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COMPLIANCE UPDATER

Regulatory and compliance news in brief | Issue: March 2020

Coronavirus and compliance.

Coronavirus is obviously the dominant issue across all media at present. It means that thousands of financial services employees are doing their best to keep everything running as near to normal as they can, from their homes. Here are a few thoughts about the compliance issues that arise:

1) Home working brings challenges in areas like monitoring others, providing support and keeping projects on track. At the very least, it is sensible for firms to reinforce that as far as possible everything that was necessary, like suspicion reporting, still is.
2) The senior management team will be acutely aware of the business impact as asset prices collapse and gyrate. Clearly cash flow and financial resources need ongoing review, but don't forget that the senior management team need to keep spirits up across the whole firm. Regular communication will be key.
3) Issues that emerge may be around the various government support mechanisms, like the UK's Coronavirus Job Retention Scheme. It enables staff to be 'furloughed' and appears to require that such staff are effectively mothballed as far as work duties are concerned. What would be the impact if a firm called on them for help during the furloughed period? Would that invalidate the claim? Such unanswered details suggest firms should be very careful about the decisions they take.

Further updates

Our video series 'Compliance Risk: COVID-19' starts 2nd April. Subscribe to our YouTube channel to keep up to date.

Deutsche Bank's UK difficulties.

Deutsche Bank has been under special supervision of the UK regulators for serious and systemic failings in its anti-financial crime controls. It appears that Deutsche Bank has been close to breaching Financial Conduct Authority's (FCA) principle 11 regarding openness and co-operation with its regulators and the Prudential Regulation Authority (PRA) is thought to be currently requiring monthly updates from Deutsche, rather than its usual quarterly meetings. Deutsche uses EU passporting rights to operate in the UK and is required to go through a re-authorisation process prior to Brexit on 31st December 2020.

Freedom of information response reveals seven breaches by UK funds.

A freedom of information request directed at the FCA led to the disclosure that, ignoring Neil Woodford's funds, seven UK funds breached the 10% limit of investment in unquoted securities since June 2017. Three of the breaches were passive – resulting from falling listed company share prices and/or rising private company values. Another four breaches were active, where investment manager decisions tipped the portfolio over the 10% threshold. None of the funds were named.

Deutsche Bank cleared funds as correspondent for Jho Low.

Jho Low, the Malaysian businessman at the centre of the 1MDB scandal that is alleged to have seen $2.7bn misappropriated from a Malaysian state investment fund, used Deutsche Bank as correspondent to clear €5.96m to buy property in Cyprus and obtain a Cypriot passport. Mr Low transferred the money from Falcon Bank to the Bank of Cyprus using Deutsche as correspondent to enable him to purchase a €5m property and qualify for the Cypriot golden passport scheme. The payment took place around four months after allegations surfaced about Mr Low's involvement in the 1MDB scandal.

Swedbank faces possible sanction breaches and a $400m fine for AML deficiencies.

Swedbank, Sweden's oldest bank, will report to the US Treasury's Office of Foreign Assets Control that it has identified some $4.8m of payments made that could have breached US sanctions. An investigation for the bank led by law firm Clifford Chance looked at US dollar transactions from Swedbank branches in Estonia, Latvia and Lithuania over five years from March 2014.
Swedbank was fined SKr4bn ($400m) for serious deficiencies in its anti-money laundering controls and withholding documents from Swedish and Estonian regulators. Swedbank was found to have had weak processes, routines and control systems and failed to give its subsidiaries in Estonia, Latvia and Lithuania adequate resources to combat money laundering.

NMC Health worrying for the reputation of UK listings.

Abu Dhabi-based and London-listed healthcare group NMC Health admitted to a suspected fraud and net debt level twice previously reported due to $3bn of borrowing that was hidden from the board. Whilst investigations continue, NMC's shares are suspended and worries are being expressed about the reputational impact on UK listings generally.

UK FCA demands warnings regarding fund problems.

In an effort to strengthen investor protections in the Coronavirus inflicted market falls, the UK's FCA is requiring notifications from funds and their depositaries where they are about to suspend trading and if any fund registers a drop of 10% or more in a single day.

Two London-based bankers convicted in Germany for tax evasion.

Two London-based former bankers were found guilty of tax evasion in a German trial. A former employee of HypoVereinsbank and his colleague were both convicted of tax evasion, the more senior was asked to repay the €14m he made on the trades and both face suspended sentences. The evasion related to 'cum-ex' transactions, exploiting a design flaw in Germany's tax code that allowed clients to obtain dividend tax 'refunds' that had not been paid in the first place. The German government estimates the total losses to German taxpayers to be around €5.5bn.

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