including the elements relating to sanction, will cease to apply to the UK two years after the Article 50 process is triggered.

- The UK's underlying obligation to implement sanctions imposed by the United Nations Security Council will continue. The mechanics of this will need to change as presently these are first implemented at EU level, before the UK then gives effect to the sanctions through its own regulations.

- As regards the easing of sanctions against Iran through The Joint Comprehensive Plan of Action ("JCPOA"), (on which, see our client alert "Implementation Day" Arrives: Substantial Easing of Iran Sanctions alongside Continued Limitations and Risks), this will not be affected. The UK was a signatory to the JCPOA in its own right and will remain bound by the terms of the deal even if it will need to give effect to it through new legislation.

- The UK's departure from the EU may have significant practical consequences in terms of the EU's stance on sanctions. For instance, in a report published in April on the implications of a vote to leave the EU, the House of Commons Foreign Affairs Committee commented that: "*EU sanctions on Russia, for example, would probably have been weaker without the UK's Prime Minister arguing within the EU for a robust response to the Russian seizure of the Crimean peninsula from Ukraine*".

- There are a number of policy options as to how a UK outside the EU will address sanctions issues. It may choose to move in step with US sanctions policy. It may simply adopt EU sanctions wholesale. It could take a path of its own and adopt autonomous sanctions regime separate from the EU much like it did with Iran during 2011 (see our client alert United States, United Kingdom, and Canada Expand Sanctions Against Iran). A less likely option would be to follow the Swiss model of adopting watered-down versions of EU sanctions.

- It should be noted that the UK can and has acted unilaterally on sanctions in the recent part, most notably on the introduction of financial transfer restrictions on notification obligations in relation to Iran in November 2011.

The Office of Financial Sanctions Implementation

A key recent development, anticipated in our 2015 Year-End United Kingdom White Collar Crime Update, has been the formation of a new government body to oversee sanctions enforcement in the UK – the Office of Financial Sanctions Implementation ("OFSI"). This body, established within HM Treasury and headed by Rena Lalgie, became operational on March 31, 2016, after plans for its creation were first announced in the UK's budget in March 2015. OFSI's stated purpose is to "*provide a high quality service to the private sector, working closely with law enforcement to help ensure that financial sanctions are properly understood, implemented and enforced*".

In the March 31, 2016 announcement, George Osborne, then Chancellor of the Exchequer, commented that OFSI would be a "*centre of excellence for financial sanctions, raising awareness and providing clear guidance to promote compliance with financial sanctions, providing a professional service to the public and industry, and working closely with other parts of government to ensure that sanctions breaches are rapidly detected and effectively addressed*."

Since implementation, OFSI has published on its website numerous guidance papers, including in relation to current lists of designated persons in various countries, general guidance on financial sanctions obligations and the approach which OFSI will take when issuing licenses and considering compliance.

Policing and Crime Bill

The creation of the OFSI goes hand-in-hand with the passage through Parliament of the *Policing and Crime Bill*. In February of this year, Theresa May, the then Home Secretary and now Prime Minister, presented the Bill to Parliament, as part of her broader attempts to effect police reform. In June, the Bill completed its passage through the House of Commons and it had its second reading in the House of

Lords on July 18, 2016. The Bill's House of Lords committee stage started on September 14, 2016, with a second sitting of the Committee Stage on October 26, 2016.

In its current form (and there have been no substantive changes to this part of the Bill during its parliamentary passage), Part 8 of the Bill will introduce significant changes to the financial sanctions enforcement regime. The key developments are:

Increase in maximum custodial sentences

The maximum custodial sentence for violating UK financial sanctions rules will be substantially increased on indictment from the current two years to seven years, and the maximum sentence on summary conviction to 2 years. This will bring the penalty for financial sanctions violations in line with those for breaches of offences under the *Terrorist Asset-Freezing Act 2010*, although it will still be lower than the 10-year maximum on indictment for breaching trade sanctions as contained in the *Export Control Order 2008*.

Imposition of civil monetary penalties

As an alternative to criminal prosecution, HM Treasury (acting through OFSI) will be able to impose civil monetary penalties for non-compliance with financial sanctions up to a maximum of the greater of either £1 million or 50% of the value of the funds or resources involved. Although it is stated in terms of a "maximum penalty", in reality the £1 million is a *minimum* penalty, as the 50% calculation on the value of the transferred assets will only apply if it is greater than £1 million.

In terms of procedure, HM Treasury must inform the person of its intention to impose a penalty, as well as: (i) the grounds for its imposition; (ii) the penalty amount; (iii) explain that the person can make representations; and (iv) specify the period within which such representations must be made.

Following these initial steps, if HM Treasury decides to impose the penalty, it must again inform the affected person, who may seek review of the decision by a government minister. The minister may then uphold, vary the amount of, or cancel, the penalty.

It is also important to note that the Bill also envisions that senior officers and managers of companies can have civil penalties imposed on them, and that these fines are on the same scale as for companies.

The Bill calls for the publication of official guidance on "*the circumstances in which it may consider it appropriate to impose a monetary penalty*" and on "*how it will determine the amount of the penalty*". Rena Lalgie commented in May, that she thought a public consultation on the powers would be held "later this year". We envisage a process similar to that adopted for the Bribery Act with the final passing of the Act, followed by a consultation, then the publication of official guidance, before the coming into force of the civil penalty powers.

Availability of Deferred Prosecution Agreements (DPAs)

As noted in our 2014 Year-End Sanctions Update, financial sanctions were an omission from the original DPA regime. The Bill will rectify this. The Bill will amend Part 2 of Schedule 17 to the *Crime and Courts Act 2013* to add financial sanctions breaches to the list of offences for which a DPA is available. A DPA, used for various economic crimes, is an agreement which suspends prosecution of an organisation pending the fulfilment of conditions (see our 2013 Mid-Year Update on Corporate Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs)).

Availability of Serious Crime Prevention Order (SCPOs)

The Bill will also amend Schedule 1 to the *Serious Crime Act 2007* to add financial sanctions breaches to the list of offences for which an SCPO is available. An SCPO is a civil court order (although it can also be imposed post-conviction) used to prevent involvement in serious crime by imposing prohibitions, restrictions or requirements on an individual or company. An SCPO can be imposed for up to five years. An example of an SCPO could include barring a company from conducting business in a particular geographic region. Breach of an SCPO is punishable by a fine and/or imprisonment of up to five years. In this context we can note that the SFO has confirmed that over the last few years it has sought and obtained 22 SCPOs against individuals.

Rapid implementation of UN sanctions

The Bill also seeks to address the delay between the United Nations Security Council adopting a financial sanctions resolution and the EU adopting an implementing regulation. Historically this has sometimes taken over a month. The Bill will empower HM Treasury (for which we can read OFSI) to adopt temporary regulations to give immediate effect to the UN's resolutions.

The Bill also allows HM Treasury to extend its temporary regulations to the Channel Islands, the Isle of Man, and the British Overseas Territories such as the British Virgin Islands, Cayman and Bermuda. The temporary regulations would then fall away once the EU had published its regulation.

This mechanism will have to be adapted post-Brexit but at a policy level it signals some dissatisfaction by the British government with the EU's response times to new UN sanctions.

OFSI's Enforcement Policies

If and when the *Policing and Crime Bill* comes into force, OFSI and the UK's prosecuting authorities will have a multi-faceted and flexible enforcement regime, ranging from criminal prosecution, to a DPA, to civil penalties. How decisions will be made as to the enforcement method that will be used in any given situation will hopefully be clarified through the above-mentioned guidance. In the interim, indications are starting to appear as to how enforcement decisions will be made.

In her speech in May of this year Rena Lalgie, the head of OFSI, made a number of highly-significant comments:

> "*A DPA will suspend any proceedings subject to certain conditions being met. … Those conditions might be a financial penalty, disgorging any profits that have been made from the alleged offence, cooperating with an investigation relating to the alleged offence, or implementing a compliance regime. … The goal post is a maximum penalty of £1 million or 50 per cent of the value of the assets, whichever of those is greater. … We will be consulting later this year on how we use those monetary penalties and also the level of penalties that will be imposed depending on the situation, and we will publish details of our agreed approach before those powers are first used. … This is not about taking a harder line, we do not intend to treat minor cases as serious ones just because we've got more stringent powers in place. … But as the chancellor set out from the outset we will be robust when facts warrant it and will work with law enforcement to take action for serious crime prosecution or indeed civil penalties.*"

In line with the *Deferred Prosecution Agreement Code of Practice*, this suggests that OFSI will be interested in a certain level of co-operation before considering a DPA, and that the terms of that DPA should be expected to include a fine, disgorgement of profits and possibly the imposition of a compliance monitor. Regarding the introduction of civil penalties the reference to "*the level of penalties that will be imposed depending on the situation*" suggests that there may be a level of regulatory discretion inserted into the process and penalties will not be imposed purely by mathematical calculation of 50% of the value of the assets.

Another indicator as to enforcement policies comes from the draft Explanatory Notes that accompany the *Policing and Crime Bill*. These are published by the government and are intended as an official aid to interpretation of a statute. Referring to the new powers to impose civil penalties, the draft Explanatory Note states that these will be used:

> "*where the extent and circumstances of the breach mean it is not in the public interest to pursue a criminal prosecution and where the level of the breach or conduct of the individual or organization is such that a mere warning letter is unlikely to bring about a sufficient change in behaviour*".

This suggests that serious breaches will still be pursued through criminal prosecution and that no part of the decision on whether to pursue criminal or civil penalties will be determined by reference to the strength of the evidence (bearing in mind the lower "balance of probabilities" burden of proof to be satisfied in civil cases).

We will update our clients and friends as further clarity is provided.

Key Developments in Sanctions Regimes

North Korea

On March 2, 2016, the UN imposed new far-reaching sanctions on North Korea, following the country's January 2016 nuclear test (UNSC Resolution 2270). These include:

- the inspection of all cargo leaving or entering North Korea by sea or air;
- asset freezes and travel bans on 16 people and 12 entities, including the Ministry of Atomic Energy Industry and the National Aerospace Development Administration;
- a requirement for UN member states (where before they were only "encouraged") to impose asset freezes on entities linked to North Korea's nuclear and missile programs;
- a ban on the import and export of goods, such as small arms; aviation fuel; coal, iron, and iron ore used for North Korea's nuclear and missile programmes; gold and rare earth minerals; and luxury items;
- the expulsion of North Korean diplomats who engage in "illicit activities";
- a ban on North Korea from chartering vessels and calling for de-registration of any vessel "owned, operated, or crewed by North Korea";
- the closing of North Korean banks in UN member state jurisdictions and terminating banking relationships within 90 days; and
- a prohibition on new branches, subsidiaries or representative offices of North Korean banks in member states, as well as prohibiting financial institutions from establishing new joint ventures or establishing or maintaining correspondent relationships with North Korean banks.

In its first strengthening of measures against North Korea since April 2013, the EU implemented these increased sanctions (Decision 2016/476 of 31 March 2016 amending Decision 2013/183/CFSP and Regulation 2016/682 amending Regulation 329/2007). All of the individuals and entities targeted in UNSC Resolution 2270, along with Korea National Insurance Corporation and subsequently individuals (primarily high-ranking military officials), have been added to the Consolidated List, the North Korean section of which now stands at 66 individuals and 42 entities (Regulation 2016/780 and Council Decision 2016/785).

Further sanctions have followed, in particular the introduction of a €15,000 threshold for all financial transfers to or from the country of North Korea. In the UK any such transfer will require prior written authorisation from OFSI (Regulation 2016/841 and OFSI Guidance).

In addition, UK financial institutions must:

- refrain from opening new branches, offices, subsidiaries, or banking accounts in North Korea;
- close existing branches, subsidiaries or banking accounts in North Korea where HM Treasury has determined that they could contribute to North Korea's illicit programs;
- refrain from entering into new joint ventures, ownership interests, and correspondent banking relationships with North Korean banks, unless authorised to do so by a Treasury licence; and

- terminate existing joint ventures, ownership interests and correspondent banking relationships with North Korean banks where HM Treasury has determined that they could contribute to North Korea's illicit programs.

Other sanctions prohibit the provision of financial support for trade with North Korea, investment by North Korea in the EU's mining, refining or chemical sectors, and the import of petroleum products, dual-use goods and technology and luxury goods (Financial Sanctions Notice and Council Decision 2016/849).

Russia

As mentioned in our Bear Baiting - EU Sectoral Sanctions Against Russia client alert in August 2014, there are currently three main sanctions regimes against Russia, namely asset freezes and travel bans relating to Ukrainian sovereignty; sanctions imposed in relation to Crimea and Sevastopol; and sectoral sanctions, including the restrictions on accessing EU capital markets and prohibitions in the energy and arms sectors.

Each of these regimes have recently been extended. In March, the EU extended the asset freezes and travel bans against 146 individuals and 37 entities until September 15, 2016 (Decision 2016/359), and then for another six months on September 16 (Decision 2016/1671). In June, the EU renewed until June 23, 2017, its sanctions on Crimea and Sevastopol (Council Decision (CFSP) 2016/982), and in July the general sectoral sanctions against Russia were extended for six months, until January 31, 2017 (Council Decision 2016/1071).

Iran

For detailed analysis of the changes to the EU's Iran sanctions post-Implementation Day see our client alert Implementation Day Arrives: Substantial Easing of Iran Sanctions alongside Continued Limitations and Risks.

There are, however, two further developments worthy of attention, namely: (i) the difficulties faced by multinational companies operating in both the US and Europe when looking to deal with Iranian entities; (ii) the adoption of the JCPOA by the UK's British Overseas Territories and Crown Dependencies.

Contrasting US/UK approaches after JCPOA

In February of this year, then Prime Minister David Cameron wrote to Barclays to ask the bank to explain why it refused to handle a payment from a British company arranging sales in Iran. Mr Cameron claimed that "*[t]he policy of Barclays Bank is in direct opposition to the policy of the EU and UN, as well as in opposition to the policy of the UK government*". Jes Staley, Barclays' chief executive, replied that the bank's presence in the US, which has not relaxed its sanctions to the same extent as the EU, required that it "*continue to restrict business activity with Iran*". This example, coupled with the Iranian government's complaints that fewer than expected transactions are coming through Iranian banks via Swift shows that multinational companies and especially those with a US presence are struggling to balance competing sanctions obligations.

In May, US Secretary of State John Kerry met with a number of European banks, to reassure them that they could resume business with Iran so long as they carry out proper checks on trading partners and pursue "legitimate business". However, several banks announced that they had no plans to resume commercial activities in Iran, owing to the uncertain position and their unwillingness to risk being fined by US regulatory authorities.

Implementation of JCPOA in British Overseas Territories and Crown Dependencies

On March 17, 2016, by Order in Council, the UK introduced an order which gives effect to the JCPOA reduced sanctions regime to the UK's Overseas Territories (*The Iran (Sanctions) (Overseas Territories) Order 2016*), including the financial centres such as the British Virgin Islands and the Cayman Islands. Bermuda has implemented the JCPOA through its own regulation (the *International Sanctions Regulations 2013*, as amended by the *International Sanctions (Iran) Amendment Regulations 2016*).

The UK's three offshore Crown Dependencies, gave effect to the JCPOA through local measures:

- In the Isle of Man the *European Union (Iran Sanctions) (Proliferation) (Amendment) (No. 3) Order 2015* gave effect to the JCPOA commitments.

- In Jersey the *Money Laundering and Weapons Development (Directions) (Iran) (Jersey) Order 2015*, which contained the local implementation of the EU's Iran sanctions expired on January 14, 2016 and was not renewed (see Jersey Financial Services Commission directions to financial services businesses).

- In Guernsey, because the *Iran (Restrictive Measures) Guernsey Ordinance, 2012* made *Council Regulation (EU) No 2015/1861* directly effective under Guernsey law, the amendments to that EU regulation which were the legal mechanism for implementing JCPOA automatically became Guernsey law (Guernsey Financial Services Commission Sanctions Notice).

<u>Additional Powers for Financial Services Regulators</u>

New annual FCA reporting obligations

In December 2015, the FCA consulted on a proposal to introduce an annual "financial crime return", as part of which firms would be asked to provide information that would help the FCA systematically assess the firm's financial crime systems and controls. In a recent Policy Statement, the FCA has outlined responses to the consultation, its intention to introduce a new annual returns and the final rules and implementation timescale for their introduction.

The return will require firms to provide information on, amongst others: whether the firm using an automated system for sanctions screening; how many true sanctions matches were detected in the reporting period; and does the firm conduct repeated or periodic sanctions screenings.

Guernsey Financial Services Commission consulting on new and increased maximum fines

On March 2, 2016, Guernsey approved proposals to change the discretionary financial penalties available to the Guernsey Financial Services Commission ("GFSC") under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987. These changes will result in increases in the maximum fines that the GFSC can impose on: (i) regulated licensees - increased from £200,000 to £4 million (capped at 10% of the licensee's turnover for any fine over £300,000); and (ii) the holders of personal fiduciary licenses for whom the maximum fine increased from £200,000 to £400,000.

Enforcement

Royal Court of Guernsey - Bordeaux Services (Guernsey) Limited & Ors v Guernsey Financial Services Commission

On May 11, 2016, the Royal Court of Guernsey handed down final judgment in Bordeaux Services (Guernsey) Limited & Ors v Guernsey Financial Services Commission (unreported, May 11, 2016), an appeal by **Bordeaux Services** against the length and level of certain penalties imposed on it and three of its directors by the GFSC in July 2015 (see our 2015 Year-End United Kingdom White Collar Crime Update. Bordeaux Services was fined £150,000, whilst the three directors received £50,000, £30,000 and £30,000 penalties, as well as prohibition orders of 15 years, 15 years and five years. The penalties were imposed in relation to various breaches of Guernsey sanctions regulations as to training and sanctions screening.

The appellants appealed against the length of the prohibitions and the level of the penalty against Bordeaux Services, arguing that the GFSC's decision-maker, the Senior Decision Maker ("SDM"), had failed to consider the appropriate criteria and that the penalties imposed were disproportionate and unreasonable.

The Royal Court held that SDM was right to impose prohibition orders on each director and the fifteen-year prohibition orders imposed on the first two directors, although "*at or very near the upper limit of what is reasonable and proportionate"*, were upheld. However, the Royal Court held that the "*absence of any rational explanation*" for the reduction in length of the orders imposed on the third director, meant that the order imposed on the latter was disproportionate and should be remitted to the GFSC for reconsideration and/or clarification.

Although also accepted as rightly imposed, the specific financial penalty conferred on Bordeaux Services was held to be unreasonable and disproportionate by the Court, particularly in light of the "paucity of reasoning" regarding the likely financial consequences to the company. The Royal Court thus remitted the decision in respect of the amount of the fine to the GFSC for reconsideration and/or clarification.

The judgment shows that decisions of the GFSC can be subject to judicial scrutiny on appeal. It remains to be seen whether the Royal Court's views on the proportionality of financial penalties will survive the GFSC's new powers to impose greater fines.

Other Case Law

Supreme Court of Bermuda – Cornhill Natural Resources Fund Ltd v Libyan Investment Authority

The Supreme Court of Bermuda handed down a judgment on January 29, 2016, upholding the decision of Cornhill Natural Resources Fund Limited to deny the Libyan Investment Authority ("LIA") the ability to redeem investment shares held in it by its nominee (*Cornhill Natural Resources Fund Limited v Libyan Investment Authority* [2016] SC Bda 9 (Com)). The judgment concerned the meaning and effect of the *Libya (Restrictive Measures) (Overseas Territories) Order 2011* (the "Order"), in particular the correct interpretation of an article permitting persons to deal with frozen funds provided that they fall within specific listed exceptions.

Cornhill Fund argued that it could not process a redemption request from LIA, whose assets had been frozen under the Order, without first obtaining a specific license from the Governor of Bermuda. In response, LIA argued that the Order allowed payments into frozen accounts where due under contractual obligations concluded prior to the account holder becoming a designated person and that its investment in Cornhill Fund occurred prior to its assets being frozen. Rejecting LIA's argument, the Supreme Court held that LIA was not a designated person; its assets were frozen on separate grounds and therefore a license had to be obtained from the Governor.

This decision is significant in being the first ruling by the Bermudan Supreme Court on sanctions legislation. In particular, it highlights the difficulties which may be faced by parties whose assets have been frozen, and the need to ensure that the correct method is used when trying to release frozen funds.

English Court of Appeal – Libyan Investment Authority v Maud [2016] EWCA Civ 788

The related EU regulatory exemption concerning the treatment of frozen funds has also recently been the subject of an English case. In this the Court of Appeal overturned a High Court judgment (*Maud v Libyan Investment Authority* [2015] EWHC 1625), which set aside a statutory demand by the LIA for payment under a guarantee which pre-dated the inclusion of the LIA as a sanctioned entity. Before the High Court, Maud had successfully argued that he could not pay the LIA without breaching the EU's sanctions against Libya, which froze the LIA's assets. However, according to the Court of Appeal, the EU's sanctions measures had to be construed as far as possible compatibly with the UN Security Council Resolutions they sought to implement and pointed to recent easing of UN sanctions against the LIA.

Maud further argued that his guarantee fell within the definition of "funds" and that payment under the guarantee would therefore breach the asset freeze against the LIA. However, the Court of Appeal held that payment of the guarantee was caught by a separate prohibition on making funds available to the LIA, which allowed for derogation in instances of payments due under agreements concluded before a person was designated and paid into frozen accounts. The Court of Appeal also dismissed Maud's argument that the LIA's statutory demand for payment was a form of claim, and so by not setting it aside the Court would be satisfying a claim on behalf of the LIA in contravention of a prohibition on doing so under EU sanctions.

5. Money Laundering

Legislative Reforms

Money laundering continues to be a priority issue in the UK. In the wake of the release of the Panama Papers, the Government's efforts to introduce greater transparency in respect of foreign companies have visibly accelerated, with a particular focus on preventing companies from using UK property and public procurement contracts as vehicles to hide the proceeds of crime as well as proposals to fortify asset recovery powers under the *Proceeds of Crime Act 2002* ("**POCA**").

In April 2016, concrete proposals were published in the Anti-Money Laundering Action Plan by then home secretary (now Prime Minister) Theresa May. It is unclear whether her appointment as prime minister and the ensuing cabinet reshuffle will affect the nature and timing of the proposals. Legislative reforms of some kind remain likely amid growing pressure to combat corruption in connection with the London property market: in July 2016, the House of Commons Home Affairs committee criticised the Government's response to money laundering as "*totally inadequate*".

Beneficial Ownership Register

At the global Anti-Corruption Summit held in London in May 2016 David Cameron announced a requirement for foreign businesses owning land and property in Britain to join a public register of beneficial ownership, which will cover the 100,000 UK properties already under offshore ownership. Further, foreign companies seeking government contracts must publish details of who owns and controls their business on a beneficial ownership register. Mr Cameron added that the Government was consulting on reversing the burden of proof in relation to the new rules, forcing companies suspected of money laundering to prove they accumulated their wealth legitimately. This announcement followed on the heels of the Department for Business and Skills' consultation proposing to bring foreign companies that hold English or Welsh real estate, or that intend to bid for UK Government contracts, under a single beneficial ownership disclosure regime.

This proposal would mirror the regime introduced in respect of domestic companies this year by Part 7 of the *Small Business, Enterprise and Employment Act 2015*, under which UK registered companies will be required to make public disclosure of the identity of the company's ultimate beneficial owner or owners (anyone exercising "*significant control*" over the company) in a Persons of Significant Control ("**PSC**") Register. As of June 30, 2016, companies were required to make PSC filings with Companies House on an annual basis. Non-compliance can result in criminal sanctions for the company, its officers, and the PSCs themselves. The UK's legislation complies with the EU's Fourth Money Laundering Directive, which came into force on June 25, 2015 and must be implemented by all member states by June 26, 2017.

Proposals to reform SAR regime

One of the priorities of the AML Action Plan was to reform the Suspicious Activity Reports ("**SARs**") regime. POCA requires persons in the regulated sector to report to the NCA where there are reasonable grounds to know or suspect that another person is engaged in money laundering. However, the AML

Action Plan states that, under the current regime, too many resources are tied up dealing reactively with a high volume of reports for relatively low risk transactions, diverting attention from higher risk reports.

The key proposals made by the AML Action Plan are to re-focus the regime on the highest risk entities and remove the consent regime, under which reporters are able to file a SAR seeking consent to proceed with a transaction. It is thus likely that a new reporting structure will be introduced that removes the consent request mechanism. The AML Action Plan adds that POCA will be amended to ensure that reporters who fulfil their legal and regulatory responsibilities will not be criminalised.

The AML Action Plan also proposed that the Joint Money Laundering Intelligence Taskforce ("**JMLIT**"), which is led by the NCA and includes representatives from the financial sector, City of London Police, FCA, HMRC and the Home Office, is to be put on a permanent footing after the end of its pilot period.

Unexplained wealth orders and an offence of "illicit enrichment"

A further key proposal included in the AML Action Plan is the introduction of Unexplained Wealth Orders ("**UWOs**"), intended to facilitate and expedite the recovery of assets in circumstances where there is no criminal conviction for a predicate offence in an overseas jurisdiction or other jurisdictions are reluctant or unable to assist a UK investigation. UWOs would allow the courts to require individuals to explain the origins of their assets. The Government is also exploring the introduction of new forfeiture powers tacked onto UWOs - enabling the forfeiture of assets for which a satisfactory explanation is not given - as well as an "illicit enrichment" offence of possessing assets which cannot be accounted for by way of lawful income. Other proposals include extending the reach of civil recovery orders under POCA to seize funds in bank accounts.

The Government has set a deadline of October 2018 for all the reforms set out in the AML Action Plan to be implemented, warning that businesses will have to devote significantly greater resources to anti-money laundering and tackling terrorist financing. Certainly, the reforms will mark a significant shift away from the current regime and are likely to require changes in reporting policies and procedures.

Enforcement

United Kingdom

2016 has seen a number of successful NCA money-laundering enforcement actions under POCA, although the pace of arrests and convictions has slowed somewhat when compared with 2015.

Herbert Charles Austin, 66, who had been sentenced to over five years in prison in December 2011 for being the mastermind of an organised crime group who conspired to launder more than £12 million stolen from Commerzbank in 2000, was in January 2016 ordered to pay back almost £5 million within 12 months. Part of the complex money laundering scam involved buying council properties from vulnerable tenants, redeveloping them and selling them on for profit. In September 2010 £2.5 million was restrained in the UK by the High Court with additional sums being restrained in Spain and Portugal.

The order followed a successful NCA investigation into offshore companies and banks used by Mr Austin to disguise the funds before being transferred to the UK.

In April 2016, **Elena Kotova**, former executive director of the European Bank for Reconstruction and Development, was ordered by the High Court to comply with a civil recovery order to surrender suspected criminal assets. The NCA seized property worth £1.5 million along with £230,000 that was held in two bank accounts. Ms Kotova has never faced criminal charges in the UK, although she was given a five-year suspended sentence in Moscow in 2014 after being convicted of seeking a $1.4 million bribe.

The SFO failed to secure convictions for two individuals accused of laundering money from a £83 million investment ("boiler room") fraud in the wake of a nine-year investigation. On 17 March 2016, both were found not guilty of one count under s. 328 of the *Proceeds of Crime Act 2002* following a nine week trial.

As we reported in our Year-End 2015 UK White Collar Crime Update, **Deziani Alison-Madueke**, the former Nigerian Minister for Oil, is being prosecuted by the NCA along with a number of other individuals, for money laundering offences. A hearing took place on April 11, 2016, with a further hearing scheduled for September. Also see above in relation to the trial of **Lynden Scourfield**, **Mark Dobson**, **David Mills** and **Michael Bancroft**.

Jersey and Guernsey

On February 24, 2016, Jersey-registered company **Windward Trading Limited** pleaded guilty to four counts of money laundering at Jersey's Royal Court in relation to corrupt activities taking place between 1999 and 2001 in Kenya, where Windward's beneficial owner, Samuel Gichuru, is resident. Mr Gichuru was chief executive of government utility Kenya Power and Lighting Company, when it awarded contracts to a number of engineering and energy companies who made corrupt payments to Windward. The nine-year global investigation involved legal assistance from twelve jurisdictions, including the UK and the US. Jersey is still seeking to extradite Mr Gichuru, as well as former Kenyan Energy Minister, Chrysanthus Okemo, to face money laundering charges in connection with Windward's activities. More than £3.6 million in company assets were confiscated from an offshore account and are due to be repatriated to Kenyan authorities.

On January 18, 2016 the Guernsey Financial Services Commission imposed fines for anti-money laundering and anti-terrorist finance systems and controls violations by **Provident Trustees (Guernsey) Limited**, as well as on two directors and the company's MLRO. The company was fined £42,000; the directors £10,500; and the MLRO £18,375. Provident and the individuals co-operated with the investigation and received a reduced fine due to agreeing to settle at an early stage.

6. Competition/Antitrust

The first half of 2016 has seen the CMA press ahead with both civil and criminal investigations, indicating that the setbacks of 2015 will not have a dampening effect on the CMA's cartel enforcement practice

Enforcement

Steel Tanks Industry

As reported in last years' 2015 Year End UK White Collar Crime Update, the CMA's criminal prosecutions in relation to an alleged cartel in the galvanised steel tanks industry came to an end, with one defendant being convicted following a guilty plea and sentenced to six months' imprisonment, suspended for 12 months, and completion of 120 hours of community service. The other two defendants were acquitted.

In parallel to the criminal prosecutions, the CMA has been carrying out a civil investigation. In March 2016, three of the five companies under investigation (**Franklin Hodge Industries Limited**, **Galglass Limited** and **Kondea Water Supplies Limited**) admitted that they had agreed with each other, and with **CST Industries (UK) Limited**, to share the market between them, fix prices and rig bids between 2005 and 2012. The companies agreed to pay fines totalling more than £2.6 million for taking part in the cartel.

On May 26, 2016, the CMA announced that it has sent a statement of objections to all of the companies under investigation. **CST Industries (UK) Limited** was the immunity applicant and will benefit from immunity from fines, provided it continues to cooperate.

The statement of objections also includes a separate allegation that some of the suppliers exchanged competitively-sensitive pricing information at (or shortly after) a meeting in July 2012. This allegation concerns the same 3 suppliers involved in the main cartel arrangement who admitted this conduct as part of the settlement announced in March, plus another supplier, **Balmoral Tanks Limited**. The information exchange allegation against the non-settling party, Balmoral, will be considered by a new case decision group.

Building and Construction Industry

Following an investigation into suspected cartel conduct in respect of the supply of precast concrete drainage products, on March 7, 2016, the CMA confirmed that it had commenced criminal proceedings against one individual for the criminal cartel offence.

Mr Barry Cooper has been charged with dishonestly agreeing with others to divide supply, fix prices and divide customers between 2006 and 2013 in respect of the supply in the UK of precast concrete drainage products. The alleged arrangements related to the businesses **Stanton Bonna (UK) Limited**, **FP McCann Limited**, **CPM Group Limited** and **Milton Pipes Limited**.

The CMA is carrying out a related civil investigation into whether businesses have infringed the *Competition Act 1998*.

Fashion Industry

Following dawn raids carried out in early 2015, the CMA issued on May 25, 2016 a statement of objections to five model agencies (**FM Models**, **Models 1**, **Premier**, **Storm** and **Viva**) and a trade

association (**AMA**), alleging that the agencies agreed to exchange confidential, competitively sensitive information, including future pricing information, and in some instances agreed a common approach to pricing. The CMA also alleges that the AMA played an important role in the alleged conduct. The CMA noted that this is its first enforcement case in the creative industries and that it shows the CMA's commitment to enforcement across all sectors of the economy.

Financial services

The first half of 2016 also saw a number of UK developments regarding the ongoing enforcement action against banks and their employees for alleged manipulation of financial benchmarks.

In January, six individuals charged with conspiracy to defraud in connection with the criminal investigation into manipulation of the LIBOR benchmark were acquitted by a jury at Southwark Crown Court. The SFO had alleged that the six defendants had conspired with **Tom Hayes**, the first individual convicted after a trial for the manipulation of LIBOR.

On June 29, 2016, three individuals were convicted of conspiring to defraud in connection with the manipulation of the US Dollar LIBOR. The defendants were convicted of dishonestly submitting rates specifically intended to advantage Barclays and themselves financially and of defrauding those with whom they were trading. Of the defendants, two (**Jonathan Mathew** and **Jay Merchant**) are UK citizens and one (**Alex Prabon**) is a U.S. citizen. The three will be sentenced in July 2016. A senior LIBOR submitter, **Peter Johnson**, had also pled guilty in October 2014. The jury was unable to reach verdicts on two other defendants, **Stylianos Contogoulas** and **Ryan Reich**. The SFO had two weeks to consider whether to seek a re-trial of these defendants. No such announcement has been made.

Finally, in March, the SFO obtained arrest warrants for five current and former traders from two other investment banks accused of manipulating the EURIBOR benchmark. In January, the traders declined a requisition request to attend London's Westminster Magistrates' Court to be charged with conspiracy to defraud. The SFO is in the process of enforcing the warrants.

7. Insider Dealing, Market Abuse and other Financial Sector Wrongdoing

Market Abuse Regulation and Criminal Sanctions for Market Abuse Directive

On July 3, 2016, the *Market Abuse Regulation* 596/2014 ("MAR") came into force and consequential changes have been made to the FCA Handbook, the details of which were published by the FCA in April 2016. Changes have been made to the following Handbook sections, the Glossary, SYSC, COCON, APER, GEN, FEES, COBS, MAR, SUP, REC, LR, DTR, SERV, BENCH and the Financial Crime Guide. By a separate instrument amendments have also been made to the Decisions Penalties and Procedures Manual and to the Enforcement Guide. We set out a detailed account of the changes to the UK's civil market abuse regime arising from MAR coming into force in our 2015 Year End UK White collar Crime Update.

By way of reminder, some of the key provisions of MAR include:

- **Inside information and disclosure**. The definition of inside information is, for the most part, unchanged, but has been widened to capture inside information for spot commodity contracts. The requirement to disclose inside information has also been extended to some emission allowance market participants (EAMPs). Issuers and EAMPS who delay disclosure of inside information will be required to notify the FCA of the delay at the time the information does come to be published. In addition, financial institutions must seek consent from the FCA prior to delaying disclosure due to financial stability concerns.

- **Insider dealing and unlawful disclosure**. The use of inside information to amend or cancel an order will be considered to be insider dealing. It is also now clarified that recommending or inducing another person to transact on the basis of inside information amounts to unlawful disclosure of inside information.

- **Market manipulation**. MAR extends the market manipulation offence to capture attempted market manipulation. The market manipulation offence will also capture benchmarks and, in certain circumstances, spot commodities.

- **Legitimate disclosures in market soundings**. Subject to a number of new formalities and procedural conditions, MAR permits inside information to be legitimately disclosed to a potential investor in the course of market soundings before a significant securities transaction. Detailed records must be taken and the recipient must consent to being made an insider and be informed of the restrictions that this will involve.

- **Accepted market practices**. MAR continues to allow regulators to establish an accepted market practice which is subject to certain criteria and conditions.

- **Insider lists**. Issuers and EAMPS will be required to maintain lists of all employees that have access to inside information. ESMA have defined the data that should be included in the list.

- **Suspicious Transaction and Order Reports (STORs)**. Investment professionals will now be required to report suspicious *orders* as well as suspicious transactions. Existing suspicious transaction reporting obligations are replaced by STORs, which must be submitted "*without delay*" to the FCA via the Connect system. A template STOR is provided by ESMA in the regulatory technical standards.

- **PMDRs**. Persons Discharging Managerial Responsibilities within issuers (PDMRs) and persons closely associated with them must notify the issuer and the FCA of any relevant personal transactions they undertake in the issuer's financial instruments (subject to a *de minimus* threshold of €5,000 within a calendar year). The issuer must make that information public within three business days.

- **Investment recommendations**. The obligation continues for persons producing or disseminating investment recommendations to ensure information is objectively presented and to disclose any conflicts of interest.

- **Minimum investigatory and sanctions standards**. MAR sets new EEA-wide minimum standards for the investigatory and sanctioning powers of the relevant enforcement authorities, requiring that the enforcement authorities for all member states of the EU and EEA countries have the power to impose fines of up to at least €5 million for an individual and €15 million or 15 per cent of annual turnover for a firm.

Firms should be aware that although it is unclear what effect the eventual departure of the UK from the EU will have on the UK civil market abuse regime the global trends since the financial crisis of 2008 have been for an enhancement of the mechanisms available to regulators to sanction market abuse and a significant relaxation of the regime in the UK would be contrary to this, in fact, in its 2015/2016 Annual Report the FCA stated that MAR "*will bring real benefits to the functioning and reputation of UK financial markets, and work in these areas will remain a priority for us in the coming year*". Firms should also remember that until the UK formally leaves the EU the European civil market abuse regime set out in MAR will still be good law. The FCA's statement following the referendum result on June 24, 2016 reiterated that firms operating in the UK must continue to comply with their obligations under EU law and there is no reason to believe that the FCA will take a more relaxed approach to enforcement activity deriving solely from EU law.

On July 3, 2016 the *Criminal Sanctions for Market Abuse Directive* 2014/57/EU ("CSMAD") came into force. Although the UK has opted out of CSMAD it will apply to the operations of UK firms in other member states as well as to trading activity on European exchanges carried out from London.

FCA Enforcement - Insider Dealing

Operation Tabernula

As we covered in our 2015 Year-End UK White Collar Update, following more than two years of investigations, in March 2010, 140 investigators from the FCA (through its precursor, the Financial Services Authority) conducted dawn raids in sixteen different premises across the City of London and the Home Counties. Operation Tabernula has been the FCA's most complex and high-profile insider-trading probe, aimed at demonstrating the FCA's dedication to combatting insider trading.

In January 2016, a twelve-week trial commenced against **Martyn Dodgson**, a senior investment banker and former executive of a number of lending investment banks, and his associate and close friend **Andrew Hind**, a businessman, property developer and Chartered Accountant. The case involved serious and sophisticated offending over a number of years whilst Mr Dodgson held senior investment banking positions. Mr Dodgson sourced inside information from within the investment banks at which he worked, either by working on transactions himself or by gleaning sensitive market information in relation to his colleagues' transactions. He then passed this inside information on to Mr Hind.

It was held that Mr Dodgson had been entrusted by his employers with sensitive and valuable information, which he and Mr Hind exploited for their own benefit in order to deceive the market. The two used a number of elaborate techniques designed to avoid detection, including payments in cash and in kind, and the use of unregistered mobile phones. After eight days of jury deliberations, Mr Dodgson and Mr Hind were convicted of conspiring to insider deal between November 2006 and March 2010. **Iraj Parvizi**, **Ben Anderson** and **Andrew Harrison** – whose charges we covered in our in our 2015 Year End UK White collar Crime Update - were acquitted.

At their sentencing hearing on May 12, 2016, His Honour Judge Pegden described Mr Dodgson and Mr Hind's offending as being "*persistent, prolonged, deliberate, dishonest behaviour*". Mr Dodgson was sentenced to four and a half years imprisonment: the longest ever handed down for insider trading in a case brought by the FCA. Mr Hind was sentenced to three and a half years imprisonment on the same day. Confiscation proceedings will also be pursued against both defendants for their wrongful gains in the amount of an estimated £7.4 million.

Schroders

On June 13, 2016, **Damian Clarke**, a former equities trader at Schroders, was sentenced to two years in prison for insider dealing over a nine-year period between 2003 and 2012. He pleaded guilty to seven charges of insider dealing in July 2015, and to two more charges in March 2016, just two weeks before his trial was to commence.

Mr Clarke was employed by Schroders as a fund manager's assistant and subsequently as an equities trader. In these roles, he received inside information including anticipated public announcements about mergers and acquisitions. He used this information to place trades using accounts in his name and in the names of his close family members, earning profits of at least £155,161.98.

The nine charges brought against Mr Clarke were 'sample counts' from multiple instances of suspicious trading. Eight of the nine charges related to potential takeovers in companies in which Schroders was a shareholder. Mr Clarke was found to have carried out trades within minutes of receiving information on deals in which Schroder's was involved, such as draft press releases. He would use a shared office computer in Schroder's' tearoom to carry out those trades. He was arrested at his desk at Schroders in 2013.

Judge Joanna Korner held that it was necessary to give Mr Clarke a prison sentence given the length of time over which he used insider information and his nefarious use of his family members' trading accounts (which had in fact led to their arrest) in an attempt to avoid detection. On one occasion he even impersonated his father-in-law on the phone in order to gain access to his account. Judge Korner found that he had "*deliberately and dishonestly*" misused his position at Schroders, and therefore sentenced him to two years imprisonment. The FCA has reported that confiscation proceedings will also be commenced against Mr Clarke for his wrongful gains.

Civil enforcement for Market Abuse

Mark Taylor

On May 5, 2016, the FCA issued a final notice against **Mark Taylor**, who was at the relevant time employed by a British wealth management company, for market abuse contrary to s. 118(2) FSMA. Mr Taylor had traded on inside information that had been circulated inadvertently within his employer. The following day Mr Taylor had contacted his broker asking if it were possible to reverse the trade as he was concerned that he may have been insider dealing. Mr Taylor did not report this to his employer's compliance department but the incident was reported to the FCA by his broker.

Mr Taylor was ordered to pay a financial penalty of £36,285 (reduced from £78,819 as a result of financial hardship) and is subject to a ban on performing any function relating to any regulated activity carried out by an authorised or exempt person for two years.

Gavin Breeze

On July 15, 2016 the FCA issued a final notice against **Gavin Breeze** as a result of trading on the basis of inside information which amounted to market abuse contrary to s118(2) FSMA and improper disclosure of inside information contrary to s118(3) FSMA.

Mr Breeze, a Jersey resident, was a non-executive director and shareholder of MoPowered Group Plc. In September 2014 he was made an insider in respect of a potential share placing by MoPowered. Mr Breeze forwarded this information to another shareholder. Mr Breeze also instructed his broker to sell his shares in MoPowered. Illiquidity in the market meant that Mr Breeze was not able to sell all of his shares. However, when the inside information became known to the market MoPowered's share price fell. The final notice records that Mr Breeze avoided a loss of £1,900, had he been able to sell all of his shares he would have avoided a loss of £242,000.

Mr Breeze was ordered to pay a financial penalty of £59,557, pay restitution of £1,850 and interest of £59 to be distributed by the FCA to those who had suffered loss as a result of his actions and was publicly censured.

WH Ireland Limited

On February 23, 2016 the FCA issued a final notice to **WH Ireland Limited** as a result of a failure to have in place proper systems and controls to prevent market abuse amounting to a breach of Principle 3 as well as a breaches of the SYSC rules (i.e. Systems and Controls) relating to conflicts of interest. WH Ireland was fined £1.2 million and restricted from taking on new clients in its corporate broking division for 72 days.

WH Ireland's failings related to controls in respect of the disclosure of inside information, in particular systems and controls to prevent leaks from the private to the public side of the business, and safeguards and controls around disclosure to external parties; the rules for personal account dealings of employees; an inadequate conflicts of interest policy and identification of services that might give rise to a conflict

of interest; deficient compliance oversight with inadequate risk management framework for market abuse and surveillance systems which did not match the parameters of WH Ireland's business activities.

This serves as a further reminder that the FCA's enforcement activities in relation to market abuse are not solely focused on instances of market abuse offences having been committed and that the FCA will continue to use the Principles of Business to pursue a prevention agenda ensuring that firms have sufficient controls in place.

Bermuda Monetary Authority – Barrington Investments Limited

In March 2016, the Bermuda Monetary Authority – the island's financial services regulator – announced a new policy whereby it would publish all uses of its disciplinary and enforcement powers on its website. This signaled a more pro-active enforcement stance. On August 29, 2016 the Bermuda Monetary Authority published its first such notice. Barrington Investments Limited was fined $50,000 for serious failings in relation to corporate governance, the prudent conduct of business and risk management. In addition restrictions were placed on Barrington's licence.

The following Gibson Dunn lawyers assisted in the preparation of this client update: Mark Handley, Patrick Doris, Deirdre Taylor, Emily Beirne, Yannick Hefti-Rossier, Steve Melrose, Nooree Moola, Marie Perrault, Rebecca Sambrook, Frances Smithson and Ryan Whelan.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following members of the firm's White Collar Defense and Investigations Practice Group:

London

Philip Rocher (+44 (0)20 7071 4202, procher@gibsondunn.com)
Patrick Doris (+44 (0)20 7071 4276, pdoris@gibsondunn.com)
Charles Falconer (+44 (0)20 7071 4270, cfalconer@gibsondunn.com)
Charlie Geffen (+44 (0)20 7071 4225, cgeffen@gibsondunn.com)
Osma Hudda (+44 (0)20 7071 4247, ohudda@gibsondunn.com)
Penny Madden (+44 (0)20 7071 4226, pmadden@gibsondunn.com)
Allan Neil (+44 (0)20 7071 4296, aneil@gibsondunn.com)
Ali Nikpay (+44 (0)20 7071 4273, anikpay@gibsondunn.com)
Deirdre Taylor (+44 (0)20 7071 4274, dtaylor2@gibsondunn.com)
Mark Handley (+44 20 7071 4277, mhandley@gibsondunn.com)
Steve Melrose (+44 (0)20 7071 4219, smelrose@gibsondunn.com)
Sunita Patel (+44 (0)20 7071 4289, spatel2@gibsondunn.com)
Rebecca Sambrook (+44 (0)20 7071 4285, rsambrook@gibsondunn.com)
Frances Smithson (+44 (0)20 7071 4265, fsmithson@gibsondunn.com)

Munich
Benno Schwarz (+49 89 189 33-110, bschwarz@gibsondunn.com)
Mark Zimmer (+49 89 189 33-130, mzimmer@gibsondunn.com)

Dubai
Graham Lovett (+971 (0) 4 318 4620, glovett@gibsondunn.com)

Hong Kong
Kelly Austin (+852 2214 3788, kaustin@gibsondunn.com)
Oliver D. Welch (+852 2214 3716, owelch@gibsondunn.com)

Washington, D.C.
F. Joseph Warin (+1 202-887-3609, fwarin@gibsondunn.com)
Richard W. Grime (+1 202-955-8219, rgrime@gibsondunn.com)
Scott D. Hammond (+1 202-887-3684, shammond@gibsondunn.com)
Stephanie L. Brooker (+1 202-887-3502, sbrooker@gibsondunn.com)
David P. Burns (+1 202-887-3786, dburns@gibsondunn.com)
David Debold (+1 202-955-8551, ddebold@gibsondunn.com)
Michael Diamant (+1 202-887-3604, mdiamant@gibsondunn.com)
John W.F. Chesley (+1 202-887-3788, jchesley@gibsondunn.com)
Daniel P. Chung (+1 202-887-3729, dchung@gibsondunn.com)

New York
Reed Brodsky (+1 212-351-5334, rbrodsky@gibsondunn.com)
Joel M. Cohen (+1 212-351-2664, jcohen@gibsondunn.com)
Mylan L. Denerstein (+1 212-351-3850, mdenerstein@gibsondunn.com)
Lee G. Dunst (+1 212-351-3824, ldunst@gibsondunn.com)
Barry R. Goldsmith (+1 212-351-2440, bgoldsmith@gibsondunn.com)
Christopher M. Joralemon (+1 212-351-2668, cjoralemon@gibsondunn.com)
Mark A. Kirsch (+1 212-351-2662, mkirsch@gibsondunn.com)
Randy M. Mastro (+1 212-351-3825, rmastro@gibsondunn.com)
Marc K. Schonfeld (+1 212-351-2433, mschonfeld@gibsondunn.com)
Orin Snyder (+1 212-351-2400, osnyder@gibsondunn.com)
Alexander H. Southwell (+1 212-351-3981, asouthwell@gibsondunn.com)
Lawrence J. Zweifach (+1 212-351-2625, lzweifach@gibsondunn.com)

Los Angeles
Debra Wong Yang (+1 213-229-7472, dwongyang@gibsondunn.com)
Marcellus McRae (+1 213-229-7675, mmcrae@gibsondunn.com)
Michael M. Farhang (+1 213-229-7005, mfarhang@gibsondunn.com)
Douglas Fuchs (+1 213-229-7605, dfuchs@gibsondunn.com)
Eric D. Vandevelde (+1 213-229-7186, evandevelde@gibsondunn.com)

GIBSON DUNN

Denver
Robert C. Blume (+1 303-298-5758, rblume@gibsondunn.com)
Ryan T. Bergsieker (+1 303-298-5774, rbergsieker@gibsondunn.com)

Orange County
Nicola T. Hanna (+1 949-451-4270, nhanna@gibsondunn.com)

San Francisco
Thad A. Davis (+1 415-393-8251, tadavis@gibsondunn.com)
Marc J. Fagel (+1 415-393-8332, mfagel@gibsondunn.com)
Charles J. Stevens (+1 415-393-8391, cstevens@gibsondunn.com)
Michael Li-Ming Wong (+1 415-393-8234, mwong@gibsondunn.com)
Winston Y. Chan (+1 415-393-8362, wchan@gibsondunn.com)