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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Rate-Rigging Convictions Deliver Much Needed Win For SFO

By Richard Crump

Law360, London (April 1, 2019, 10:49 PM BST) -- The convictions of two former Barclays traders for manipulating Euribor has given the embattled Serious Fraud Office a boost at the tail end of its long-running rate-rigging probes in the wake of criticism for its handling of several recent high-profile prosecutions.

Though the watchdog has had mixed success over the last few years persuading juries that a number of traders broke the law by seeking to manipulate key benchmark interest rates, it secured the convictions of two out of three bankers on trial in the latest case over the Euro interbank offered rate.

And on Monday a Southwark Crown Court judge sentenced Colin Bermingham, a veteran trader on Barclays' London cash desk who is now retired, to five years in prison and Carlo Palombo, a former senior swaps trader at the bank, to four years for his role.

The wins come at a key moment for the watchdog after it dropped two high-profile probes without charging any executives in February and saw another major prosecution fall apart in December last year.

"These results will undoubtedly fortify the SFO, demonstrating that it can prosecute complex financial cases to conviction," said David Rundle, counsel in WilmerHale's U.K. white collar defense and investigations practice. "Moreover, the success may also be relied upon in the future, by challenging the SFO's perceived reluctance to charge individuals."

The verdicts bring the total number of individuals convicted of rigging Euribor to four, with two acquitted. and mirror the SFO's mixed record in bringing successful prosecutions over the rigging of Euribor and its U.K. counterpart, the London interbank offered rate, known as Libor, in the mid-2000s.

In the most recent case, the trio was accused of conspiring with former Deutsche Bank star trader Christian Bittar and onetime Barclays trader Philippe Moryoussef by agreeing to submit "false or misleading" rates into the Euribor-setting process to benefit the bankers' trading positions.

Both Bittar and Moryoussef, whom the SFO described as the "main architects" of the conspiracy, have been sentenced in the case. Another Deutsche Bank employee, Achim Kraemer, was acquitted at the same trial. Ex-Barclays rate submitter Sisse Bohart was likewise acquitted during the most recent trial.

"This is a case that has taken a long time and two trials to resolve. It has seen the SFO add to both its tally of convictions and its total of unsuccessful prosecutions in relation to rate-rigging," said Aziz Rahman, senior partner at business crime law firm Rahman Ravelli. "Only the SFO can say whether it regards this case as the end of this lengthy saga."

The SFO's prosecutions into interest rate-rigging, which began in 2012, have resulted in more acquittals than convictions. The white collar crime agency has secured nine convictions while 10 individuals were acquitted as part of the probe, which resulted in six trials and retrials.

"It shows the cases were not straightforward. It shows the SFO has gone for difficult targets and not just gone down the easy route," said Alistair Graham, head of white collar crime at Mayer Brown LLP.

However, the SFO has managed to successfully prosecute a number of prominent bankers over the scandal. Tom Hayes, the former UBS AG and Citigroup trader, became the first trader worldwide convicted of manipulating the London interbank offered rate in August 2015. He ultimately received an 11-year sentence following his appeals.

Despite Hayes' conviction, the SFO failed to convince a jury that six former brokers had plotted with Hayes to influence rate submissions for the yen-denominated version of Libor. By the end of just two days of deliberations, jurors had acquitted the men of all charges.

But the agency later proved Hayes' conviction wasn't a fluke with its 2016 prosecution of five former Barclays traders accused of manipulating Libor submissions, securing a guilty plea from the bank's senior rate submitter and winning the conviction of three other bankers at trial.

At the same time, the initial jury split on two other former traders and a second jury acquitted the pair. The mixed nature of the verdicts demonstrates the "fine line" in proving dishonesty in complex financial fraud cases, said Sarah Wallace, head of regulatory and criminal investigations at Irwin Mitchell LLP.

"The cases are tricky and revolved around dishonesty," she said. "The traders that were more peripheral to the conspiracy allegations with less prolific behavior have stood a better chance of acquittal, as the jury would not have been sure they were dishonest."

The verdicts in the most recent case came weeks after the SFO abandoned two of its biggest long-running cases into alleged corruption by individuals connected to British car maker Rolls-Royce and alleged bribery at pharmaceutical giant GlaxoSmithKline.

And the SFO's case against three former executives at Britain's biggest retailer Tesco PLC collapsed in December when a judge tossed the charges midtrial.

To borrow sporting parlance, prosecuting white collar crime is a results business. But although the SFO is judged on whether it gets a conviction or acquittal, determining whether the investigation was a success is rarely so simple.

"Every time the SFO gets an acquittal it is criticized over whether it should have brought the case at all or whether it should have done a better job and got a conviction," said Dechert LLP partner Timothy Bowden. "It's not so black and white. Just because a defendant is acquitted doesn't mean it was wrong to bring the case.

Overall, white collar attorneys deemed the rate-rigging probe a success.

“From the SFO’s perspective it has brought cases home," Wallace said. "You can’t say it was wrong for SFO to bring the cases. Juries are still convicting people seven years later."

The regulators have also reaped massive fines from banks involved in rigging benchmark rates. Barclays was one of the first banks linked to Libor manipulation in 2012, when it was fined about $450 million in the U.K. and U.S. for submitting false rates.

Since then, UBS agreed to an approximately $1.5 billion settlement that came with a guilty plea in December 2012. The Royal Bank of Scotland PLC paid $612 million and entered a guilty plea in February 2013.

Nevertheless, attorneys think it would be no surprise if the SFO decides it has achieved all it can in this area.

New SFO director Lisa Osofsky has said she intends to clear the anti-fraud agency's backlog of high-profile cases, including ongoing investigations into mining giant Eurasia Natural Resources Corp. Ltd., oil company Petrofac, energy consultant Unaoil and aviation giant Airbus.

“Lisa Osofsky is not going to have any appetite to pursue a blast from the past in this way. The SFO has got its convictions and it is time to move on,” Graham said.

--Editing by Melissa Lipman and Pamela Wilkinson.