Regulatory Developments

The Financial Conduct Authority (FCA) fines and bans former finance director – On 21 September 2015, the FCA issued a Final Notice imposing a fine of £350,000 against Mr Craig McNeil, and prohibiting him from performing any significant influence function in relation to regulated activities.

The FCA found that Mr McNeil, the Finance Director at Keydata Investment Services Limited (Keydata), had failed to disclose information relating to the failure of a Luxembourg SPV to make payments to Keydata, and that on a number of occasions he had failed to act with due skill, care and diligence.

The Final Notice follows on from previous Decision Notices issued in respect of other Keydata personnel in May 2015, and has been followed by a further Final Notice on 30 September 2015, in relation to similar issues against an independent financial adviser.

FCA and Payment Systems Regulator (PSR) Boards appoint new members to decision-making committees – On 21 September 2015, the FCA announced that the FCA and PSR Boards have appointed new members to decision-making committees relating to regulatory decisions, enforcement and competition.

The committees are responsible for taking regulatory decisions on behalf of the FCA and PSR. Their members come from a range of backgrounds, including law, financial services, accountancy, and academia.

Financial Crime

The end of a new offence of a corporate failure to prevent economic crime? Government answer provided to written question regarding Action 36 of the UK Anti-Corruption Plan of December 2014 – Written questions enable MPs to raise queries to government ministers for information on the work, policy and activities of government departments. Bryon Davies MP submitted the following written question on 9 September 2015: “... what progress [the Secretary of State for Justice] has made on Action 36 of the UK Anti-Corruption Plan; and when [the Secretary of State for Justice] expects corporate criminal liability to be introduced”. Action 36 provides that the Ministry of Justice will examine the case for a new offence of a corporate failure to prevent economic crime and the rules on establishing corporate criminal liability more widely by June 2015.

On 28 September 2015, Andrew Selous MP responded explaining: “The UK has corporate criminal liability and commercial organisations can be, and are, prosecuted for wrongdoing. The UK Anti-Corruption Plan tasked the Ministry of Justice to examine the case for a new offence of a corporate failure to prevent economic crime and the rules on establishing corporate criminal liability more widely. Ministers have decided not to carry out further work at this stage as there have been no prosecutions under the model Bribery Act offence and there is little evidence of corporate economic wrongdoing going unpunished.” This represents a blow to the Director of the Serious Fraud Office who has argued recently for such an offence to extend the weapons available to him. The current HMRC consultation (for which responses are due by 8 October 2015), “Tackling offshore tax evasion: a new corporate criminal offence of failure to prevent the facilitation of evasion,” will keep alive the possibility of a similar offence becoming law (in the narrower context of “criminally facilitating tax evasion”) but, for now, the broader corporate offence seems unlikely to pass into law.

Key Global Developments

USA: Bridgestone Corporation (Bridgestone) fined $28 million – Bridgestone has pleaded guilty to charges brought by the Department of Justice (DoJ) and agreed to pay a criminal fine of $28 million.

Bridgestone was charged, under the Sherman Act and Foreign Corrupt Practices Act, with conspiracy to rig bids for rubber hose and related products, and with conspiracy to make corrupt payments to foreign government officials in Latin America.

The plea agreement, which is subject to court approval, recognised Bridgestone’s cooperation with the DoJ’s investigation and its extensive remedial action, but also required the company to enhance its compliance programme and internal controls.

Total FCA Fines

• FCA fines total for 2014: £1,471,431,800.
• FCA fines total for 2015 (as at 1 October 2015): £826,860,767.