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US and UK financial crime regulation: Congruence or conflict? A round-table discussion with Michael Foot (Promontory Financial Group), Philip Robinson (FSA), Keith McCarthy (SFO), David Howes (Standard Chartered) and Eugene Ludwig (Promontory) held on Wednesday, January 14, 2009, at Innholders Hall, 30 College Street, London, EC4R 2RH, from 12:30-2:15pm.

With support from Promontory Financial Group LLP

Financial crime regulation is certain to be centre stage under an Obama presidency in the wake of the Madoff scandal. More pertinently the recent \$350m fine imposed on Lloyds TSB for \$350m (£231m) by the US government for helping customers get around sanctions on dealing with Libya has heightened the importance of US/UK relations. The first speaker said regulators could normally expect the industry to be compliant on issues of crime but warned that technology made that hard. A firm might do 150,000 transactions a day, of which a large number might to an Arabic-sounding name. Should every one be checked? There is a thin line between bringing the system to a halt and keeping the filter too loose. Law enforcers should lay out the outcomes they want and then begin a dialogue with regulators and market participants. The industry does not want to feel agencies could suddenly pounce on a transaction done five years ago.

The second speaker said the Financial Action Task Force (FATF), the inter-governmental body, had only been partially successful as it often not held that dialogue or been staffed with people with operational experience. That was not the case in the UK, thankfully. There is often tension between common law countries that forbid certain activities but allowed all others and civil law ones that sought to codify everything. The third speaker said there was a strong impression the US was better at enforcing anti-corruption, fraud and bribery than the UK One key difference is that UK law insists on identifying a “controlling mind”, which can be difficult in complex cases.

The Serious Force has embarked on a transformation process to improve procedures and practice. A key element of the SFO strategy is to encourage firms to self-report cases where it has uncovered bribery and corruption. It is looking at giving leniency in such cases and might look to the model of the Office of Fair Trading that has a leniency programme for cartels. One issue is the EU Procurement Directive that blacklists any firm with a conviction for bribery. This discourages self-reporting. The SFO will aim to certify companies that have shown they have tackled the problem through monitoring, staff training, board level commitment and restitution. The SFO is also reallocating more resources to combat overseas corruption.

The fourth speaker said there was clearly congruence between the US and the UK, which had looked west for inspiration in terms of tools, sanctions and active intervention. However he warned the UK not to follow the US down the route of heavy enforcement that created a

climate of fear and led to a culture of box-ricking rather than risk assessment by companies.

The fifth speaker said the current mood in the US was to come down hard on financial institutions involved in anti-social activity. Whatever the rhetoric from the White House, there would no let up compared with the Bush era. Congress in particular was full of hellfire and brimstone. Initially the focus would be more on financial stability than money laundering &c but it would be a terrible mistake to think that compliance would start a back seat. Enforcement agencies have recently gained greater status and more staff and that trend will continue.

Obama will be more globally focused than Bush and a better partner to Europe and the UK in particular, he said. The Madoff affair has tainted previous efforts to make regulation more businesslike and the regulatory pendulum will doubtless swing back. One member asked whether all the resources spent on criminal investigations were as much as use as drug enforcement that perhaps caught 1% of smuggled goods. The speaker agreed it was a lot of money but said the 1% uncovered in terms of financial crime uncovered was vitally important. The second speaker rebutted the idea that enforcement was ineffective saying that fraudsters were being nicked all the time.

So can one make the system better? The fifth speaker said there was no single way out of the maze and it would doubtless require brute resource and many resources to get it done. One key element was having talented people in the enforcement agencies, something the UK has always had but the US has sometime been behind on. He hoped Obama would put an emphasis on that.