REGNEWS

The Regulatory Compliance Newsletter from Xcina Consulting

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Welcome to the first edition of our new quarterly Regulatory Compliance Newsletter: Reg News.

Reg News will provide you with a snapshot of regulatory developments and hot topics impacting financial services firms.

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Keep track of developments with our new Regulatory Calendar

We are delighted to announce the launch of our Regulatory Calendar which, in addition to keeping users abreast of key developments in UK and EU financial services regulation, provides insightful analysis of key impacts and challenges, together with supporting whitepapers.

As our Executive Managing Director Mark Child says: "Helping our clients to track and plan for regulatory change is of paramount importance to us; our aim is to create an online tool which interprets changes in regulation and encapsulates the key impacts for our readers".

VISIT OUR REGULATORY CALENDAR ›

Brexit Delay
& Postponement

Regulators both in the UK and Europe have implemented transitional mechanisms for businesses that will be affected in the event of a no-deal Brexit.

The FCA has put in place the Temporary Permissions Regime (TPR) for inbound EEA firms and funds. It is worth noting that currently, firms planning to enter the TPR need to have notified the FCA by 11 April 2019.

Separately, in early February, the European Securities and Markets Authority (ESMA) agreed a Memorandum of Understanding with the Bank of England for the recognition of central counterparties and central securities depository established in the United Kingdom.

We continue to monitor events as they unfold, offering the latest considerations from a regulatory compliance point of view through our regulatory calendar.

The Latest on SM&CR

A date for your diary: from 9 December 2019, SM&CR will apply to all regulated financial services firms.

This is a significant sea change for senior managers grappling to appreciate fully their increased levels of individual accountability under the regime. SM&CR reinforces and strengthens conduct principles for everyone working in financial services, the result of which will undoubtedly bring forward a significant shift in culture and behaviours for firms.

Individual Senior Managers will require a greater level of support, management information reporting and training. The FCA has produced a short video on the experiences drawn from leading banks when they first implemented SM&CR back in 2016.

VIEW THE TRANSCRIPT ›

The common theme derived from this feedback is that SM&CR was a catalyst to re-define governance, ownership and accountability within the firm. "If people are clear about their roles, responsibilities and accountability ... it actually improves the quality of control over the business that is overall beneficial" – The Financial Conduct Authority, December 2018.

Xcina Consulting has independently gathered feedback from the Banking sector and detailed below are the five key steps for successful SM&CR implementation.

1. Planning

Preparation is key. Do not underestimate the time you need to prepare for SM&CR, early planning and engagement with all areas of the business and individual managers is paramount in order to meet all compliance objectives.

2. Project Management, Record Keeping & Documentation

The road map to compliance, evidence gathering, and documentation for assessment of individual senior managers is vital to demonstrating the approach you've taken and all decision rationale for regulatory or audit scrutiny.

Ensure you assess and challenge the Statement of Responsibility and Responsibilities Map robustly, that there is clarity on defined responsibilities, and no over or underlaps. The FCA requires full transparency on who is accountable.

3. Governance & Culture

Recognise that SM&CR compliance is not just a box tick exercise but a required change in culture and behaviours.

A review of the firm's governance infrastructure and governance procedures is essential to reflect SM&CR requirements early on. A key influencer, SM&CR was the catalyst to structuring the way in which Boards and Senior Managers should have been behaving all along. It has been highly beneficial, supporting a better quality of interaction and discussion at Board level overall.

4. HR Processes & Employment Contracts

Early involvement of HR with SM&CR implementation is key, particularly the provision of support to the individual senior manager as they come to terms with their enhanced responsibilities under the regime.

HR Processes and Employment Contracts require specific changes in preparation for SM&CR, including consistency and alignment of the Statement of Responsibilities with the employee's Job Description and Employment Contract. There should be no ambiguity when it comes to outlining the individual's duties and responsibilities.

5. Training

Undertake job specific scenario-based training for Senior Managers to support them in their understanding of their new responsibilities and liability.

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FCA's Latest SM&CR Consultation Paper (CP) 19/4

Lastly on SM&CR, the FCA issued their latest SM&CR Consultation Paper (CP 19/4) on 23 January 2019.

KEY TAKEAWAYS FROM THE PAPER INCLUDE:

- The much-needed proposal by the FCA to exclude the legal function from the Overall Responsibility Requirement under SM&CR.
- The proposal to include the Systems & Controls Functions within the Certification Regime. It is proposed that the Certification Regime applies to individuals performing roles that were Systems and Controls functions under the Approved Persons Regime, but which are no longer approved under the SM&CR.

The consultation closes on 23 April 2019, with the Policy Statement expected to follow in Q3, 2019.

READ THE FULL PAPER ›

Financial Crime Compliance

Preparation for the transposition of the 5th Anti Money Laundering Directive (AMLD) is well underway, with the 10 January 2020 milestone only nine months away.

Not so much a revolution as an evolution of AML regulations, the 5th AMLD seeks to address the potential money laundering and terrorist financing risks posed by virtual currencies, extending the scope of the European Union's Regulatory Authority to virtual currency transactions.

The global focus on financial crime prevention continues. While the 5th AMLD is moving ahead, the EU Parliament published in late 2018 their proposals for the 6th AMLD to strengthen the fight against money laundering. The provisions of this directive get much more personal.

Tougher Sanctions, fines, increased offences and the extension of criminal liability to legal persons, the 6th AMLD is much more focussed on dissuasive sanctions.

In summary, the 6th AMLD brings forward:

- 22 specific predicate offences for Money Laundering, including for the first time environmental offences, cybercrime, and direct and indirect tax offences
- A broader scope of money laundering offences to include aiding, abetting and attempting to commit an offence of money laundering
- An extension of criminal liability to legal persons, including those with authority to exercise control who commit offences for the benefit of the organisation, including where the offence was made possible by the lack of supervision of control of the individual
- Tougher penalties, increasing the minimum prison sentence for money laundering offences for individuals from one year to four years, together with temporary or permanent disqualification from business practices, judicial winding up order and closure of business premises

Financial Crime Compliance

- Collaboration between member states, including more efficient and swifter cross-border cooperation between competent authorities, agreement to prosecute in one single member state where the investigation covers multiple jurisdictions, as well as requirements for effective investigative tools (including adequate resources, targeted training and up-to-date technological capacity)

The timeline for transposition into national law is 3 December 2020, with a compliance date set for 3 June 2021.

It is likely, whether with Brexit or "Bremain", that the UK will seek to adopt the 6th AMLD for continued alignment with Europe.

The severity with which the Regulators are taking FCC is evident in the widely-anticipated fine to be imposed for FCC control failures by a Nordic Bank, which is likely to be in the region of $8billlion. This is significantly higher than we have seen imposed to date and would dwarf the most recent multi-million-pound fines levied on UK and EU banks by the US regulators.

With accountability for specific areas of the business being better defined under SM&CR, we anticipate much tougher sanctions, including criminal actions against senior managers with compliance and anti-money laundering responsibilities under SM16 and SM17.

These senior managers should be asking themselves whether they have the appropriate governance and oversight arrangements, management information and reporting, resources, training and technological support to continue the fight against money laundering offences.

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In other news...

Xcina Consulting Limited partners with The London Market Forums

Xcina Consulting Limited, in association with Consilio, is proud to be partnering with LM Forums – the London Insurance Market's fastest growing thought leadership and networking hub – to support their Legal, Risk and Compliance Leaders Practice Group.

Xcina Ltd, in association with Cyberscout, is also supporting the insurance hub's cross-industry Cyber Resilience Leaders Practice Group.

The Risk, Legal & Compliance Practice Group of 30+ senior professionals from across the London Insurance Market held their first meeting of 2019 on 5 February.

Risk Legal & Compliance – Practice Group – 3rd Session

Dee Mc Manus, Director of Regulatory Compliance at Xcina Consulting, gave an overview of the challenges surrounding the implementation of the Insurance Distribution Directive, and its synergies with MiFID II. The group also considered how "reg tech" can support compliance functions in meeting ongoing reporting obligations.

Meetings will take place throughout the course of the year to discuss key industry challenges, regulatory insights and best practice.

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