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A legal update from Dechert LLP

Imminent Thematic Review by FSA of Asset Managers in the UK

The Financial Services Authority is shortly to embark on a thematic review of asset managers. Its focus will be on the risks of bribery and corruption, sanctions and money laundering. Twenty two firms have already been identified for review and the regulator's report is due to be published in the third quarter of 2013. All asset managers, whether they are to be visited by the FSA or not, should review their compliance in these areas.

Compliance failings in any of the areas could lead to very significant adverse consequences. Each has been an area of focus by the FSA and other enforcement agencies during the past year in respect of other types of financial institutions, in particular the banks. Now the FSA has the asset management sector in its sights.

Bribery and Corruption

The new Bribery Act, now in force for just over a year, has put a fresh onus on all commercial organisations to put in place adequate procedures. The UK's Serious Fraud Office has been actively enforcing the previous anti-corruption legislation for a while, but is also believed to be undertaking a number of investigations under the new Act.

The FSA's thematic review of bribery and corruption compliance in investment banks, published in March of this year, identified significant weaknesses, including failure to undertake adequate anti-bribery and corruption risk assessments, poor management information, failure to carry out specific anti-bribery and corruption audit and significant issues in firms' dealings with third parties used to win or retain business. In addition, the FSA identified that firms in the investment banking sector had been too slow and too reactive in managing bribery and corruption risks. In particular, the FSA criticised the limited understanding of the relevant issues and failure to monitor the effective implementation of policy and procedures.

Sanctions

At the same time a number of institutions have recently been subject to enforcement action for failing to implement effective systems and controls to manage sanctions risk. In August 2010, the FSA fined Royal Bank of Scotland Group £5.6m for failure to implement appropriate, risk-sensitive policies and procedures to prevent activities relating to money laundering and terrorist financing.

However, the stakes are increasing. In June 2012 ING paid \$619 million to settle accusations it helped Iranian and Cuban companies move billions of dollars through the US financial system in violation of international sanctions. HSBC currently faces a fine which could be far higher following allegations of providing financial services to banks linked to financing terrorism, processing transactions linked to the Iran's nuclear programme and assisting Mexican drug dealers to move £1.3 billion into Cayman Island accounts.

The FSA requires regulated firms to maintain appropriate policies and procedures in order to prevent funds or financial services being made available to those on the sanctions list and are expected to effectively screen customers and payments against relevant sanctions lists. Firms must also ensure that they have written procedures in place which include the requirement to check the financial sanctions list, undertake appropriate due diligence and that training is provided to all staff on the financial sanctions regime and its application to the firm.

Money Laundering

The FSA has previously undertaken a thematic review of the banks' management of high money laundering risk situations which equally may apply to the asset management sector. In particular, the FSA found that the banks were appearing to take unacceptable money laundering risks where potentially profitable relationships were at stake, that the level of enhanced due diligence undertaken in high risk situations was inadequate, and that the banks were failing to identify the customers as politically exposed persons.

In relation to asset managers, the FSA could look immediately at compliance with the Money Laundering Regulations and, if recording errors or breaches are found, choose to look more deeply into the affairs of the manager and its attitude to compliance. Compliance with the Money Laundering Regulations, which are unlikely to change in substance for several years, will be seen as a necessary part of business and although evidence of money laundering is almost certain to be absent, failure to document relationships properly could lead to a deeper review.

What Does This Mean for You?

All of these issues should be of concern to the asset management sector, particularly as a result of the FSA's recent enforcement track record against the banks. Some of the breaches upon which the FSA has relied in order to take this action (for example, a breach of Principle 3 as well as breaches of various rules within the SYSC handbook) could apply equally to asset managers.

If the findings of the FSA's thematic review into asset managers identify as many weaknesses into anti bribery and corruption compliance as the thematic review into investment banks earlier this year, asset managers should be very cautious of any future enforcement action. In particular, asset managers should be wary of the risk of enforcement action by the FSA as a result of a firm's systems and controls failings in addition to, and independently from, the firm's risk of being prosecuted by the SFO under the Bribery Act itself.

If you would like to discuss compliance in these areas, please contact Jonathan Pickworth or your usual Dechert partner.

Dechert's Corporate Crime and Compliance Team

Dechert's corporate crime and compliance team is a global leader in the industry. With a dedicated team of litigators in addition to a global platform of financial services lawyers, Dechert has the multi-jurisdictional capabilities, experience and skills to guide asset managers with respect to regulatory compliance, investigations and disputes which might arise anywhere around the world. In representing many of the leading banks and asset managers, our lawyers are at the forefront of all the strategic legal issues affecting the industry. Our London team is ranked in the top tier for corporate crime and investigations by the independent legal directory *Chambers UK*, 2013.

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