

Anti-money laundering in the UK & US: Looking ahead

UK

AML enforcement is high on the agenda of UK agencies and regulators. The FCA has again highlighted AML as one of its cross-sector priorities for this year. It has at least 60 ongoing AML investigations and its latest AML report indicates that it has “begun a small number of ongoing investigations into firms’ systems and controls where there may have been misconduct that might justify a criminal prosecution under the Money Laundering Regulations 2017”.

Where FCA specialist supervisors consider there are deficiencies in systems and controls we have seen a greater appetite to use early intervention powers to impose restrictions on firms onboarding of all new business or of certain types of higher risk business and a greater use of s166 skilled persons reviews whether formal or ‘voluntary’. We also notice a stronger emphasis on the need for a more joined up approach to AML, anti-bribery and corruption and market abuse systems and controls.

Our clients have kept us busy thinking about: proceeds of crime in the context of investments in the Canadian cannabis industry; how to satisfy the competing demands of appropriate Customer Due Diligence and the desire to provide a frictionless customer experience; AI and transaction monitoring and how AML obligations apply in practice to crypto businesses.

This summer has seen developments on the Suspicious Activity Reports (“SARs”) reform agenda, and we look forward to seeing the realisation of the recommendations from the

Law Commission’s June 2019 report and the Government’s 3-year Economic Crime Plan. The proposals to issue clearer guidance on key statutory terms such as ‘suspicion’ and to replace the current SARs reporting website with sector-specific portals and intuitive fields for more targeted reporting, with better information available to firms to improve their own SARs reporting, are all welcome.

Assimilating the EU’s Supranational Risk Assessment (July 2019), FCA Thematic reviews and other guidance published this year, we highlight some key AML typologies and risks to focus on: Laundering through capital markets, financial products offering anonymity and non-face-to-face business relationships generally, trade based money laundering, professional football with its complex organisation and investor citizenship and residency schemes.

Also, in the pipeline is the upcoming transposition of the EU’s 5th Money Laundering Directive (to be transposed by 20 January 2020). We note the Treasury’s recent Consultation Paper on this trailed the prospect of some gold plating of the Directive’s requirements. As well as some new ‘obliged entities’ including letting agents, art and antiques dealers and intermediaries, virtual currencies exchange platforms and wallet providers we will see the expansion of the UK’s trusts register and the introduction of a national register of bank account ownership.



US

Across the Atlantic, anti-money laundering enforcement and scrutiny is also at high tide in the United States. Enforcement activity, civil and criminal, remains strong across all financial institution sectors, including banks and other depository institutions; securities brokers and dealers; money services businesses; and financial services industries. The Financial Crimes Enforcement Network (FinCEN), the U.S. government's lead AML regulator, has also paid particular attention (both in regulatory guidance and in enforcement) to the nascent cryptocurrency industry and the unique illicit finance risks in that sector.

In addition to enforcement from the federal government, many individual states (especially New York) have commenced their own enforcement actions and investigations. And many enforcement actions and settlements involved multiple agencies in parallel/joint activities (for simultaneous resolution) or successive actions, subjecting financial institutions to multiple fines or other penalties for the same underlying conduct. Finally, with an aim to increase accountability and enhance deterrence, both civil and criminal enforcement agencies in the AML space have been willing to consider individual liability for corporate officers, directors, and employees who participate in the underlying violations.

Certain (though not all) types of financial institutions – banks and credit union, mutual

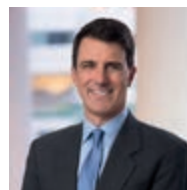
funds, securities brokers and dealers, futures commission merchants, and introducing brokers in commodities – are also continuing to build out their systems and programs to comply with the recent Customer Due Diligence Rule, which went into effect on May 11, 2018. Among other things, the new regulation requires covered financial institutions to determine the beneficial owners of legal entity customers.

In late 2018, the U.S. Department of the Treasury issued various documents and advisories related to money laundering/illicit finance risks, including the National Money Laundering Risk Assessment, the National Terror Finance Risk Assessment, and National Proliferation Finance Risk Assessment.

Most recently, in September 2019, FinCEN announced the creation of a new division, the Global Investigations Division, “responsible for implementing targeted investigation strategies” and especially focusing on foreign money laundering and terror finance threats. This new initiative, which replaces FinCEN’s Office of Special Measures, suggests greater emphasis for FinCEN’s use of its Section 311 authority and other unique authorities, and may signal more frequent use of FinCEN’s actions to designate individuals, entities, and jurisdictions as areas of “primary money laundering concern.”



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