City of London Law Society

Minutes of a meeting of the Corporate Crime and Corruption Committee held at 8.30am on Tuesday 2nd June at Kingsley Napley office at 14 St John's Lane, London EC1M 4AJ.

Present:

Michael Caplan QC: Kingsley Napley

Caroline Wojtylat: Skadden

Andrew Keltie: Baker McKenzie

Barry Vitou: Pinsent Masons

Jo Rickards: Kingsley Napley

Dr Simon Joyston Bechal: Turnstone Law

Satnam Tumani: Kirkland

Marcus Thompson: Ropes Gray

Roger Best: Clifford Chance

Jonathan Pickworth: Dechert

Richard Sims: Simmons & Simmons

In Attendance:

David Hobart: CLLS

Kevin Hart: CLLS

Claire Lipworth: FCA

Apologies:

Arnondo Chakrabarti: Allen Overy

Daren Allen: BLP Law

Eoin O'Shea: Reed Smith

Louise Delahunty: Sullcrom

Luke Tolaini: Clifford Chance

Matthew Cowie: Skadden

Nick Benwell: Simmons & Simmons

Omar Qureshi: CMS CMCK

Raj Parker: Freshfields

Rodney Warren: Rodney Warren & Co

Sam Eastwood: Norton Rose

Sarah Wallace: Irwin Mitchell

Satindar Dogra: Linklaters

Tony Woodcock: SHL legal

Barry Donnelly: Macfarlanes

1. Presentation by Claire Lipworth, Chief Criminal Counsel, FCA

Claire Lipworth, Chief Criminal Counsel, FCA, gave a presentation. She was working in the Enforcement and Market Oversight (EMO) section of the FCA.

EMO worked in several areas, including taking on ad hoc cases, oversight of the markets, consumer protection and deterrence. They work with the City of London Police and the NCA.

Under consumer protection, the FCA had taken on such cases as those involving unauthorised selling of shares and giving unauthorised financial advice. Other cases had resulted in convictions and sentences of up to 20 years in total.

The aim of the FCA is to get involved in cases as early as possible with a view to enforce regulations and then subsequently to supervise those enforcement arrangements rather than pushing immediately for prosecution. Examples of cases where early intervention included one which had resulted in a £2.6 million fine, rather than in a prosecution. Similarly the FCA had closed down some 14 “boiler room” scams.

The FCA was identifying and developing cases relating to insider dealing. Cases were also coming through from the manipulation of LIBOR.

The complexity of some of the cases was exemplified by one operation which saw six defendants convicted. This had comprised some 200,000 lines of trading, 400,000 lines of telecommunication and 300 witnesses.

Unlike the FCA, the US Department of Justice had recourse to wiretap evidence in their work. This meant that the Department of Justice was able to construct cases on considerably fewer witnesses and other forms of evidence.

Increased cooperation between the FCA and those being investigated was encouraged. Early plea agreements and cooperation resulted sometimes in confiscation orders and

suspended sentences, and it could mean the difference between dealing with a matter under Section 118 or by way of prosecution. It also assisted in keeping control over prosecution costs. The message from the FCA to defence lawyers was that their door was always open and they encouraged early cooperation.

There had not been many cases brought for market manipulation, as prosecutions were difficult to bring.

The FCA's focus with regard to high frequency trading was more on efficiency, fairness and resilience. They needed to consider the risks involved in the trading, with recent examples of "flash crash" cases where algorithm trading had moved out of control.

There has been a variety of ways of responses to high frequency trading, including by way of tax (Italy) and licencing and additional fees (Germany), whilst the UK's response combined analysis-led policy, market surveillance, supervision and enforcement. New rules were being considered with revised systems within firms to switch off the remaining algorithms so as to prevent the market continuing to run out of control. Enforcement was predominantly by way of regulation, not through criminal sanction.

Questions

- The FCA will consider prosecuting offences which engages its powers of prosecution;
- Joint UK/US cases had differing protocols and conflict of laws;
- Directive on Criminal Sanctions for Market Abuse (CSMAD) was leading to changes in corporate liability, such as a failure to prevent fraud. The UK had not opted in to this Directive;
- Wiretap evidence – without this, cases were resource intensive, but the FCA was managing without this resource;
- The FCA's message to defence practitioners was to have an open and honest discussion with them, so as to look at the evidence together, to be more collaborative, and to engage with the FCA earlier in the process. Disclosure packs were sent out to clients, which gave a stronger indication of the strength of the case, so it was beneficial to firms' clients to meet with the FCA and understand the issues.

2. SFO –v- Lord

The SFO's attitude appeared to be hardening on the necessity of legal advisers to be present in interviews with an employee of the company when the legal adviser is representing the company. As the process was inquisitorial it was being argued that representation was not needed. There was also concern that the presence of the lawyer was inherently coercing the employee, a position with which the Law Society had apparently agreed. Separate representation of the employees could itself, however, be provocative.

A bigger worry was that clients were being told by the SFO that they could not have solicitors in Section 2 interviews.

It was agreed that this matter would be kept under review, with also pressure to be kept up on the Law Society to change its position.

3. ABA/CLLS Conference

This is being held on 13th/14th October.

4. Money Laundering Issues

The case of *Holt* which had gone all the way to the Privy Council related to the use of money from a questionable source to pay counsel fees. By using client's money for the firm's own purposes, in this case, payment of counsels' fees, the Supreme Court found that the firm had been guilty of money laundering. The case had been successfully appealed: it was, however, a warning to firms to maintain proper checks on the sources of funds coming into client accounts.

5. Consultations

There was an ant-icorruption consultation currently being carried out by the Cabinet Office.

6. Legal Developments

There were consultations arising from the SME Act in relation to beneficial ownership.

7. AOB

It was agreed that outside speakers were a useful resource for members of the committee.

The next meeting would be in September.

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