

April 2016

Alert

Q1 2016: Regulatory Round-Up

White Collar Defense & Investigations

This round-up contains a summary by sector of certain key global regulatory developments which occurred during the first quarter of 2016. The sectors covered in this round-up include:

- Financial Services
- Telecommunications
- Pharma
- Energy
- Transportation/Motor
- Technology
- Data
- Sport
- "Other"

Detail contained within is publicly available information. This note does not contain legal commentary on the mentioned.

Financial Services

Forex

- On 15 March 2016, the UK Serious Fraud Office ("**SFO**") announced that it had closed its investigation into allegations of fraudulent conduct in the Forex market. The SFO stated that the decision followed a "*thorough and independent investigation [...] [and] based on the information and material we have obtained, there is insufficient evidence for a realistic prospect of conviction*". The SFO stated that there were reasonable grounds to suspect the commission of offences involving serious or complex fraud; however, the available evidence would not meet the evidential test required to mount a prosecution in the UK. The SFO stated that it would continue to liaise with the US Department of Justice ("**DoJ**") regarding its ongoing investigation.¹

LIBOR

- On 23 March 2016, Mr Justice Cooke ordered **Tom Hayes**, former UBS and Citigroup trader currently serving an 11 year sentence after being convicted of LIBOR manipulation, to pay a confiscation order of £878,806. In deciding on the extent of the criminal benefit, the Judge evaluated the extent to which Hayes' attempt to manipulate LIBOR had on his overall trading activities, the impact this would have had on the profit/loss position of his employers, and its effect on his remuneration.² He has also been denied leave to appeal to the Supreme Court.

- On 11 March 2016, Judge Rakoff of the US District Court of the Southern District of New York sentenced two former **Rabobank** traders after a jury found them guilty of conspiracy to commit wire and bank fraud and substantive counts of wire fraud relating to LIBOR manipulation. Anthony Allen, former head of liquidity, was sentenced to two years in prison and Anthony Conti, a former derivatives trader, was sentenced to one year and one day.³
- On 2 March 2016, the UK's Financial Conduct Authority ("**FCA**") announced that it had banned **Mike Curtler**, a former trader at Deutsche Bank from the UK financial services industry for lacking honesty and integrity following a criminal conviction for fraud in the US. In October 2015, Mr Curtler pled guilty to manipulating Deutsche Bank's US Dollar LIBOR submissions.⁴
- The SFO's trial against six former **Barclays** traders accused of Libor manipulation, which was due to start in February, has been delayed after new information was provided by Barclays. The trial is now due to start in April.⁵
- On 27/28 January 2016, a jury acquitted six brokers of conspiracy to defraud in connection with the SFO's ongoing criminal investigation into the manipulation of LIBOR. The SFO had alleged that the six individuals conspired with Tom Hayes to influence the submissions of panel banks in the Yen LIBOR setting process.⁶

Senior Managers Regime

- On 7 March 2016, the FCA launched the Senior Managers Regime. It has been reported that almost 250 managers from London's top nine international banks have been registered as Senior Managers. Certain senior executives of **Citigroup** have avoided being captured by the regime on the basis that some executives with global responsibility were not included as there were other London-based executives with regional responsibility for those business areas.⁷
- On 27 January 2016, the FCA announced a consultation on whether the General Counsel function should be identified as a senior management function within the new regime.⁸

New FCA Appointment

- On 26 February 2016, HM Treasury ("**HMT**") announced the appointment of Andrew Bailey as the new permanent Chief Executive of the FCA, to take

effect in July 2016. Andrew Bailey is currently the Deputy Governor for Prudential Regulation at the Bank of England and Chief Executive of the Prudential Regulation Authority ("**PRA**").⁹

Hiring Princlings

- On 22 February 2016, **HSBC** announced that it was one of a number of banks being investigated by the US Securities and Exchange Commission ("**SEC**") over its hiring of people linked to Asian governments.¹⁰

LPP in Internal Investigations

- On 4 February 2016, it was reported that **Barclays** agreed to provide the SFO with certain documents which it had previously claimed were protected by legal professional privilege relevant to the SFO's investigation into allegations of corruption regarding Barclays' fundraising deal with the Qatar Investment Authority.

Dark Pool Trading

- On January 31 2016, the SEC announced that **Barclays Capital Inc.** and **Credit Suisse Securities (USA) LLC** had agreed separate settlements regarding violations of federal securities laws while operating alternative trading systems (dark pools) and Credit Suisse's Light Pool. Barclays admitted wrongdoing and paid US\$35 million penalty to the SEC and the New York State Attorney General ("**NYAG**"), totaling US\$70 million. Credit Suisse agreed to pay US\$30 million to the SEC, US\$30 million to the NYAG and US\$24.3 million in disgorgement and prejudgment interest to the SEC, totaling US\$84.3 million.¹¹

Banks Assisting Tax Evasion

- On 26 January 2016, Swiss bank **Reyl & Cie** pled guilty to money laundering and agreed to pay a €2.8 million fine. Reyl & Cie entered into a court-sanctioned plea bargain, which resolved allegations that it held six bank accounts abroad used by French citizens to launder money. The agreement is the first time that France's National Financial Prosecutors Office has secured a plea bargain in a complex white collar case.¹²
- On 25 January 2016, Swiss bank **Leodan Privatbank** was fined US\$500,000 by the DoJ to settle the allegation that it assisted Americans evade tax. The settlement was part of the US program which was launched in 2013 that allowed banks to

resolve potential criminal liabilities in the US. The bank has since announced that it would shut down its operations.¹³

Sanctions

- On 13 January 2016, The DoJ announced that it was reviewing whether two law firms gave improper advice to **Standard Chartered Plc** during its investigation into sanction-violations regarding Iran, Burma, Libya and Sudan. In 2012, Standard Chartered entered into a deferred prosecution agreement (“**DPA**”) and was fined US\$667 million regarding sanction violations. The DoJ’s current investigation into the law firms relates to whether the bank withheld information before entering into DPA. The DoJ has requested a review of emails and other documents relating to the bank’s communications with both law firms.¹⁴

Other

- On 25 March 2016, the US Treasury Department’s Financial Crimes Enforcement Network (“**FinCEN**”), using its authority under the USA PATRIOT Act, issued a final, revised rule designed to prevent the Federal Bank of the Middle East (“**FBME**”), a Tanzanian bank which operates mainly in Cyprus, from continuing to do business in the US or in US currency. The revised rule addresses due process concerns previously raised by FBME in a preliminary injunction proceeding before a US federal court in Washington, DC, to enjoin the original FinCEN rule. Stating that FBME remains at risk of being used by terrorists and other criminals to hide illicit funds, FinCEN found that “reasonable grounds exist” for concluding that FBME is a financial institution of primary money laundering concern. The basis for this finding include: (i) “serious and systemic” deficiencies in FBME’s anti-money laundering compliance program identified by third-party audits, and FBME’s failure to remediate such deficiencies, despite instructions to do so by regulators; (ii) continued involvement in terrorist financing activity, including at least one instance of an alleged Hezbollah associate owning an account at FBME; (iii) a significant volume of bank transactions with no apparent legitimate business purpose; and (iv) FBME’s failure to timely review a significant portion of its high-risk customer files. FinCEN’s final rule, which is subject to final judicial review, prohibits US financial institutions from opening or maintaining correspondent accounts for, or on behalf of, FBME.

- On 23 March 2016, District Judge Quentin Purdy ruled that Mr Sarao, a British futures trader, should be extradited to the US to face trial on 22 charges ranging from wire fraud to commodities manipulation of US futures markets over a four year period.¹⁵
- FinCEN issued new administrative rules that became effective 1 March 2016 which apply to residential real estate transactions exceeding US\$3 million in Manhattan and US\$1 million in Miami. The rules, known as Geographic Targeting Orders (“**GTOs**”), require title insurance companies to identify the natural person that directly or indirectly owns 25% or more of the legal entity purchasing the real estate, and applies to residential real estate purchases: (a) exceeding US\$3 million in Manhattan and US\$1 million in Miami; (b) financed without bank loans or other “similar forms of external financing,”; and (c) financed at least in part “using currency or a cashier’s check, a certified check, a traveler’s check, or a money order in any form.” Within 30 days of the closing of the transaction, the title insurance company must file a FinCEN Form 8300 identifying the beneficial owner and other relevant details about the transaction, such as the property address and purchase price. The GTOs are temporary and expire in August of this year, after which it is expected that FinCEN will assess their efficacy as part of a broader regulatory effort to address money laundering through real estate transactions in which the beneficial owner’s identity is concealed.
- In February 2016, the Tanzanian High Court began to hear a claim brought by a local company, VIP Engineering and Marketing (the minority investor in a power plant project) which is seeking US\$491 million in damages from **Standard Chartered**, **Mechmar** (the Malaysian majority investor in the plant) and **Wärtsilä** (the Finnish engineering group that built the plant). The hearing is ongoing.¹⁶
- On 28 January 2016, the FCA and the PRA announced that they had commenced investigations into certain former **HBOS** senior managers. The investigations will determine whether or not any prohibition proceedings should be commenced against them. The FCA and PRA continue to review materials with a view to making further decisions regarding other former HBOS senior managers.¹⁷
- On 6 January 2016, the FCA announced that it had opened a preliminary investigation into whether a trader at **Lloyds Banking Group** had manipulated the market for UK government bonds.¹⁸

- On 6 January 2016, it was announced that **Credit Suisse**, **Crédit Agricole** and **Nomura** were among multiple banks being investigated for possible manipulation of the government-sponsored debt market as part of a broad probe by the DoJ. The investigation reflects the DoJ's wider look at potential manipulation of certain markets following the Libor and FX investigations.¹⁹
- In January 2016, a 12-week trial of five defendants charged with insider dealing offences commenced. *Tabernula*, the code name for the operation, commenced in late 2007 is one of the largest insider-trading cases in the UK. The defendants are accused of conspiring to trade securities with inside information between 2006 and 2010. The trial is ongoing.²⁰

Telecommunications

- On 1 March 2016, the SEC announced that **Qualcomm Incorporated**, without admitting or denying the SEC findings, agreed to pay US\$7.5 million to settle charges that it violated the Foreign Corrupt Practices Act ("FCPA") by hiring relatives of Chinese government officials who had the role of deciding whether to select the company's mobile technology products. The SEC investigation revealed that Qualcomm also provided gifts, travel and entertainment to try to influence officials at government-owned telecom companies in China.²¹
- On 18 February 2016, the DoJ, SEC and Dutch regulators announced that they had reached a global settlement with **VimpelCom Ltd**, in which the company agreed to pay over US\$795 million to resolve its violations of the FCPA. The company must also retain an independent corporate monitor for at least three years. VimpelCom's Uzbek subsidiary, Unitel, admitted paying more than US\$114 million in bribes between 2006 and 2012 to a government official related to the president of Uzbekistan. It was alleged that the bribes gave VimpelCom entry into the Uzbek telecoms market and allowed it to obtain 3G and 4G licences that generated more than US\$2.5 billion revenue.²²

Pharma

- On March 23, 2016, **Novartis AG** agreed to pay a penalty of over US\$25 million to settle allegations brought by the SEC that the company violated the books and records and internal controls provisions of the FCPA, 15 U.S.C.78m(b)(2)(A) and (B). The

SEC cited conduct at two of Novartis's Chinese subsidiaries involving cash payments to health care professionals ("HCPs") in China, some of them government officials, which were improperly recorded as expenses such as medical studies and conference travel. The SEC also noted that sales representatives submitted fake receipts to generate cash to provide gifts to HCPs like spa treatments. The SEC's order did not indicate any involvement at the parent company level. The SEC's order requires Novartis to self-report to the SEC staff periodically for two years on its remediation and compliance implementation measures.

- On 3 March 2016, the Canadian-based health science company, **Nordion Inc** and a former employee, **Mikhail Gourevitch**, agreed to collectively pay more than US\$500,000 to settle FCPA charges. Gourevitch, an engineer, arranged bribes to Russian officials for drug approvals and received kickbacks in return. Nordion lacked sufficient internal controls to detect and prevent the scheme.²³
- On 29 February 2016, **Valeant Pharmaceuticals International Inc.** announced that the SEC had commenced an investigation and it had received a subpoena from the regulator in the fourth quarter of 2015. On 21 March 2016, Valeant's 8-K announced that the company would restate certain prior period financial statements. It has been reported that the SEC's investigation relates to Valeant's now terminated relationship with drug distributor Philidor RX Services LLC.²⁴
- On 4 February 2016, the SEC announced that **SciClone Pharmaceuticals** had agreed to pay more than US\$12 million to settle charges that it had violated the FCPA when international subsidiaries increased sales by making improper payments to healthcare professionals employed at state health institutions in China.²⁵
- In January 2016, **GlaxoSmithKline** announced that it would stop paying doctors to promote its products in response to increasing pressure on the pharmaceuticals industry over conflicts of interest with medical professionals.²⁶

Energy

- On 21 March 2016, the trial of two executives of **Gazprom** commenced regarding allegations of bribery. The unnamed executives were charged with accepting bribes between 2001 and 2006 in

exchange for awarding contracts to manufacture gas turbines needed for the 4,000 km-long Yamal gas pipeline, which runs from Siberia to Germany. It is the first case in which the Swiss Office of the Attorney General has prosecuted a foreign public official for accepting bribes.²⁷

- On 26 February 2016, the Paris Court of Appeal overturned the acquittal of **Vitol**, **Total**, Total's former CEO Christophe de Margerie and a number of other individuals of participating in a bribery scheme to circumvent the United Nations Iraq oil-for-food scheme. The Paris Court of Appeal imposed a maximum possible fine on Total of €750,000 and a €300,000 fine on Vitol. The individual defendants received fines ranging from €3,000 to €100,000. Vitol have announced that it will seek to appeal the decision and Total is seeking to appeal its sentence. The Total and Vitol conviction is likely to have an impact on several pending foreign bribery cases, including those against Volvo-owned Renault Trucks and gear manufacturer David Brown Transmissions.²⁸

Transport/Motor

- On 29 March 2016, the SFO announced that it had charged Terence Watson, the Alstom Country President for the UK and Managing Director of Alstom Transport UK & Ireland with an offence of corruption contrary to section 1 of the Prevention of Corruption Act 1906 and an offence of conspiracy to corrupt contrary to section 1 of the Criminal Law Act 1977 and will appear at Westminster Magistrates' Court on 5 April 2016. The alleged offences are said to have taken place between 1 January 2003 and 31 December 2008 and concern the supply of trains to the Budapest Metro.²⁹
- In March 2016, 278 institutional investors in **Volkswagen** filed a €3.256 billion claim against the car maker for breaches of its capital markets duty. The claim was filed at a regional court in Braunschweig and claimants include German investors and US pension fund Calpers.³⁰
- On 4 February 2016, **LAN Airlines CEO, Ignacio Cueto Plaza**, agreed to pay a US\$75,000 fine to settle charges that he authorised improper payments to an unnamed Argentine government official who passed some of the money to union officials in order to end a labour dispute between LAN and its employees.³¹

- At the end of January 2016, **Robert Bosch** announced that it was conducting an internal investigation into whether any of its staff were involved in the allegations that Volkswagen rigged emissions tests.³²
- On 8 January 2016, New York Attorney General Eric Schneiderman publicly criticised Volkswagen's refusal to cooperate fully with the US state-level investigations into the German car maker's strategy of installing software into its cars to avoid emissions tests and pass US environmental regulatory requirements. Volkswagen was refusing to provide the regulator with internal emails due to German data privacy laws.³³

Technology

- On 25 February 2016, the SFO announced that it had charged two former executives at technology company, **Sarclad**, over allegations that they offered bribes to secure contracts between 2004 and 2012. Both individuals were charged with one count of conspiracy to corrupt, contrary to section 1 of the Prevention of Corruption Act 1906, and one count of conspiracy to bribe under section 1 of the Bribery Act 2010.³⁴
- On 16 February 2016, the SEC announced that **PTC**, a Massachusetts-based tech company, and its Chinese subsidiaries agreed to pay more than US\$28 million to settle FCPA cases involving bribery of Chinese government officials to win business.³⁵

Data

- On 2 March 2016, Germany's Federal Cartel Office announced that it was investigating whether **Facebook's** terms of service violated competition and data protection laws by requiring users to give up their personal data.³⁶
- On 12 January 2016, in the case of **Barbulescu v Romania** ([2016] ECHR 61), the European Court of Human Rights dismissed a Romanian national's appeal against his employer's decision to terminate his contract for using a professional Yahoo Messenger account to send personal messages to his fiancée and brother. Mr Barbulescu contended that his employer had breached his Article 8 right to respect for his private life and correspondence, and that the domestic courts had failed to protect his right. The Court found that there had been no such violation because the monitoring of the account by his employer had been limited and proportionate.³⁷

Sport

- Following claims of match-fixing, an independent review will be conducted into the effectiveness of the Tennis Integrity Unit's anti-corruption programme and will consider structural changes to enhance its independence.³⁸

Other

- On 16 March 2016, the Organisation for Economic Development and Cooperation ("**OECD**") published a comprehensive review of the arrangements in place across all OECD countries for protecting whistleblowers that raise concerns. Please see our Alert entitled "[Whistleblowing in Bribery Cases - OECD Reports on Failings in the Public and Private Sector](#)".
- On 2 March 2016, the UN Security Council adopted Resolution 2270 and on 18 February the US introduced the North Korea Sanctions and Policy Enforcement Act of 2016. These measures substantially expand the scope of the North Korea Sanctions. Please see our Alert entitled "[U.S. and United Nations Expand Sanctions Against North Korea](#)".
- On 26 January 2016, the Malaysian Attorney-General cleared **Prime Minister Najib Razak** of criminal offences or corruption. Attorney-General stated that the transfer of US\$681 million deposited into the Prime Minister's personal bank account was a gift from Saudi Arabia's royal family.³⁹
- On 20 January 2016, **Shiwei Yan, CEO of the Global Sustainability Foundation**, a Manhattan-based organisation which promotes economic development in foreign countries, pled guilty in federal court to one count of bribery. Yan admitted facilitating bribes to John Ashe, the former president of the United Nations General Assembly ("**UNGA**"), in exchange for official actions on behalf of various Chinese businessmen. Ashe has also been charged in the case and pled not guilty.⁴⁰
- On 15 January 2016, the SEC announced a **whistleblower** award of more than US\$700,000 to a company outsider who conducted a detailed analysis that led to a successful SEC enforcement action. The SEC's whistleblower program has paid more than US\$55 million to 23 whistleblowers since the program's inception in 2011. The SEC protects the confidentiality of whistleblowers and does not

disclose information that might directly or indirectly reveal a whistleblower's identity.⁴¹

- On 15 January 2016, the Court of Appeal overturned a 2002 decision which held that when an amendment to the country's corruption laws came into effect, it was not an offence to bribe a foreign official. Sir Brian Leveson and Justice Haddon Cave held that when the Prevention of Corruption Act was passed, it had been a criminal offence to bribe an agent of a foreign private or public body.⁴²
- In January 2016, the SFO asked for a £21 million additional funding to cover the cost of blockbuster investigations.⁴³
- In January 2016, **Smith and Ouzman Ltd**, a UK printing firm specialising in security documents such as ballot papers, was ordered to pay a total of £2.2 million, comprising of a fine of £1.3 million, £900,000 to satisfy a confiscation order and £25,000 in costs. The fine follows the conviction in December 2014 of the company and two executives for paying bribes of £400,000 between 2006 and 2010 to public officials for printing contracts in Kenya and Mauritania. It was the first time a British company was found guilty of bribing foreign agents.⁴⁴
- In January 2016, **US and EU sanctions against Iran** were partially lifted.⁴⁵ Please see our Alert entitled "[Implementation of Iran nuclear deal leads to partial lifting of US and EU sanctions](#)".

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