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FCA Eyes New Targets After Insider Trading Win

By **Melissa Lipman**

Law360, New York (September 26, 2016, 1:17 PM EDT) -- The Financial Conduct Authority's recent conviction of a pair of industry insiders at its most complex insider trading trial will only embolden the watchdog to ramp up criminal securities enforcement against individuals as its broader market-rigging investigations wind down, attorneys say.

After a monthslong trial, a London jury convicted a trader and an accountant in May on insider trading charges in a case known as Operation Tabernula that the FCA had been investigating for nearly a decade.

Attorneys say the Financial Conduct Authority's recent conviction of ex-Deutsche Bank AG managing director Martyn Dodgson, pictured, and DeskSpace Offices director Andrew Hind will embolden the watchdog to beef up enforcement against individuals. (AP)

Though the verdict only landed the FCA convictions for two of the five accused of running a sophisticated, long-term insider trading ring, attorneys said the result would only encourage a watchdog that should have more resources to devote to prosecuting individuals for market abuse crimes now that long-running probes into benchmark rate manipulation and foreign exchange trading are largely over.

"The foreign exchange and the Libor investigations took a huge amount of resources," said Mayer Brown LLP's Guy Wilkes. "Now that those investigations have largely finished, that frees up a lot more FCA resources to go back to traditional market abuse and insider trading work. So if anything, the number of investigations and outcomes will increase."

While the U.K. has had laws on its books criminalizing insider trading since 1985, enforcement remained scattershot until the creation of the FCA's predecessor, the Financial Services Authority, in 2001. And even then, the watchdog didn't really begin to take on the difficult cases until the mid-2000s when Margaret Cole joined the FSA as director of enforcement around the same time that the European Union's directive on market abuse kicked in.

During her time at the agency, the veteran financial services litigator pushed a credible deterrence strategy, vowing in early 2006 to prioritize "new ways to make sure our penalties bring about the deterrent effect" the FSA was hoping to use to change behavior in the industry. The agency put resources into upgrading its system to monitor securities transactions so it can identify potentially abuse of trades, Cole said in 2007.

The result was 11 insider trading convictions in 2011, Cole's last full year with the watchdog. Combined, the FCA and the FSA have now racked up 28 convictions overall through a mix of trials and plea deals.

"If you start back in 2008 with Margaret Cole and the clear decision to focus resources within enforcement on insider dealing and make it a regulator that prosecutes criminal offenses ... they've made quite significant strides to now," said Pinsent Masons LLP's Michael Ruck, a former FCA attorney.

The agency's first convictions in 2009 focused on relatively low-level offenses: In March of that year, a London jury found a solicitor guilty of passing along inside information to his father-in-law, who the jury concluded illegally traded on the details.

But since then, the cases have gotten more complicated. In 2012, the FSA convicted six individuals in what is known as a print room case, where the government accused the manager of the JP Morgan Cazenove print room of passing along information from confidential documents about takeover bids to traders.

The same year, the agency also won guilty pleas from three individuals tied to a brokerage called Blue Index, a case that marked an early joint insider trading investigation between the U.K. authorities and the U.S. Department of Justice and U.S. Securities and Exchange Commission.

But the latest case — known as Operation Tabernula, the Latin term for "little pub" — was far and away the most complex insider trading probe the FCA has done. In addition to the two men convicted at trial, the agency also won three guilty pleas in a related conspiracy involving so-called City insiders, the London equivalent of Wall Street traders.

The jury convicted ex-Deutsche Bank AG managing director Martyn Dodgson and DeskSpace Offices director Andrew Hind of concocting the insider trading plan using insider information Dodgson picked up from deals he or investment banker friends worked on.

"They have shown particularly with Tabernula that they will come after insider dealing and can get results, but it just is inherently difficult to investigate and prosecute," said WilmerHale's Elly Proudlock. "It's certainly the first big insider dealing case that the FCA has successfully prosecuted proper City people, if you like."

Even though the result at trial was mixed, attorneys said the FCA probably wouldn't be put off bringing future cases.

"Obviously if you invest that much money into that case ... you want to be successful, and you think you will be, but I don't think it matters enormously to their perception of success," said Hogan Lovells LLP's Elaine Penrose. "I don't think individuals will think, 'Well, I might get charged, but I won't get convicted so that's okay.'"

"Nobody wants to go through that process, and your career's over anyway," Penrose added.

The sentences for Dodgson and Hind — four and a half years and three and a half years, respectively — are also among the most severe the watchdog has won. Indeed, Dodgson's sentence set a new high watermark for the FCA even though it is still below the seven-year maximum for an insider trading charge. And under the right circumstances, experts said the sentences could go even higher still.

"A court can't impose a sentence without having regard to the sentencing guidelines, [but] I'm sure that given the prevailing wind at the moment, if a case of sufficient scale or seriousness comes before a court, I think we could expect to see yet tougher sentences handed out," said Osborne Clarke LLP partner Jeremy Summers, who heads the firm's business crime and regulation practice.

And even though most of the convictions the FCA won in that case came from guilty pleas, attorneys emphasized that in the U.K. system where defendants who admit to wrongdoing get at most a third off their sentence, a guilty plea generally represents a good showing for the watchdog.

"The people who are pleading guilty, it is because they are guilty, and the evidence is so strong against them," Wilkes said. "For that reason, it's always the difficult cases that go to the jury."

With the FCA now boasting 28 insider trading convictions, experts said the watchdog presents a credible threat. But attorneys disagreed on whether the U.K. enforcer had reached the same tier of insider trading authority as the DOJ.

The DOJ's ability to use wiretap evidence, threaten stiffer sentences and offer guilty pleas to lower-level offenders in exchange for evidence on those at the top of a conspiracy is likely to keep it at the top of the enforcer tower, according to Proudlock.

"The will is certainly there," Proudlock said of the FCA. "I think the U.S. leads the way by a long margin both in terms of its results and its methods, and I think the methods are very relevant to the results."

Nonetheless, Tabernula may be just the tip of the iceberg in terms of insider trading cases for an agency that should have more resources to devote to prosecuting these kinds of market abuse cases now that the sprawling industrywide scandals of recent years appear to have mostly worked their way through the system.

Indeed, the FCA's insider dealing probes have already jumped 175 percent to a total of 22 in the fiscal year ending April 2016, according to data Pinsent Masons collected from the FCA.

And the FCA now has a large, experienced team ready to pursue those sorts of cases, according to Ruck.

"There are obviously many more investigations ongoing that people aren't aware of externally," Ruck said. "So it will be a continuation of the status quo but a continuation of a status quo to increase the number of investigations they're pursuing. And the number of prosecutions, the number of financial penalties, will kind of support that growth."

--Additional reporting by William Shaw. Editing by Christine Chun.