ENFORCEMENT UPDATE

New Zealand AML supervisor fires warning shot to reporting entities

By Nathan Lynch, Thomson Reuters

Many businesses in New Zealand are still struggling with basic aspects of their compliance obligations under the anti-money laundering and counter financing of terrorism (AML/CFT) regime, new research has found.

The Financial Markets Authority (FMA), one of New Zealand's three financial crime compliance supervisors, has indicated that it will ramp up its enforcement efforts as the country's financial crime framework approaches its sixth year.

The FMA said that although businesses have made progress in meeting their obligations, there are still a number of fundamental areas that require attention. The most common concerns in the FMA's supervision work included the basic elements of financial crime compliance, including AML/CFT programme failures, outdated risk assessments and customer due diligence (CDD) failures.

The first phase of New Zealand's AML/CFT Act came into full effect in mid-2013. The securities market supervisor said it expects reporting entities to be "fully aware of their obligations, and to have implemented adequate and effective policies, procedures and controls to ensure compliance."

Over a two-year period to June 2018, the FMA did 44 onsite visits and undertook 24 desk-based reviews. From these

PICTURE: Nathan Lynch / THOMSON REUTERS

Love New Zealand: A Kombi parked on a secluded beach in Waiheke, an island just 40 minutes by boat from Auckland.

reviews it found 89 issues in 2017 and 175 issues in 2018 that required remedial action.

"The laws surrounding anti-money laundering and countering the financing of terrorism have now been in place for more than five years. We expect to see more mature policies, procedures and controls in place," said Liam Mason, the FMA's director of regulation.

THE ODDS OF OVERSIGHT

The data in the FMA report suggests reporting entities in the securities and markets area have a four percent chance of receiving a supervision visit (either on-site or desk-based) each year.

The FMA supervises around 800 reporting entities, two-thirds of which are financial advisers. The FMA also oversees derivatives issuers, brokers and custodians, fund managers, providers of discretionary investment management services, equity crowdfunding and peer-to-peer lending platform providers, licensed supervisors and issuers of securities.

Mason said the FMA was ramping up its formal enforcement presence, in addition to requiring more entities to take remedial action.

"This is more likely now to be accompanied by formal enforcement action, as we expect reporting entities to understand and meet their obligations. Entities have had enough time to prepare now, and it is only fair to the vast majority of organisations we supervise who meet the legal requirements," he said.

Gary Hughes, a barrister based in Auckland, said a lack of familiarity could not be considered a satisfactory excuse any more.

"It's more likely lack of effort. I've practised in this area since before the Act was passed in 2009, and it was well-signalled even then, plus came with a long implementation period stretching towards four years. So you could say Mr Mason is being charitable. In fact, this law has been in place for nearly a decade now," Hughes said.

MORE MONITORING AHEAD

The FMA said that, looking forward, there would be more desk-based and on-site monitoring visits and a greater focus on reviewing independent audit reports. There will be more targeted reviews in areas such as client onboarding and account monitoring.

For reporting entities, training will be crucial in this heightened supervision climate. The regulator will spend more time interacting with frontline staff to assess their understanding of their AML/CFT obligations.

Hughes said there had been a "freeing-up of resources" at the FMA in recent months, which was facilitating this more hands-on approach.

"After a long and intensive review in 2018 of banking and insurance sectors, running a 'mini-Hayne' if you like, the FMA has staff and capacity strengths to start tackling AML more seriously now," he said.

The FMA is one of three supervisors for AML/CFT in New Zealand, alongside the Reserve Bank of New Zealand and the Department of Internal Affairs (DIA). The DIA is the sole supervisor for "phase two" reporting entities including lawyers, accountants, real estate agents and certain high-value goods dealers.

Hughes said the DIA, which has a bigger AML team, has to date led the way in AML/CFT enforcement.

"The DIA has already taken 3 or 4 people to court. Given its other legislative priorities, the FMA has to pick cases more carefully. But as New Zealand's main specialist financial regulator, it certainly has the wherewithal to take on hard cases if necessary," he said.

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NAMING AND SHAMING

The FMA expects reporting entities to "consider the findings and observations in this report and, where required, update their AML/CFT policies, procedures and controls to ensure compliance with their obligations."

"We will continue to investigate suspected non-compliance and take appropriate enforcement action consistent with the FMA's enforcement policy," the report said.

The supervisor will also consider "naming and shaming" with more public reports on the outcomes of any formal warnings that it issues.

Hughes said publicity and media exposure has real value but it needs to be used carefully.

"Over half the FMA's constituency is relatively small or one-man-band financial advisers. So there's a need to take care not to put people out of business," he said.

At the same time, reporting entities should be mindful that New Zealand's FATF Mutual Evaluation in 2020 may drive the supervisors to take a more visible approach to enforcement.

"The FMA will need to show it has bared its teeth by 2020. Companies may wish to re-read the FMA's 2017 Sector Risk Assessment, especially the derivatives issuer and brokers/custodian sectors, where the risk levels were raised back then," Hughes said.