UK Financial Conduct Authority Enforcement Risks—Looking Ahead

16 October 2020

With the UK Financial Conduct Authority ("FCA") recently releasing its 2019/2020 annual report (for the year ended 31 March 2020), we look at what this and the FCA's other publications this year indicate about some of its likely enforcement priorities in the next few years.

Financial Crime. The FCA's business plan for 2020/2021, issued at the height of the UK's coronavirus lockdown, was much shorter than usual but stated that financial crime remains one of its five 'key priorities' for the next one to three years across the sectors that it regulates. The FCA has committed to collecting and analysing more data to identify the highest-risk firms and areas. During 2019/2020, the FCA conducted 180 onsite and desk-based reviews of regulated firms' financial crime controls, and it is developing new tools to test how effective firms' systems are in detecting financial crime. As at 31 March 2020, more than 10% of the FCA's total enforcement workload comprised financial crime cases.

Money laundering is singled out as a focus for enforcement action where serious misconduct is uncovered. The £38 million penalty imposed on Commerzbank AG in June for failings in its oversight of anti-money laundering ("AML") issues, customer due diligence processes and transaction monitoring was the latest in a series of cases demonstrating that AML controls are at the top of the FCA's agenda. The FCA has also made much noise in recent years about using its criminal powers under the money laundering regulations and it has a number of ongoing investigations. However, it has yet to bring any prosecutions and this apparent lack of action has recently generated significant press interest.

Market Abuse. Combating market abuse has been a FCA priority for some time and will continue to be in the future. Market abuse cases represented over 20% of open enforcement investigations at the end of March 2020 and were the largest category of cases. The majority of these related to insider dealing, but there were also a substantial number of investigations into market manipulation and misleading statements. Firms should assess the market abuse risks that may arise in the course of their rapidly fluctuating business and working environments, and consider whether existing controls continue to mitigate those risks effectively.

The FCA is investing significantly in improving and deploying its market monitoring tools, and it has never had a shortage of market abuse investigations. However, it has historically struggled to bring successful enforcement actions on a regular basis. There are some signs that this may be changing, and the FCA will have taken note of the US Commodity Futures Trading Commission's record-breaking $920 million penalty against JP Morgan for spoofing in the precious metals and Treasuries markets. The FCA's detailed July decision (pending appeal) against Corrado Abbattista for spoofing is its first public case under the EU Market Abuse Regulation, which came into effect in 2016. This sets out some fundamental principles concerning illegitimate trading techniques that send misleading signals to the market.

We have seen the FCA putting more attention on UK-listed companies publishing false market statements and we expect that trend to continue. Most recently, the FCA censured Redcentric Plc and commenced criminal proceedings against three of its former senior employees for overstating its cash holdings and understating its net debt in its financial results. In a Market Watch newsletter, the FCA reminded companies to be careful to verify that announcements are complete and accurate, even in the face of market uncertainties due to the pandemic. The FCA also emphasised that the changed working arrangements affecting many people will not be an excuse for mishandling inside information.

Non-financial Misconduct. A more recent area of FCA focus is non-financial misconduct, such as discrimination, harassment and bullying. It has stated that it intends to hold individuals and firms to account for such behaviour, including under the senior managers and certification regime. Issues regarding mistreating whistleblowers and ignoring or covering up misconduct allegations will be treated particularly seriously. Further, in its assessment of whether senior managers are fit and proper to hold their roles, the FCA will consider highly relevant any personal non-financial misconduct or failure to address such actions by others. This topic forms part of the FCA's drive to improve culture in firms, which includes examining their leadership, governance, approach to managing people, and remuneration practices.

Alternative Investment Managers. The UK alternative investment management sector, including hedge funds and private equity firms, has largely escaped much FCA attention in the past, in contrast to the frequent enforcement activity in the US. However, earlier this year, the FCA very unusually directed a 'Dear CEO' letter to firms in its alternatives portfolio highlighting the areas where it believes firms are falling below its expectations and posing a risk of harm to customers and markets. These include market abuse controls, risk-taking that causes disruption to financial markets, and AML and anti-bribery procedures. The FCA has signalled that it intends to step up its supervision of alternative investment managers in these areas. Consequently, we anticipate a growing number of investigations and enforcement actions in this sector in the years ahead.


Karolos Seeger
Partner, London
+44 20 7786 9042
kseeger@debevoise.com


Robin Lööf
International Counsel, London
+44 20 7786 5447
rloof@debevoise.com


Kayleigh Anderson
Associate, London
+44 20 7786 5513
kanderson@debevoise.com


Andrew Lee
Associate, London
+44 20 7786 9183
ahwlee@debevoise.com