Gem Briefing Note 15/1

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GEM Compliance Consulting

FCA Financial Crime Webcasts (Jan 2015)

Key Messages

Introduction

The FCA confirmed in its 2015/16 Business Plan that financial crime (FC) remains a priority and replaced rapid house price growth as one of the top 7 risks. The FCA remains focussed on firms' systems and controls to prevent financial crime and in 2015/16 it will pay close attention to firms' Anti-money Laundering (AML) and Anti-bribery and Corruption (ABC) measures.

In January, the FCA produced two financial crime webcasts based on recent thematic reviews. Key-point summaries of both webcasts are included below and two important messages for all firms to consider on an ongoing basis are:

1. Where the risk is greater, do more.

2. Firms only outsource the function, not the responsibility.

Managing money laundering and sanctions risk at smaller banks

- The FCA looks for evidence of the initial and ongoing due diligence/monitoring carried out by the firm to establish the identity of its client (and beneficial owners), source of funds/wealth and the client's PEP/Sanctions status.

- Just because a country is not on the FATF's (the Financial Action Task Force's) list of high-risk and non-cooperative countries, doesn't mean its controls are equivalent to those in the UK.

- The main areas of FC concern for the FCA are money laundering and bribery and corruption.

- FCA focus is on: AML; CTF (Counter-terrorist Financing); Sanctions; de-risking policies; and firms' business-wide FC risk assessments.

- Firm FC risk assessments should cover: customer types, products and/or services; delivery channels; jurisdictions; and outsourcing arrangements.

Managing bribery and corruption risk in commercial insurance broking

- The FCA reviews files for evidence of anti-bribery and corruption (ABC) controls.

- It has seen good progress in the areas of staff recruitment and remuneration, including incentives.

- The FCA confirmed it is not looking to check compliance with the Bribery Act but compliance with SYSC 3.2.6R and Principles for Businesses 1-3 in respect of bribery and corruption.

- Bribery doesn't actually have to take place for the FCA to take enforcement action. If it does, this is where the Bribery Act will bite.

- Gifts/hospitality and remuneration policies help demonstrate compliance with the FCA's rules regarding FC prevention.The FCA will expect to see that bribery and corruption risk across the whole business has been assessed, and this assessment should cover:

  - Country, sector and type of business
  - Risk posed by introducers and brokers; and
  - Non-trading matters (e.g. recruitment, corporate hospitality and charitable donations).

- The FCA's thematic review highlights weaknesses in the initial risk assessment conducted by firms; either it was based on a single factor (e.g. country of origin) or a number of factors were used but these weren't brought together to provide an overall risk rating. The risk rating generated by the initial risk assessment process should drive the level of due diligence and monitoring necessary to properly manage the risk posed by the relationship. Therefore, if this initial assessment is flawed the FCA believes the firm will fail to properly manage the risk.

- Factors that should be considered in the initial risk assessment are:

  - Proposed role;
  - Country firm/client is based in and/or where the business is conducted;
  - Remuneration arrangements;
  - Sector risk; and
  - Political/governmental connections.

- In relation to gifts/benefits/hospitality, the FCA expects:

  - Clear limits;
  - Clear rationale for limits, which firms can easily articulate to the FCA;
  - A requirement to produce receipts;
  - Appropriate oversight and challenge of expenses; and
  - Balanced remuneration structures;

- Where policies require reporting of gifts, etc. over certain limits, a lack of reports may indicate the threshold is too high and/or a failure of staff to understand risks.

- In terms of pre-employment checks an individual's market reputation could be a useful risk indicator.

- The FCA states that ABC training should not be a one-off exercise and training should be relevant.

- Good governance of ABC risk is achieved through effective MI, which is likely to include: details of rejected business; details on big ticket/higher risk items on gifts/rewards/hospitality register(s); charitable donations; business generated by 3rd party introducers; and remuneration of 3rd party introducers.

- Each third party introducer appointment should have a business case explaining:

  - The purpose and nature of the business relationship;
  - Remuneration arrangements – are these commensurate with the activities being conducted by the introducer; and
  - Why the firm needs the introducer/why the firm can't obtain this business by itself.

- The business case should result in a risk rating that is within the firm's risk appetite and makes good business sense (i.e. the risk is worthwhile).

- Firms conducting insurance related activities within a chain should know every other party within the chain.

- A firm can rely on the due diligence carried out by another firm but it should not do this blindly. If a firm wishes to rely on the checks conducted by another firm, it should take steps (initial and ongoing) to ensure it can rely on the other firm to perform appropriate checks. This is because functions are outsourced not the responsibility, and many well-known firms have been the subject of enforcement action for failings in systems and controls. It is a potential red flag if a firm is unable to provide details of its policies and procedures.

- When performing due diligence, whilst commercially available databases can be useful they aren't essential. Just as good a job can be done using Internet search engines, such as Google, which the FCA also use.

- E-verification is not enough in situations requiring enhanced due diligence.

- Payments (received and requested) should be linked back to the initial risk assessment and business case to ensure it is appropriate to make/accept the payment.

Next steps

The FCA urges firms to review its thematic work and updated FC guide, and take appropriate action to improve policies and procedures.

Although the FCA doesn't expect the 4th Money Laundering Directive to cause major changes to the current approach, firms can expect a Consultation Paper covering proposed changes to the FCA's FC Guide in 2016.

This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.

For further information, please contact Gem Compliance Consulting Ltd.

Edinburgh office: 14 - 18 Hill Street, Edinburgh EH2 3JZ **Tel:** 0131 344 4318
www.gemcompliance.com Registered in Scotland no. SC 294346