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New FCA Chief Offers A Steady Hand, But Not A 'Soft Touch'

By **Melissa Lipman**

Law360, London (October 4, 2016, 5:36 PM BST) -- The newest head of the Financial Conduct Authority may come to the watchdog with a more industry-friendly reputation than his predecessors did, but attorneys say the longtime central banker won't back away from the regulator's enforcement role.

When the British government tapped Andrew Bailey in January to move from the Prudential Regulation Authority to the Financial Conduct Authority, the appointment was seen as a conscious step back after a pair of aggressive enforcers had beenat the helm.

The country's then-treasury chief, George Osborne, had effectively forced out longtime securities regulator Martin Wheatley, who once famously praised the creation of the FCA by saying the agency would get the power to shoot first and ask questions later. And then Wheatley's temporary replacement Tracey McDermott, herself a longtime enforcer, pulled out of the competition for the permanent role.

Still, attorneys said there was no reason to think Bailey would be a lax enforcer, pointing out that the former PRA chief played a big role in developing new regulations designed to hold senior bank managers responsible for wrongdoing under their authority.

"I think the banks regard him as somewhat more dovish in terms of enforcement. ... He's seen more at the lighter end of the spectrum compared to say Martin Wheatley," said Mayer Brown International LLP's Guy Wilkes, a former FCA enforcement head of department. "[But] he certainly shouldn't be seen as someone who's a soft touch or who goes easy."

Bailey has a long history at the Bank of England, dating back three decades from private secretary for the Bank of England's governor to executive director for banking services. In 2011, he became the deputy head of what was then known as the Prudential Business Unit at the Financial Services Authority and later became chief of the PRA in April 2013, not long after the FSA was split into the FCA and the PRA.

Despite his experience with the industry and its regulation, he doesn't have the same history of going after wrongdoing that McDermott had in her role as director of supervision or that Wheatley had coming out of Hong Kong's securities watchdog.

"He was brought in in what's been widely assumed to be quite a political move by Osborne at the time to get rid of Wheatley, who was perceived as not City-friendly," said WilmerHale's Elly Proudlock, referring to London's equivalent of Wall Street. "Bailey is a sort of an antidote to that."

But there are plenty of reasons to expect continuity at the FCA under Bailey's leadership.

For one, attorneys pointed out, the FCA's director of enforcement remains a Wheatley appointee. Mark Steward hails from the same Hong Kong securities watchdog as the ousted chief executive.

"Wheatley and Steward used to work together in Hong Kong, and he is very much in the mold of Wheatley. It'll be interesting to see how that plays out," said Hogan Lovells LLP's Elaine Penrose, who has spent time working in the FCA's enforcement division.

With the massive overhaul in the U.K.'s conservative government following the national referendum in favor of leaving the European Union, new Prime Minister Theresa May has ousted Osborne and at least talked about cracking down on big business, Penrose said.

"Now Osborne is no longer the chancellor, you've got Theresa May who's come in and taken a bit of a swipe at the privileged few," Penrose said. "Query whether the potential move away from going after the banks and being an aggressive regulator under Osborne might be reversed under May."

And Bailey himself stressed the importance of enforcement at a July hearing of the Treasury Select Committee, where he hailed the convictions the FCA won at its first major insider trading trial. That kind of work, Bailey said, is "very important [for the] cleanliness of the market."

Moreover, Bailey was heavily involved in the creation of the senior managers regime, which went into effect earlier in 2016 but has yet to yield any cases. While Bailey warned in a May speech that regulators couldn't force a change in culture at financial firms, he called the new system a "big step forward" in entrenching the notion that top managers at companies are personally responsible for what goes on at the bank.

"He's been very keen at the FCA but also at the PRA to drive home the importance of senior management in taking the initiative in controlling conduct," Proudlock said. "We just need to wait for those senior manager cases under the new regime to trickle through."

In some ways though, Bailey has already emphasized that the FCA will strive for continuity among the broader changes to come as the U.K. begins the process of exiting the European Union.

At the FCA's annual meeting in July, Bailey vowed that the agency would continue to implement upcoming EU financial services rules that are set to take effect in the coming years and said the U.K. should try to preserve access to the EU's single market for financial services firms.

"He comes in in a period of wider uncertainty caused by Brexit, and that's a whole other reason why he's unlikely to do anything radical at this stage," Wilkes said. "This is the wrong stage to be tinkering around with the regulatory system when there are so many other things they need to be worrying about with Brexit."

But over the long term, Bailey's stewardship and the Brexit process itself may lead to some changes in the FCA's regulation and enforcement, according toPinsent Masons LLP's Michael Ruck, a former FCA attorney.

"There are discussions currently about ... whether the FCA will seek to be as intrusive or seek to have enforcement as high profile as it has been to date in a situation where the U.K. may be seeking to encourage financial services firms to remain in the U.K.," Ruck said. "From a political level there is probably going to be a desire particularly at the level of banks to not see the level of enforcement that has been seen in the past two, three, four years. That doesn't necessarily mean less enforcement, but less on banks."

--Editing by Patricia K. Cole.