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5 Questions About The FCA's Big Financial Crime Push

By **Mark Taylor**

Law360, London (November 17, 2016, 7:57 PM GMT) -- British regulators have signaled plans to ease costly burdens banks must bear to comply with strict new anti-money laundering laws, but legal experts question how far they can ease up before running into compliance problems of their own.

The debate opened last week when Rob Gruppetta, head of financial crime at the Financial Conduct Authority, told an audience of anti-money laundering professionals that the regulator wants to rewrite its guidance to help the sector reduce their estimated £5 billion ($6.2 billion) annual AML compliance costs.

His remarks at the Annual AML & Financial Crime Conference fanned hope in an industry already burdened with the costs of rising capital requirements that relief might be in store on the AML front. But lawyers see limits to where the FCA can relax rules, and see little sign of any material change occurring soon.

“There is a recognition from the FCA the current legal and regulatory landscape doesn't seem to be working in terms of money laundering compliance,” said Sona Ganatra, enforcement specialist and legal director at Fox Williams LLP.

“The cost of compliance has escalated rapidly for banks and firms,” she said. “This accords with our understanding from clients.”

Here, attorneys look at five issues confronting efforts to relax new AML rules.

Will Firms Be Able to Cut Costs Even With More Laws Coming?

Britain’s banks collectively spend an estimated £5 billion ($6.2 million) each year on financial crime compliance, according to industry statistics. New laws on AML enter force next year, along with updated wire transfer, payments and data protection laws that will combine to push that figure higher.

“Firms need more guidance as to how to comply with the plethora of financial crime rules and obligations,” Ganatra said. “The cost of compliance has escalated rapidly for banks and firms. This accords with our understanding from clients.”

But, she said, while the FCA has acknowledged the soaring costs of compliance, the introduction of its Financial Crime Return regime only threatens to push those costs higher.

To help with cost efficiencies, Gruppetta has suggested a wider centralized database for suspicious activity reports. This would allow banks to pool anonymized data on clients for the industry and law enforcement to review.

He said the regulator would discuss this along with several other issues with the government.

“Whether it is done by industry or the public sector, could centralization help achieve economies of scale, lessen duplication and, most importantly, help firms and law enforcement see the bigger picture more clearly so they can make more refined judgements about what is and is not suspicious?” he said.

Can Such Centralized Transaction Monitoring Ever Become a Reality?

The FCA is using its competition mandate to encourage developments in regulatory technology, or “regtech.”

But while Gruppetta and FCA chief executive Andrew Bailey used the conference to push the regulator’s belief that innovation can help banks meet compliance demands and reduce costs, lawyers say a handy database for banks to anonymously submit information on transactions and clients they suspect of wrongdoing without fear of regulatory sanctions is a pipe dream.

“More thinking would need to be done regarding the pooling of financial crime monitoring across banks. There would be huge legal and regulatory issues to be tackled,” said Chris Webber, banking litigation partner at Squire Patton Boggs LLP.

While there may be a huge number of advantages for banks, particularly being able to see the bigger picture and economies of scale, the idea is fundamentally flawed, said Guy Wilkes, financial services regulatory partner at Mayer Brown LLP.

“There are barriers such as data protection issues and customers’ concerns about confidentiality,” he said.

Other, more immediate roadblocks exist, he added.

“Banks have huge difficulties getting their own internal systems to speak to each other,” Wilkes said. “Getting them to speak to other banks would require a huge investment, and I’m unsure how successful it would be.”

It seems unlikely this would work across the EU, lawyers say, and given that the U.K. is heading for a Brexit and leaving the bloc, its influence may be diluted even further.

“There would need to be common international standards to allow the information to move to a central register, and it seems a much longer-term aspirational thing,” Wilkes said.

Solutions, when they do arrive, are likely to be costly, lawyers agree.

“Sharing of intelligence and a centralized system is crucial and has long-term benefits, but the infrastructure to allow that needs investment; the technology and resources to enable intelligence sharing doesn’t come cheap,” Ganatra said.

According to Shona Watson, associate in the financial services regulatory group at international law firm Taylor Wessing LLP, firms are watching the FCA for any proposals that cut costs or simplify old or obsolete processes.

“It is a two-pronged issue,” Watson said. “Firms and the regulator must have a supportive relationship to generate the right results for wider society as well as themselves.”

With Brexit Looming, How Can the FCA Help Relax International Laws?

The uncertainty rocking financial circles since the Brexit vote does not look to be subsiding soon as fierce lobbying takes place over how and whether London’s banks can serve the EU.

"The big push post-Brexit will be making sure financial services can still access the EU," said Jacob Blatch, legal director for Addleshaw Goddard LLP. "Banks will want to make sure they are still aligned with EU AML provisions."

However, the relaxation of AML laws would need international standards to be renegotiated, which the FCA admits it is powerless to trigger. It can only add to the dialogue, which is that much harder when Britain is out of the bloc, lawyers said.

“When it comes to [anti-money laundering], Brexit creates only an illusory degree of sovereignty,” Wilkes said. “In practice, and for all sorts of reasons, the U.K. will largely have to retain equivalent standards when it comes to financial crime.”

The U.K. faces two issues here, lawyers say: It may not have a place at the EU table to voice opinions, and easing back a regulatory regime in London to entice banks merely adds to their workload.

“Looking at what happens on an EU-level plugs into the wider debate about equivalence regimes, but it's a dangerous area to crystal ball gaze,” Webber said. “Cross-border multinationals may not want real divergence between the U.K. and EU, as change too much and you risk giving them a headache working out which standards to apply where.”

He says anecdotally money-laundering risk tends to be cross-border, and any attempt to split from EU laws would muddy this further.

Are Criminal Sanctions for MLROs Doing More Harm Than Good?

Gruppetta posed this question to the industry, asking them if the criminal liability hanging over money laundering reporting officers is working as intended or simply causing a bigger headache.

For the first time, MLROs are included under the senior managers regime. And according to the FCA, over-reporting from defensive MLROs who flood authorities with useless information to cover themselves is only adding to compliance costs.

“Being an MLRO is a tough and very specialist role,” Webber said. “As a community, they are conscious of being not too defensive about their reporting and undoing the good they do in reporting financial crime, but anything that can be done to lessen the burden on them would certainly be welcome.”

The ability to look at problems objectively and report concerns in ways unavailable to others may be dangerous to alter, Ganatra said.

“It's important you don’t take that responsibility away. However, there needs to be an overhaul of how this role is regulated — at the moment, MLROs face a considerable number of obligations, with failures resulting in both regulatory and criminal sanction,” she said.

Criminalizing negligence over wrongdoing can be viewed as extreme, said Wilkes, but to loosen the ties may also cause other senior managers to undermine the risks, and he said he was not convinced.

“Would removing [criminal sanctions] make a difference? I’m not convinced. You would still need to retain civil or regulatory liability,” he said.

“Whilst they would welcome the diluting of the criminal aspects of the legislation, in some respects they are more worried about the regulatory consequences, because they are far more likely to occur,” he said.

Are Regulators and Enforcement Agencies Too Far Apart in Their View of What Banks Should Do?

Regulators and enforcement agencies view banks through different lenses, Wilkes said, and this fundamental difference will pull banks in opposite directions.

“For regulators, banks are a gatekeeper to financial services, and banks should do what they can to stop bad guys having access,” he said. “Prosecutors, however, look at the banks as a source of information to enable them to pursue criminals, and in some respects there is a conflict between the two.”

He said if financial giants become better at keeping bad actors out of the system they run the risk of forcing the problem elsewhere. Criminals are more likely to use less transparent methods such as cryptocurrencies including bitcoin to move money instead.

“In some respects the police may prefer the banks to continue to operate accounts whilst making appropriate disclosure to allow them to monitor and investigate,” Wilkes said. “But the question then becomes, do the police have the resources in place to act on this information?”

--Editing by Rebecca Flanagan and Brian Baresch.
