

## At A Glance

# White Collar, Investigations and Enforcement in the European Union

### Overview

Economists in our Global White Collar, Investigations and Enforcement Practice have extensive experience in applying quantitative economic analysis in internal and regulatory investigations, enforcement proceedings, and criminal white collar matters. Our global reach and expertise enable us to support firms (or regulators) around the world in all economic aspects of such matters, including working on market abuse investigations and enforcement actions, providing expert testimony, and quantifying regulatory impacts and risks. We are able to coordinate our work in cross border matters, with an approach that is cohesive but also tailored to different jurisdictions.

We frequently assist clients in responding to formal investigations and requests for data and analyses from regulatory entities, such as the Financial Conduct Authority, the UK Serious Fraud Office, the Division of Enforcement at the US Securities and Exchange Commission, the US Department of Justice, the US Commodities and Futures Trade Commission, and self-regulatory organisations such as the Financial Industry Regulatory Authority. Our capabilities include the construction and analysis of large and complex transaction databases, analysis and implementation of computerised surveillance procedures, and preparation of summary materials in response to regulatory inquiries. NERA experts' analysis of damages and disgorgement measures aids clients in negotiating settlement agreements.

We have supported clients in matters covering a variety of products and services, including agricultural commodities and natural resources, capital equipment, transportation and fuel surcharges, industrial inputs, and consumer goods and services. We also have extensive experience working with mutual fund families in their discussions with regulators, with banks in analysing money laundering allegations, and with health care and pharmaceutical companies in cases alleging billing fraud and corruption.

In other case examples:

- We assist clients facing issues arising under the UK Bribery Act, the Foreign Corrupt Practices Act (FCPA), and other anti-corruption laws by offering a sophisticated economic approach to determining the true "value" of an alleged bribe.
- NERA has been retained to analyse data, reports, and algorithms used in automated surveillance of specialists' trading and exchange rules for equities and listed options.
- We have helped clients respond to allegations involving high-frequency trading and various forms of alleged market manipulation (e.g., spoofing or quote-stuffing).

### Key Areas of Expertise

NERA economists use economic analysis to assist clients in criminal and civil investigations and litigation, including:

- Internal investigations
- Regulatory investigations and enforcement
- White collar criminal and civil litigation (defence and prosecution)
- Cartels—bid rigging, price fixing, market allocation (customer and/or geographic), and other forms of criminal collusion

- Insider dealing/tipping (criminal and civil cases)
- UK Bribery Act, FCPA, and other anti-corruption enforcement
- Market manipulation (e.g., pump-and-dump, microcap stock fraud)
- Pyramid/Ponzi schemes
- Anti-money laundering, Bank Secrecy Act, and the economics of terrorism financing
- Trade and economic sanctions (analysis of the impact of alleged violations)
- Health care/pharmaceutical related and environmental fraud
- Tax controversy and enforcement
- Market manipulation in the foreign exchange market, in the interbank lending market and of other benchmark rates

## Client Experience

### Hedge Fund Litigation: *Weaving Capital (UK) Ltd. and Anr v. Peterson and Ors*

Weaving Capital (UK) Limited (WCUK) was a London-based investment manager that acted as the investment adviser to the Weaving Macro Fixed Income Fund Limited (the Macro Fund). WCUK and the Macro Fund collapsed in 2009 amidst allegations of fraud. WCUK's liquidators sued the company's former Chief Executive and Managing Director, Mr Magnus Peterson, and three other WCUK directors and employees, seeking compensation for the hundreds of millions of dollars in losses incurred by investors in the Macro Fund. The civil case, brought before the Chancery Division of London's High Court of Justice, focused on interest rate swap agreements with a reported value of more than \$600 million between the Macro Fund and British Virgin Islands-based Weaving Capital Fund (WCF), a company majority owned and entirely controlled by Mr Peterson. WCUK's liquidators claimed that the interest rate swap agreements were "sham" transactions used by Mr Peterson to manipulate the Macro Fund's reported asset values and to give investors the impression that the fund was performing well. NERA provided expert economic analysis and testimony on behalf of WCUK's liquidators. NERA's analysis demonstrated that the cash flows exchanged between the Macro Fund and WCF in relation to the interest rate swaps were not consistent with the economic value of the transactions. NERA provided evidence that the valuations ascribed to the interest rate swaps were incorrect and did not take account of the counterparty risk associated with WCF. High Court Justice Sonia Proudman cited NERA's analysis in her

decision as "the opposite of superficial, dealing with all relevant matters in considerable detail and great clarity". On 30 May 2012, Justice Proudman issued a judgment on behalf of the liquidators, terming the interest rate swaps "shams" and finding Mr Peterson liable for fraud and the three other defendants liable for negligence. All four defendants were also found to be in breach of their duties to WCUK. Justice Proudman awarded damages of \$450 million against the defendants.

### Ponzi Scheme: *Stanford Investment Bank*

In March 2012, R. Allen Stanford was convicted of running a \$7 billion Ponzi scheme. Prior to the criminal trial, the US District Court for the Southern District of Texas was asked to determine whether Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co. were entitled to deny coverage for the defence costs of Mr. Stanford and other executives of the Stanford Financial Group pursuant to an exclusion clause under the directors and officers insurance policy. Relying in part on the testimony of a NERA expert, the court found that Mr. Stanford and his executives knowingly prepared and approved false financial reports and facilitated the concealment and transfer of the bank's funds through related companies without disclosure to investors or regulators. As such, the Underwriters were entitled to deny coverage and seek reimbursement of payments previously made.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. NERA serves clients from more than 20 offices across Europe, Asia Pacific, and North America.

## Contacts

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