Breaking Up - The Financial Services Authority (FSA)

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The Financial Services Authority (FSA) is being split into two later this year. But will the changes mean its duties will be carried out more effectively? Or will it be a case of new names, same old problems?

The FSA will soon be no more. Legislation is in the process of coming into law that will see the FSA officially split into two organisations. This change is expected to come into effect in April. In a nutshell, it will separate the FSA into the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). Business crime will fall under the control of the FCA, which will have the FSA's existing Enforcement and Financial Crime Division working out of it. Supporters of the FCA believe it will lead to a more proactive approach; with the new organisation reaching out to companies and individuals (most probably consumers or victims of crime) in a way that the FSA never has. The question that needs an answer – which we may well have in a year or so – is whether this new approach will lead to greater success for the FCA than the FSA ever had in tackling financial crime.

Tracey McDermott, Director of the FSA's Enforcement and Financial Crime Division, believes the FCA's fresh tactics could see quicker compiling of intelligence, swifter intervention where illegal activity is suspected and maybe even more risk taking.
She said: “History has made it clear that simply sitting back and waiting to see how things evolve is not an option. Enforcement - in its traditional sense – will remain a core part of what we do. Our credible deterrence strategy will remain, taking tough and meaningful action against those firms and individuals who fall short of our standards and break the rules.”

The Financial Services Bill currently going through Parliament gives the FCA rather than the PRA a clear mandate in relation to financial crime. It means that the FCA’s focus will be on protecting consumers from financial criminals and stopping firms facilitating crimes such as money laundering. This separation of roles is intended to prevent any ineffectiveness brought about by the two new organisations overlapping or even passing the buck.
Systematic, recurring and in-depth reviews of the biggest banks' defences against money laundering and sanctions breaches have already been flagged up as a major FCA duty. Fraud operations involving bogus share sales - also known as boiler rooms -, land banking, carbon trading or collective investment have also been identified as FCA territory. Such operations currently lead to nearly 5,000 calls a year to the FSA, which estimates that such fraud leads to more than £500M per annum being taken from victims. Yet despite the talk of reaching out, being proactive and taking strong action, the hard fact of the matter is that the FCA – or any other organisation faced with the challenge in the future – will not be able to keep pace with the constantly evolving nature of business crime. There is always a financial reward for the criminal who devises a new scheme and by the time either UK law or the FSA (or, in the near future the FCA) catches up with that person they will already have taken large amounts of money from as many victims as possible.
The FCA, according to McDermott, will work with other agencies around the globe to produce targeted, intelligence-driven attempts to disrupt those it believes to be committing the fraud. She also praises the FSA’s recent review of banks’ defences against investment fraud and highlights examples of good practice. But perhaps crucially, nothing has yet been said about if or how the FCA can expect to meet with greater success than the FSA. Rather than relying on enforcement as a first response, there appears to be an emphasis on being proactive and building bridges; of companies and institutions sharing experiences and viewpoints. FCA staff, it has been explained, will be allocated to issues as and when they arise; meaning they will go where the action is rather than covering the same old beat and hoping something turns up on their patch. The idea seems to be one of gathering the intelligence on the ground and then allocating resources accordingly. Such a thought-out approach is commendable. But while any number of consultation papers, seminars or round tables are being conducted, those committing the fraud will not be stopping their activities to await the outcome.
The FCA appears committed to tackling fraud and few will shed tears for the FSA, which has at times appeared weak and indecisive when faced with big issues. It failed to foresee the banking meltdown, was appallingly slow in tackling both the PPI scandal and the rise of boiler rooms and seemed to swing between light and heavy regulation with very modest degrees of success. This new organisation is making all the right noises about closer engagement with other agencies here and abroad while intending to, according to McDermott, “experiment and be imaginative in discovering new ways to get results”. Quite where these new ideas are going to come from remains to be seen. Money laundering, fraud, sanctions breaches and banks’ misdemeanours made headlines throughout 2012. There is no reason to expect this to change in this year or any other year, regardless of the plans to replace the soon-to-be-defunct FSA.

In this new FCA-based era, therefore, all that companies can do is exactly what they should have been doing during the reign of the FSA and what they should do if and when the FCA is ever replaced or remodelled. Making sure your company is legally compliant, has adequate procedures in place to prevent corruption and has developed a robust anti-fraud policy is the best approach to staying out of the FCA’s eye line. At Rahman Ravelli, we regularly advise a variety of companies and institutions on compliance and how to create a proactive workplace culture that both stifles any opportunity for fraud and makes it more easily identifiable and reportable should it ever occur.
Such a straightforward, legal approach to prevention of wrongdoing will always be the most effective...regardless of any newly-created organisation devised to try and protect your interests.