EXCLUSIVE-FCA wrote to 635 firms about MLRO turnover in 2021

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The UK Financial Conduct Authority (FCA) wrote to the boards of 635 authorised firms last year requesting they carry out an assessment of the underlying causes for the high turnover of money laundering reporting officers (MLRO/SMF17) at their businesses. The number of letters was disclosed after a request made under the Freedom of Information Act 2000 by Regulatory Intelligence. It pre-dates the regulatory scrutiny of anti-money laundering (AML) controls prompted by Russia's invasion of Ukraine.

Lawyers are advising business unit heads to work closely with their firm's MLRO as they assess the ramifications of all the individuals and businesses sanctioned by UK, European Union and U.S. governments.

"While I believe there will be more focus on the AML risk pillar [because of Russian sanctions], I believe the FCA expectations are that a competent MLRO should have identified any increased risk in their client portfolio ahead of the sanctions, via their BAU risk assessment process," said Rupi Christophers, practice lead for fraud and financial crime at Bovill, a compliance consultancy.

Targeted

Firms with three or more personnel changes in SMF17 were targeted with the letters. The FCA also commissioned six Section 166 (under the Financial Services and Markets Act 2000) reviews in the financial crime category (lot E) in the final quarter of 2021.

Christophers has experience of leading s 166 reviews which involve failings in financial crime and money laundering controls.

"For me, the biggest red flag is people who can't articulate the financial crime risks for the business. These are usually about onboarding or continuing relationships with high-risk clients, because inevitably, they're going to be your most profitable and that really is the red flag," she said.

In December, NatWest was fined £265 million after being convicted of three offences of failing to comply with money laundering regulations. It was the first time the FCA had elected to pursue criminal charges. That same month, the regulator fined HSBC £63 million for failures in its AML systems and controls.

It is vital for MLROs to be able to challenge an institution's management when issues are identified, Christophers said.

"Where we find problems is when individuals don't challenge the first line robustly enough. That isn't always about seniority, it's about the individual. At portfolio firms, the SMF17 will report to the board, so they have got to be able to be independent and distance themselves from the business," she said.

FCA expectations

In January, the regulator issued a guidance note aimed at clarifying its expectations of applicants for SMF17 and heads of compliance roles. The guidance makes it clear that the FCA believes MLROs are best located at the firm's principal place of business. Outsourcing compliance entirely to a third-party contractor is frowned upon, although support from external consultants for SMF17 and heads of compliance "may be a helpful addition", the FCA said.

The regulator also said that it reserved the right to test a candidate's knowledge and competence at interview.

"My takeaway from the FCA statement was the regulator saying, 'an individual doesn't have to have held the SMF17 role before, but they have to be very aware of the regulations'. So, if you are a SMF17 and head of compliance, then that is a wide spectrum of information you need to be fully familiar with. Obviously the FCA allows for firms to take an approach proportionate to the size of the business, but what we see is that where both of those roles are held by the one individual, that does get a heavy challenge when they come to reviews. Bovill always recommends that if a firm can afford to split the role, it does," Christophers said.

The FCA statement also conveyed mixed messaging as to who would make an appropriate MLRO, she said.

"In the final paragraph of the FCA statement it talks about other senior individuals at smaller firms (who are not from the client-facing side of the business) being able to hold the SMF17 role. For smaller firms this will always pose a challenge, as the regulator has said that the SMF17 should be independent," she said.

There can be merit in recruiting an MLRO internally, however.

"Sometimes I think there is value in identifying that individual in-house — someone who understands the business and the culture. But it is important to ensure they can voice any concerns," Christophers said.