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2022 / *Issue 7*

WhatsApp-enable your business

Central banks eye digital currencies • SEC ups pressure on compliance • Watching trends in surveillance
Third degree for critical third parties • New crypto regulation • Why mental health matters in financial services

globalRELAY. PUBLICATION

2022 / ISSUE 7

Orbit TRC is the ideal magazine for decision makers working at enterprise corporations, financial services firms (especially banks, brokers, and asset managers), and in the insurance and commodities sectors.

It covers the interconnected relationship between Technology, Risk, and Compliance (TRC). It delivers insights on developing technology, key risks that need recognition, best practice, and the most effective methods to ensure compliance.

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ORBIT

Publisher
Alex Viall

Managing Editor
Martin Cloake

Editorial consultant
Richard Cree

Designer
Nikki Ackerman

Sub-editor
Rachel Horner

Cover artwork
Tonya Golmant

Contributors
Jennie Clarke
Carmen Cracknell
Ben Edwards
Chip Jones
Stefan Rust
Philip Worman
Alex Viall

Contact
Orbit@Globalrelay.net
Subscribe
Globalrelay.com/Orbit
Printing
Geoff Neal Group
Issue
07

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"Regulation can be an enabler, making the conduct of business easier and creating the confidence vital for consumers and brands"

For too long, regulation has been presented as a blocker. The narrative that business, of all varieties, was only prevented from being successful by red tape – a phrase that became cartoonish shorthand for any attempt to impose order and transparency – was all-pervasive. Recent events should prompt a rethink.

The FTX crypto exchange scandal is arguably the loudest of the wake-up calls, but it is not the only one. The pension fund crisis sparked by the UK government's disastrous October budget revealed an, at best, carefree approach to leverage. The SEC reported gathering a record amount in penalties. And the ESMA has reported financial penalties imposed for market abuse almost tripled year on year.

The use of the word 'freedom' in this debate has not been helpful. It is a loaded term, and freedom to do business has too often been revealed as freedom to do exactly what you like. Regulatory arbitrage is an acceptable approach, but regulatory evasion and wilful neglect of basic standards of commercial protection for client funds represent convenient indifference that resulted in significant harm. Those that have been exposed fall into the category of pioneers relying on forgiveness rather than seeking permission.

Other freedoms matter. For example, the freedom to participate in a market with confidence, or the freedom to build trust. Regulation can be an enabler, making the conduct of business easier and creating the confidence that is so vital for consumers and brands. And that conversation is beginning to take shape.

In this issue we take a look at how the regulatory landscape is developing in the US, how governments are sizing up the options CBDCs offer, new proposals for dealing with critical third parties, and new trends in surveillance and communication. And our cover feature focuses on the big issue of integrating WhatsApp into compliant environments.

These discussions are necessary if we are to successfully navigate an increasingly complex but connected world.

Martin Cloake
Managing Editor

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IMAGE: MELISSA LONG

ON THE RADAR

$4m

fine for Goldman Sachs for breach of ESG-related policies

ESG FINE FOR GSAM

Goldman Sachs Asset Management (GSAM) received a $4m penalty from the SEC for failures surrounding ESG-related policies and procedures. Between April 2017 and June 2018, GSAM failed to have certain ESG research-related policies and procedures in place. Even after they were created, it failed to follow them consistently until February 2020. Without admitting or denying the SEC's findings, GSAM agreed to the penalty and consented to the order it violated sections of the Investment Advisers Act of 1940.

IMAGES: FCA, GETTY, SEC.GOV, ADOBE STOCK

Santander introduces crypto exchange cap

Santander has limited the amount its customers can send to cryptocurrency exchanges. With rising crypto fraud in the UK, and amid an uncertain crypto market, Santander has implemented limits for payments to crypto exchanges using mobile and online banking. As of November 15, 2022, there is a limit of £1,000 ($1,197) per transaction, with a total limit of £3,000 ($3,592) in any rolling 30-day period. Customers will still be able to receive money from crypto exchanges.

PROMOTING GREEN TECH

BCS, the Chartered Institute of IT, has launched a new campaign to promote tech's part in the drive to net zero. *Net Zero Digital* is a series of short films exploring new technology initiatives that help reduce CO2 emissions across society, but also those that reduce the technology industry's own carbon footprint, such as green data centers. To watch the films and engage with the campaign, visit netzerodigital.bcs.org.

Sunak abandons powers to overrule regulator

UK Prime Minister Rishi Sunak has abandoned proposed post-Brexit powers that would allow the government to overrule regulatory decisions. The proposals for "call-in" powers would have enabled MPs to question the outcomes of regulatory decision-making where they deemed it to be in the public interest. These powers have now been scrapped, following criticism from the Bank of England and FCA – which expressed concerns that their independent decision-making powers would be undermined.

OVERSIGHT IN AN ERA OF OUTSOURCING

The SEC has proposed a new rule and amendments to the Investment Advisers Act of 1940 that would require investment advisers to conduct due diligence and monitoring before outsourcing certain services. As the use of third-party service providers continues to rise, the SEC is becoming acutely aware of the potential risks where there is not "appropriate adviser oversight". Under the proposals, advisers would have to satisfy specific due diligence elements before retaining a service provider, and carry out periodic monitoring thereafter.

> *"When an investment adviser outsources work to third parties, it may lower the adviser's costs but it doesn't change the adviser's core obligations to its clients. [This] proposal specifies requirements for advisers to ensure outsourcing is consistent with those obligations"*
>
> **GARY GENSLER, CHAIR OF THE SEC**

New ESG code of conduct for ratings providers

The FCA plans to form an independent group to develop a code of conduct for ESG data and ratings providers. As financial services firms continue to integrate ESG into their products and activities, third-party ESG data and ratings providers are increasingly relied upon. The FCA aims to take a coordinated approach to the development of the code, to promote the rapid development of best practice and a consistent, global standard.

FINRA charges firm and staff for text failure

FINRA has charged a firm and its senior employees who conducted business operations on prohibited communication channels. Over the course of three years, at least 24 employees (including senior staff) spoke about business matters in text messages that fell outside the firm's approved communication platforms. As a result, the firm was unable to submit them to FINRA when requested. The firm received a $1.5m fine, while its Head of Investment Banking and Director of Research were both fined $15,000.

> The SEC and Chair Gensler are serious about one message – comply or pay up”

Got to get a message to you

The SEC wants firms to understand they have to sort out recordkeeping compliance for texts and mobile apps, or face paying substantial fines

By **CHIP JONES**, *Executive Vice-President, Global Relay*

In mid-November, the SEC released its 2022 fiscal year enforcement results and statistics. Unsurprisingly, 2022 was a record year from a money ordered perspective, totaling $6.4bn. Of that total, $4.2bn was in penalties, which was almost four times the amount for any of the past five years. What does it mean? In short, that the SEC and Chair Gary Gensler are serious about one message, “comply or pay up”.

Of that $4.2bn, $1.2bn stemmed from SEC settlements with 16 broker-dealers and one investment adviser for widespread books and records violations. These centered on business communications to clients and fellow employees on personal devices. Gensler said: “Since the 1930s, such recordkeeping has been vital to preserve market integrity. As technology changes, it’s even more important that registrants appropriately conduct communications about business matters within only official channels, and they must maintain and preserve those communications… we will continue to ensure compliance with these laws.”

In the past, many broker-dealers and investment advisers looked at the occasional violation or regulatory fine as the cost of doing business. With these regulatory actions, the SEC has triggered a paradigm shift in how firms will think about such matters.

IMAGE: ADOBE STOCK

Recent regulatory and industry conferences have been abuzz with questions: What do we do now? When is the other shoe going to drop? Will the SEC continue to bring these cases? When will FINRA jump in? The answers are simple. Yes, the SEC will continue to bring these cases and FINRA has already jumped in, taking action against firms and individuals for not capturing and supervising business communications on employees’ personal devices.

In the past, firms simply prohibited business communications via personal devices and had employees sign periodic attestations affirming that such communications were not occurring. The pandemic greatly accelerated the sending of business communications via personal devices. It is this practice that financial services firms and regulators are trying to get under control. Sanjay Wadhwa, Deputy Director of Enforcement at the SEC, said: “The time is now to bolster your record retention processes and to fix issues that could result in similar future misconduct by firm personnel. In line with this first-of-its-kind group resolution and our December 2021 settlement with JP Morgan Securities LLC, staff will continue efforts to enforce compliance with the Commission’s essential recordkeeping requirements.”

Gaining control of employees using personal devices for sending business communications is easier said than done. When statistics show that text messages have a 98% open rate, compared to 20% for email, and that text messages have a 45% response rate compared to 6% for email, it’s difficult for employees to stop. Regulators understand this texting phenomenon and are not saying “don’t do it”. What they are saying is business texting is fine if done compliantly under books and records requirements. Regulators have sent a clear message that the days of a texting prohibition and attestation are behind us and this practice now needs to be bolstered with a compliant texting solution.

Global Relay offers a fully compliant solution that captures text messages, placing messages in the Global Relay archive for review and supervision. In addition, the solution can also capture WhatsApp and voice calling, if needed. Firms often hear from employees that they don’t want anyone viewing personal text messages. Our solution keeps personal and business texts completely separate, maintaining an employee’s privacy. Global Relay can even use an employee’s office phone number for texting, reducing the possible confusion from a new phone number.

Financial services firms have reached a fork in the road. They can continue with the antiquated practice of prohibiting business texting, coupled with a periodic attestation; or they can layer on a compliant texting solution that allows individuals to communicate with clients and fellow employees via a platform that can be captured and supervised. Given recent enforcement actions taken by the SEC, FINRA, CFTC and other regulators, I would appreciate the peace of mind of knowing that I was doing everything I could do to avoid being the target of the next regulatory action. ●

To find out more about the Global Relay solution, visit www.globalrelay.com/collaborate/text-and-voice

A word of warning on crypto regulation

It has been a difficult time for cryptocurrencies, with the dawn of another "crypto winter". As regulators look to step in, can we trust them to do the right things?

By **STEFAN RUST**, *CEO of Laguna Labs and former CEO of Bitcoin.com*

The last year has been an eventful one for cryptocurrency, to say the least. Between the collapse of the Terra Luna ecosystem in May and the recent implosion of FTX, the world's second-biggest crypto exchange, there is no denying we are now in the middle of a bleak "crypto winter". With millions of users' savings wiped out practically overnight by these black swan events, it's no surprise that global regulators are rushing to develop frameworks to oversee the cryptocurrency market.

The latest country to have announced plans to recognize cryptocurrencies as regulated financial instruments and products was the UK. Its recently installed prime minister Rishi Sunak is the youngest UK PM of modern times and also a former banker. He is well known for having progressive views on cryptocurrency, having publicly stated his plans to turn the nation into a crypto hub.

This process begins with ramping up regulatory oversight, with the British parliament recently voting to include crypto assets in the Financial Services and Markets Bill – a piece of legislation that outlines the UK's post-Brexit economic strategy. This move was welcomed by the market, with bitcoin and ether up 5% and 12% respectively on the day following the announcement.

Finding a new regulatory route

It is positive news that the UK, a major global financial center, is finally recognizing bitcoin as an asset class in its own right. But following the unexpected and swift collapse of FTX in November, it has become more apparent than ever that cryptocurrency must avoid going down the traditional finance route at all costs.

Until November 8, 2022, FTX was the second-largest crypto exchange in the world, valued at $32bn. Yet in the space of a few days, the exchange became insolvent after news emerged of an $8bn hole in its balance sheet, caused by unethical and risky lending practices. This latest disaster is eerily reminiscent of the fall of Lehman Brothers in 2008 and is an important reminder of the failures of the current financial system.

While a rapid regulatory response may be the answer to flush out bad actors from the crypto industry, an important distinction must be made between centralized cryptocurrency platforms, such as Celsius, Voyager and FTX, and decentralized finance (DeFi). The former take custody of users' assets, therefore exposing them to counterparty risks, and have been at the center of the latest crypto market downturn. Just like banks in the run up to the global financial crisis (GFC), they used customer funds to take on excessive leverage. It's clear that this centralized model – based on the cult following of crypto moguls at the helm of billion-dollar empires – breeds corruption, eventually causing crashes that wipe out billions.

DeFi, on the other hand, is a permissionless and trustless financial system that is fully transparent, not controlled by any one individual, and which never requires users to relinquish custody of their assets. None of the dominoes that have fallen in recent months have been connected to this burgeoning ecosystem. Yet it is more than likely that global regulators will tar all cryptocurrency service providers with the same brush when developing legislative frameworks. This would be detrimental to the entire space and set DeFi development back many years.

We should be asking whether the existing regulatory frameworks are fit for the burgeoning world of digital assets"

The role of central banks

We are already witnessing issues emerge from attempting to apply traditional frameworks to blockchain. Witness the birth of central bank digital currencies (CBDCs) in a number of countries across the globe (read more about this on page 26). The concept of CBDCs is key to the UK's plans to become a cryptocurrency leader, while they are already being implemented in China and explored by more than 100 other nations. While CBDCs are built using the same blockchain technology that powers the Bitcoin network, this is where the similarities end. Unlike the world's biggest decentralized currency, CBDCs are issued by central banks and are therefore centrally controlled and managed. As such, CBDCs are the product of the same broken financial system that has caused crisis after crisis, resulting in the widespread loss of capital and trust in the traditional financial model. This model is no longer working on a corporate or sovereign level. The largest financial institutions continue to be embroiled in corruption scandals, while central banks are struggling to keep runaway inflation under control.

As such, we should be asking ourselves whether the existing regulatory frameworks are fit for purpose when it comes to the burgeoning world of digital assets. Instead of rushing to bring cryptocurrency into the fold, regulators should be mindful of the enormous value of the decentralized monetary system, one that was developed as a direct response to the GFC. The latest crisis in crypto only serves to underscore the important role DeFi can play in reshaping the future of finance. Regulators must act carefully to avoid stifling innovation. ●

WhatsApp-enable *your business*

Words:
MARTIN CLOAKE
and **ALEX VIALL**
Illustration:
TONYA GOLMANT

Since its launch in 2009 messaging app WhatsApp has become ubiquitous, thanks primarily to its simplicity and ease of use. With more than two billion users worldwide, it has also become a regular business tool. But in a regulated environment such as financial services, all messaging comes with compliance concerns

Before 2009, if you wanted to send somebody a message on your phone, you sent a text. You may have messaged them, or possibly sent an SMS. You did it using a variety of services, and what you called it depended to some extent on the service you used. Today, you almost certainly WhatsApp (WA) the people you want to contact. A piece of software launched in 2009 has become so successful, so ubiquitous, that it has become a verb.

»

The key to WA's early popularity was its brilliant simplicity. People loved the idea you could use a phone number to exchange information with people on the internet, without needing extra layers of operator plans or additional costs. WA offered a simple way to optimize the tech everyone already had. That's why today, according to statistics compiled by specialist website Business of Apps, there are more than two billion WA users on the planet, sending over 100 billion messages a day and spending over 200 billion minutes on voice and video calls.

This ease of use and universal reach has presented the financial compliance sector with a problem that it shouldn't have.

"WhatsApp has gone on a huge growth spurt since it arrived in 2009, and finance people have always used it," says Warren Roy, founder and CEO of Global Relay. "They may have used it initially in a personal capacity, but it got adopted in a business capacity naturally."

Senior management denial

The trouble is that too many senior management teams spent too long in denial about their accountability for employee use of WA from a strict recordkeeping perspective. "They used the defense of saying they had policy that forbade its use," explains Roy. "We called it a 'gray area' – a strata of unregulated communications that tied together the whole financial world. We knew this chicken was coming home to roost. And it did in the shape of the JP Morgan fine."

The $200m fine JP Morgan Securities had to pay has caused subsequent upheaval throughout the financial sector. But, says Roy: "For people to be surprised by the fine is a shock." That is because we've been here before. With email.

It's all in the number

Most WA usage is messages sent on phones. Corporates need to think, as they seek to control employees' WA use, that everything relates to the number, not email. The only way a corporate can control WA is by owning and managing the number. It splits personal and business comms and ensures access to data when requested by a regulator or law enforcement can't be challenged. And people leaving don't walk out with clients' details on a BYOD phone.

2 billion+

WA users worldwide

"This is exactly what happened when email emerged," explains Roy. "It's about how to get business done faster. Human nature is behind this – people want to communicate with clients on their preferred channel. This is a fact of life. With personal email, people eventually realized they had mixed their personal world with their corporate persona. Not with any bad intent, just through lacking the discipline and understanding to know why you need to separate those worlds.

"It took us five to seven years of compliance mentorship to make sure people were not doing business in their personal mail and not sending out personal stuff from their corporate device. This is often the timeline for resolution on these sort of habitual changes that are driven by a significant technological advance."

Walking away from a community

He adds: "It will now take many years to rid the finance community of illicit use of WA as it is hard to just exit a community where there is so much opportunity. Walking away from that is not something people are willing to entertain, so businesses have to find compliant solutions because they really do need it."

A short history of WhatsApp

1/2009 – Former Yahoo! employees Brian Acton and Jan Koum launch WhatsApp 1.0 as a comms app showing status and username

6/2009 – Apple launches push notifications and WA updates so push notifications can be sent when users update status

8/2009 – WA 2.0 launches as internet instant messaging app that users log in to with a phone number. It isn't device-specific (like Blackberry Messenger) and doesn't require a unique ID (like Skype and G-Talk). Gains 250,000 users in months

11/2009 – Beta stage ends. WA launches on Apple's App Store

12/2009 – WA adds ability to send photographs on iPhones

8/2010 – Support for Android devices. 10 million active monthly users

8/2013 – Voice messaging. 300 million active monthly users

1/2014 – WA web client launches

2/2014 – Facebook buys WA for $19bn. 465 million active monthly users

That's why, continues Roy, so many prospective customers over the past 18 months have all been asking whether Global Relay has a WA compliance solution.

As a result, Global Relay approached Meta, which acquired WA for $19bn in 2014, to work on a partnership solution. It took time to find an open door, but even then there was little initial interest.

Global Relay was proposing a compliance solution, while Meta wanted a marketing tool to enable WA to be the first and last point of contact customers had with a business.

Roy describes it as "two people running down the beach with their arms wide open and totally missing each other as they sail past".

Then JP Morgan hit the iceberg. Financial services businesses knew it was no longer plausible to deny they were responsible for the communication channels their employees used; Meta executives realized the potential for extreme brand damage.

JP Morgan paid $200m for failing to regulate employee comms

"Overnight they got the federated thing," says Roy. "Their service model is not designed to support a federated model at the scale our customers require, managing tens of thousands of WA Business Accounts (WABAs). This allows dynamic entry for WA into finance applications."

A provider you can trust

All of which is why Global Relay has been putting so much into delivering a solution that enables clients to WhatsApp-enable their business.

"The messaging aspect and the admin aspect make up what we provide here," Roy explains. "You can, through a business service provider (BSP) like us, send messages from a proprietary client through the BSP and then on to WA and its community.

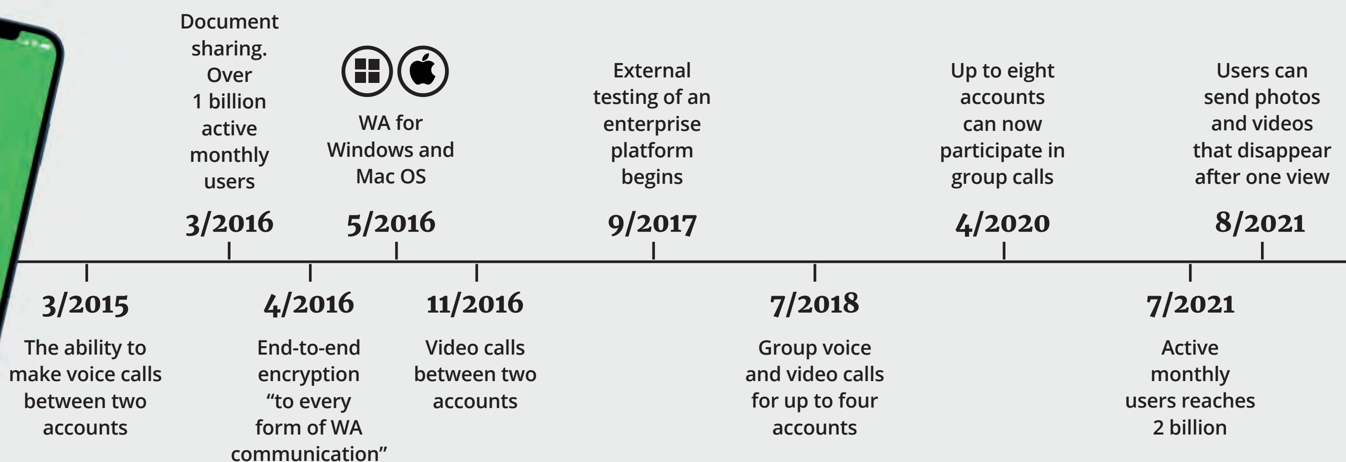
"That's the flow but there is no other compliance provider like Global Relay as an application end user. The big difference is the administrative side, which means not only can we send messages back and forth as a BSP through an API, but we have an administrative API that allows us to operate WABAs. There is as much complexity in the WABA automation as there is to support the messaging."

In parts of the industry, the reaction to the JP Morgan fine has been to lean towards a return to requiring staff to use only approved corporate channels. But Roy says this doesn't address the issue that the market has moved on. Coming to terms with that requires rethinking the approach to business communication from the bottom up.

"What it is crucial to understand is that WA keys into a phone number and in the regulated world phone numbers can be represented as landlines, corporate phones or BYOD," Roy explains. "As far as financial »

We didn't set out to build a company. We just wanted to build a product that people used"

WHATSAPP FOUNDER JAN KOUM



regulation goes, granting control to customers over phone numbers ,so your messaging is clearly owned by the regulated entity, is vital. This removes the concept of personal WA so it becomes business WA. Control over WA accounts and control over the flow and management of the phone number are essential for compliance purposes.

"Microsoft is aligned with corporate governance but it doesn't contemplate your relationships so it doesn't support federation or following the market as it is so business-centric. Relationships in finance, whether professional, personal or client, do not reside on enterprise tools; they are on Bloomberg, Reuters and the social channels such as LinkedIn. The question is not how to stop people using WA, it is how do we embrace its use compliantly."

Sticking to existing networks

It's possible to WA-enable a landline as well as a mobile, whether corporate or BYOD. An individual's identity is their telephone number, it's the way they are recognized and the way they maintain a business presence – an asset manager is likely to have around 300 contacts on average.

"Asking them to change that and change where they do their business is very tough," says Roy. "So the best solution is to transition to using WA on their current method of corporate communication. Landline is very US-centric but BYOD and corporate is more prevalent elsewhere. New numbers are OK for new employees but no one else. Landline numbers and corporate numbers are sticky. In principle firms don't like BYOD as they might lose their customers when people leave. But no one likes carrying two phones."

Businesses need to be careful not to consider WA solely through the prism of compliance – important though that is. There is vast opportunity to be seized, as Roy explains: "People think the need right now is just to archive your WA messages. We are enabling business so that you can have a corporate branded presence – a green tick as a verified business account, which means you can build your brand on the largest social messaging network in the world. It represents your company and corporate profile."

Global Relay has developed a solution that takes advantage of this opportunity. "We use a WABA with an API underlying it," says Roy. "This is what corporate clients want, as it gives them the opportunity to market to business APIs. That provides open marketing to the whole WA business community with controls around it that comply with GDPR to allow for opt out."

Over 200 billion minutes are spent every day on WA voice and video calls

The Meta partnership

This ties in neatly with Meta's ambition to make WA the place where business is conducted end to end. "The business can allow its employees to be represented by business name, line of business and description of their business account – and that is certified so this person is who they say they are, and it is an authentic and verified business," Roy explains. "This is a double win as it gives the community certainty. We provide all this set up in an automated and scalable fashion to ensure all employees can have a WA business card for when they communicate and that all the compliance and privacy requirements are met.

"WA is building a full corporate communication ecosystem that Global Relay has integrated with to make it very easy for regulated firms to onboard. There's a complete compliance framework around the marketing and management of inbound interest, and it's handed off through a workflow that is underpinned by a CRM – all without leaving the WA world.

"It is secure; it builds your brand; it's compliant; it gives you excellent marketing tools; and it allows you to get ahead of your competition. Scamming and phishing can be resolved in a way that email has not managed to."

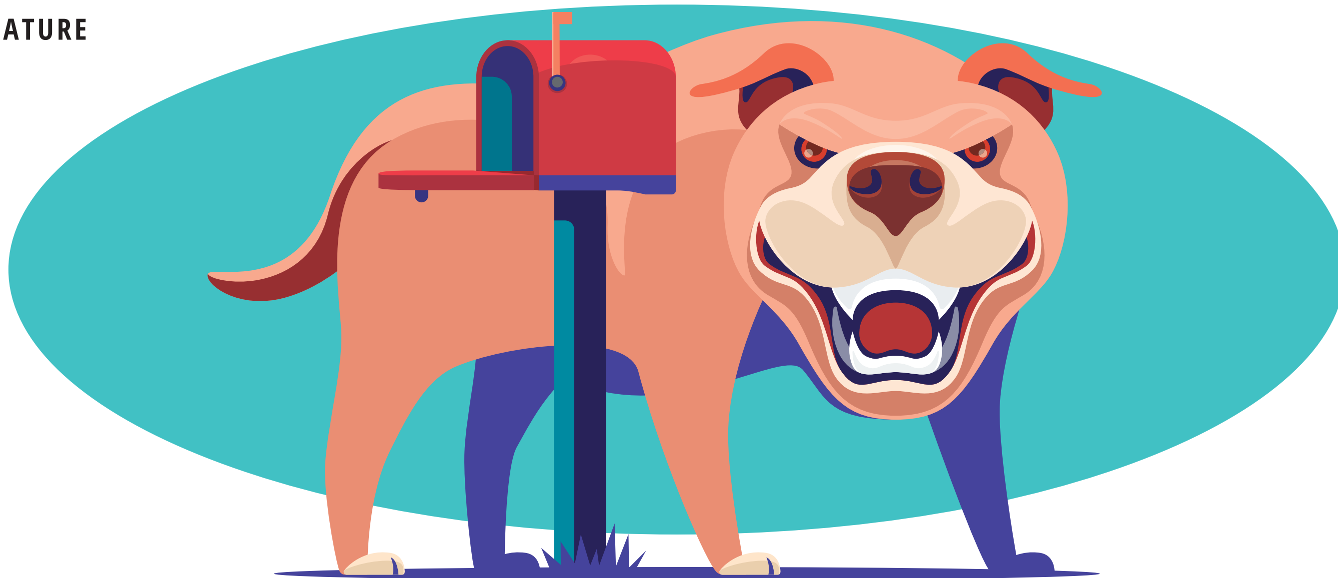
WA is here and for now is thriving. The trick is to harness its power and plug it securely into your existing infrastructure. As to how long it will take for a new arrival to usurp WA, the clock is probably already ticking. ●

The future of business messaging apps

WhatsApp wants its platform to be the first and last place you connect with customers – and the race is on to be the one 'business app' where everyone can connect, market, communicate and transact in a complete business ecosystem. Right now the two fastest out of the blocks are WhatsApp and WeChat.

Noteworthy is their approaches in creating distinct corporate applications that are verified, official and controlled. This is a transparent and almost-regulated approach. Signal and Telegram, also popular for business communication, have remained strictly consumer-focused, and offer a place where dialogue remains veiled, if that's what you are looking for.

Also, don't write off new entrants to this race; have you heard of a guy called Elon and his passion for Tweets?



UK WATCHDOGS

widen their reach to critical third-party providers

Financial regulators in the UK are concerned about providers of critical support services getting too big to fail. Is this a justified fear, or simply an excuse to exert greater control over the tech giants?

Words by
BEN EDWARDS

As banks increasingly rely on cloud-based technology, there are mounting concerns among lawmakers about what might happen to the financial system if one of those cloud providers was to fail.

"There's a paranoia in government at the highest levels about the concentration among cloud providers," says Alex Viall, director of regulatory intelligence at Global Relay. "There's a fear about what could happen if one of those providers – Google, Microsoft Azure or AWS – gets taken out or sold to China or whatever. If a big financial market infrastructure provider has everything with one of those cloud companies and there is a failure, there are potentially many parts of the financial system that could fall apart."

The concern has prompted the UK government to propose plans to regulate critical third parties (CTPs) that are systemically important to the functioning of the financial system and where those services are not already regulated by any of the UK's financial watchdogs. To get the ball rolling, the Financial Conduct Authority (FCA), the Bank of England and the Prudential Regulation Authority (PRA) published a joint discussion paper in July outlining how they could oversee resilience of CTPs as part of the Financial Services and Markets Bill that is currently going through parliament, which would give the UK Treasury (HMT) final say over who and what counts as a CTP.

"Even pre-Covid the Bank of England, the FCA and the PRA had said they needed to find a way of increasing resilience in the financial sector," points out Ben Arram, practice lead at financial services regulatory consultancy Bovill. "HMT would ultimately have the authority to designate a company as a critical third party, but they are going to be doing that on the basis of recommendations from the supervisory authorities, whether that's the FCA, PRA or Bank of England."

The rule of three

As part of that determination, the regulators are looking at three main categories: materiality, concentration and potential impact. Materiality, says Arram, looks at the dependency of firms on these third parties for the delivery of important financial services. Concentration looks at how many firms or sectors are using a particular third party. And then potential impact tries to gauge what the failure of one of these third parties would look like for the financial system as a whole and looks at whether there are things companies can do to mitigate that risk, such as how easy it would be to substitute one provider for another, says Arram.

While many expect the regulation to be targetted at cloud services providers, the discussion paper said it would be looking at non-technology providers as well.

"That could include services such as cash distribution or claims management for insurers," says Luke Scanlon, head of

IMAGE: GETTY

fintech propositions at Pinsent Masons.

Other types of financial services providers may also eventually fall within the scope, even if they escape the initial round of designations.

"It is a land grab in terms of who they want access to and be able to engage with in a more open way," says Vidhi Mahajan, a senior associate in Ashurst's London financial regulation practice. "The immediate priority will probably be the larger tech providers, but there is a market of financial services businesses such as trade reconciliation software providers that operationally underpin a lot of our financial markets, and there is a body of those that aren't regulated already who could be next in the firing line."

While there won't be any financial penalties for CTPs that fail to comply with the regulations, they could potentially face other sanctions, such as being blacklisted from the market.

"It will be lighter touch regulation than would apply to fully authorized firms, but they can be subject to specific rules as to what they can or can't do, information requirements, investigations and testing of resilience standards," says Tony Watts, a financial services partner at Keystone Law. "There doesn't seem to be any proposal for the regulators to be able to fine CTPs, but it will be possible to censure these companies and prevent them from providing their services in the future."

Part of a global trend

Concerns about CTPs are not limited to the UK. The EU is introducing its Digital Operational Resilience Act (DORA), designed to ensure firms and CTPs providing digital services to those institutions can withstand IT-related disruptions. In October, the US Securities and Exchange Commission proposed new rules for investment advisers outsourcing certain services to third parties.

"It's a land grab in terms of who they want access to and be able to engage in a more open way. The immediate priority will be the larger tech firms"

"This is definitely on the agenda globally, but cross-border poses so many challenges," says Mahajan. "Most of these major providers are headquartered in the US, so to what extent UK regulators can monitor what is going on over there is going to be a challenge. The EU has put a pretty firm line in the sand in that firms using third parties will have to use ones that have a base in the EU, so the question is if the UK will expect providers to also have a base in the UK."

One potential unintended consequence of the regulation is that it could deter innovative US or other non-UK fintech companies from entering the UK market just in case they find themselves caught up by the rules in the future.

"I don't think it will ever stop your big tech companies from doing what they're doing – they will find ways to live with this and work around it," suggests Mahajan. "But for some smaller US-based software providers that were looking at UK expansion, they might just look at this now and say the barrier to entry is too high because they could be next in the firing line."

The regulation may also exacerbate concentration risk by making it harder for smaller third-party service providers to grow. "There is a concern that there are perhaps too few large providers and by imposing additional costs on medium-size providers you make it harder to get more sizeable providers," says Michael Lewis, a partner at Osborne Clarke.

"There will undoubtedly be an additional compliance cost imposed on the third-party service providers. It's not clear who will bear that cost"

Passing on the cost

Another potential issue is around cost, with financial services providers' customers ultimately likely to be expected to indirectly pick up the tab.

"There will undoubtedly be an additional compliance cost that will be imposed on the third-party service providers, and who will bear that cost?" asks Lewis. "It's unlikely to be the third-party service providers, they are likely to pass it on to the firms, which in turn will pass it on to their own clients."

The regulation might not have any direct impact on financial institutions, but it could have potentially beneficial knock-on effects, such as helping tech providers better understand the regulatory issues facing banks."There's some debate about how much difference it will make," says Scanlon. "It doesn't change the accountability of financial institutions at all, but there is hope it will lead towards more standardization and that providers will understand why financial institutions are asking outsourcing providers for audit rights and to participate in their business continuity tests."

There is also an argument that it could help make contracts between banks and big tech companies fairer.

"In theory it would give regulated firms more leverage over CTPs when it comes to them agreeing on terms and conditions," explains Viall.

While it may be some time before a decision is made on which firms will be designated as CTPs (comments for the discussion paper were due by December 23, with a consultation paper expected after that) market participants should start thinking how changes might impact them, says Arram.

"These are things that firms don't want to be looking at further down the line, now's probably the time to start thinking about it and planning," he says. ●

A life of two halves

Jennifer Shapiro-Lee is a New York City-based therapist, who delivers wellbeing programs for employees in financial services and other firms. Following a successful career in fashion, and having experienced a personal tragedy, she retrained as a therapist, graduating from Columbia University in 2010. After time working as a psychotherapist, a clinical social worker and a clinical trainer, she founded her own practice in 2017. She now leads a team of several licensed psychotherapists, with different specialties and expertise.

Jennifer SHAPIRO-LEE

Therapist **Jennifer Shapiro-Lee** is on a mission to get the tough-talking types of Wall Street to open up more and discuss their mental health, driven by a desire to stop the spread of an invisible killer

Words: **RICHARD CREE**
Photography: **MELISSA LONG**

Gordon Gekko may be spinning in his braces, Jordan Belfort howling in his lair, but Wall Street has changed. Forget "greed is good", the most effective financial services firms today are built on diverse, open cultures embracing concepts such as mindfulness, wellbeing and concern for the mental health of staff.

In this new age of awareness, it's not surprising to find Jennifer Shapiro-Lee walking the financial corridors of power. Shapiro-Lee is a therapist. While she offers the usual one-to-one support for individuals, couples and families, she also delivers preventative corporate training programs on employee mental health issues and wellbeing.She even teaches meditation, allowing would-be Jordan Belforts the opportunity to develop a different kind of chest thump (and chant routine).

Right now, there are plenty of reasons for those in financial services to feel under pressure. Markets haven't settled down since Covid and then came the war in Ukraine. Volatility and uncertainty are rife. According to a June 2021 survey by the Banking Administration Institute, 37% of respondents felt the pandemic had a negative impact on their mental health. Aon's most recent Global Wellbeing Survey identified the top wellbeing risks facing financial services companies as stress (67%), burnout (46%) and anxiety (37%). The same report highlighted the extra challenges remote working is causing for employers, citing difficulties managing employee wellbeing at a distance; the potential for burnout and poor mental health, as remote work causes loneliness and makes it harder to separate home and work life; and a potential increase in security, conduct and fraud exposure as risk frameworks are challenged by remote working.

In the UK, responsible investors launched the CCLA Corporate Mental Health Benchmark to "provide a window on how 100 of the UK's largest companies approach and manage workplace mental health, based on published information".

> *I'm brought in on other people's behalf. But people aren't as open to it as they might be"*

Shapiro-Lee is unsurprised by this collective uptick. "There is always stress and anxiety around change and volatility. And research shows money remains one of the big stress factors. I work a lot in financial services, going to companies to offer mental health and wellness support for employees. It's a stressful job managing and working with other people's money."

Lots of firms in the sector are serious about improving employee mental health, in order for people to perform well, be better with clients and take care of themselves. "Research shows that the companies that bring in these resources for staff get better results. It has a direct positive effect on the bottom line. There is less absenteeism, as fewer people take sick days, and a decrease in stress and anxiety," says Shapiro-Lee.

Asked whether she has met resistance from clients or teams in an industry still known for macho posturing, Shapiro-Lee is a model diplomat, saying that regardless of industry, there is often an initial resistance or reluctance to engage. "I'm brought in by the head of HR on other people's behalf. People are definitely resistant or hesitant. There is still a bit of stigma with these things and people are not as open to it as they might be."

Shapiro-Lee is talking via Zoom from her office in New York, an example of how remote video calls have been normalized by the pandemic. Covid has also changed perceptions of mental health. "A silver lining from Covid and lockdowns is that it has reduced the stigma of mental health," says Shapiro-Lee. "People now recognize that lots of people across the world suffer from a mental health condition. When you go into an organization today, there is more acceptance. Covid normalized that. A lot of people who never wanted help [before] come forward now. More people recognize they need help and companies realize employees need support and are making services available."

Shapiro-Lee adds that during Covid a lot of managers were coping with stressed employees and preventing this affecting »

clients. "It was a very stressful time. People didn't know what to do and didn't have the tools or training to deal with it."

Shapiro-Lee's corporate work is mostly pre-emptive. "I don't get called when there's a crisis. It's more often the senior team seeing the need for prevention. A lot of large organizations are offering this sort of support. Google, Meta and large insurance companies are doing it. Managers are saying people are burned out or anxious after the past few years and more people are coping with depression. I run different sessions, focusing one week on depression, the next on anxiety, or run a session on how to decrease stress or manage life-work boundaries. There are practical things everyone in the room can benefit from."

So how did Shapiro-Lee get here? After all, it's not the obvious trajectory for someone who started out in fashion. She says she always had the feeling she wanted to pursue two different careers, having an interest from a young age in mental health and fashion. "I had a really good career in fashion and was traveling all over the world and had a team who were doing really well. For some reason, I applied to grad school to go and be a therapist. In the end I didn't do it. I had this great job and couldn't explain why I was leaving, even though it felt like something I was meant to do."

She says she has always been the sort of person other people open up to. With a natural ability to get along with people and be interested in their stories, she was a good candidate to be a therapist. But, when it happened, the switch from fashion was caused by a personal trauma, which caused her to rethink everything.

"In 2004, I lost my father to suicide. It was an awful, life-changing event. I never saw my father depressed. He was the CEO of a large hospital group. He ran this huge organization and worked till the day he died. We only found out after he passed that he had been going out of our area to get medicine for depression, because of the possible stigma. He didn't want anyone to know he was suffering, because he was the CEO of the hospital and had this amazing reputation. When I found out he was dealing with depression and anxiety and felt like he couldn't get help or tell people, I knew I was meant to help others in that situation."

So, she applied again to grad school and left her fashion career to enroll at Columbia University in New York City. She graduated in 2010 and launched her practice soon after. "I'm extremely passionate about my work. I go into companies and remember my father had been a CEO. You never know who's suffering. You don't know what people are going through behind closed doors. They appear to have perfect lives, but people have no idea. It's a silent disease. If you break your arm, you see it and fix it. And there's ways to fix this stuff, too."

Shapiro-Lee says the latest estimate is that one in four people suffer from a mental health condition. "It means in every company I go to, someone is suffering and people aren't seeing it. That's what I've made my mission in life. I've seen people transform their lives and save themselves through mental health treatment."

While mental health challenges, such as anxiety and depression, remain silent killers in the workplace and across society, we're all more vocal and more aware of them than we used to be. Shapiro-Lee agrees. "Organizations are using people like me because there's a need for it and people ask for it. People want a better quality of life and better work-life balance. Covid made people realize they only have one life. It makes you look at yourself and ask 'what am I doing with my life?' We want to take care of ourselves physically, mentally, spiritually and emotionally. The need was always there, but it wasn't as widely accepted before as it is now.

"Employees tell me what I do has helped them at work and home. People see others in the same situation and don't feel so alone. Often they say they didn't realize they could get help for themselves."

Before we wrap up the interview, we turn again to the pandemic and the effect of remote working. I ask whether she sees remote and hybrid working as a force for good or harm. "I see human connections are super important. But there are pros and cons to remote and in-person working. The hybrid model recognizes this. The challenge is that everyone's different. Some love working from home, others feel isolated; some feel productive at home, others feel it's impossible. Companies will have to be flexible, because staff want mental health needs acknowledged."

People have seen what's possible and know they can work well from home, the office or a hotel either side of a vacation. "It's about being in tune with staff and understanding their needs. There will have to be compromise. Employers, managers and leaders need to figure out what staff want. It's hard to meet everyone's needs perfectly." ●

Jennifer Shapiro-Lee can be contacted online at www.jennifershapirolee.com

Six ways to think positively

1. Stay upbeat
Before you go to bed, think of three wins from the day. Don't focus on what you didn't do or what went wrong.

2. Turn it around
Turn negative thoughts into positive ones. When something bad happens, ask what it taught you and focus on next time.

3. Be grateful
Focus on things you have to be grateful for. The more we train our minds to be positive, the less we focus on negatives.

4. Make a choice
There are lots of solutions to all problems. You can stay miserable, or tolerate it. Ask if you can fix something. If you can't fix it now, don't make everything negative. Stay upbeat and fix it when you can.

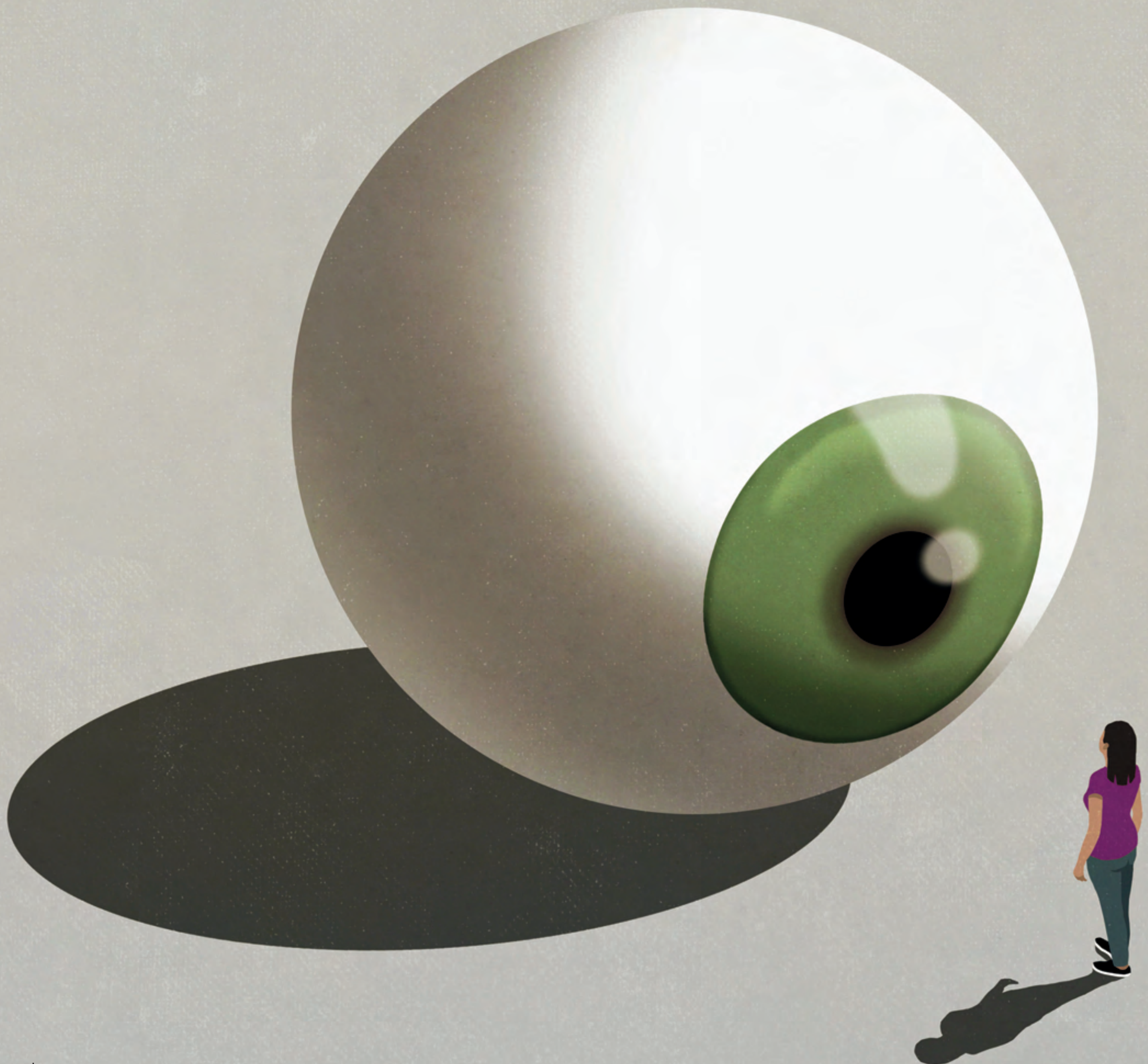
5. Accept what you can't change
If you are having an issue in a relationship, don't beat yourself up. Instead of blaming the other person, ask what you can do. Focus on how you react and respond in a way that works for you, because that's all you can control.

6. Don't be impulsive
When you're in an emotional state, try not to react. Take time to stop, take a breath and figure out a response. You may choose not to engage at all or to do so when things are calmer.

Trends in SURVEILLANCE

Even the established compliance practice of monitoring an array of data types for regulatory breaches and other forms of misconduct has evolved post-pandemic. But how exactly is the market changing, what are the key trends and where is surveillance practice heading?

Words by
ALEX VIALL



Speak to the experts on the frontline of surveillance and compliance and they point to a marked shift in practice in recent years, notably driven by a post-pandemic reset.

One surveillance practitioner *Orbit* spoke to anonymously, who has been at the frontline of this discipline for more than 20 years and currently works for a large global investment bank, sets the scene in a tier 1 bank: "Surveillance stalled somewhat during the pandemic," he explains. "Alert numbers went off the charts, as people were distracted and not as productive. Now we are just about back into the development cycle.

"A lot of the focus now is on coverage of areas like fixed income and exotics and getting that data into surveillance, but also asking what do you do with it once it is there."

Intense focus

He is absolutely convinced that we are moving into a distinctly new period.

"I have never seen regulators as interested in surveillance as they are currently," he says. "The focus is intense. This is because it has always been the poor relation to advisory, and this is just banks reaping what they sow.

"Surveillance is expensive to do well. The banks have tried to cut cost on the human resource to make up for what they pay for technology.

"It has led to a problem with making challenges and I think that the credibility and standing of surveillance in banks has got lower and lower. Regulators have twigged this and realized what an important component of compliance it is, and that this is probably the best place to gauge corporate culture.

"This focus has been a long time coming and is all happening at once – it is a global phenomenon and not regional.

Fragmented approach

Summing up where the trade side is headed, he tells *Orbit*: "There is fragmentation that we have not seen for a while. You used to have to buy SMARTS and do bits around the edge but there is no obvious vendor so many banks are going DIY, which might mean we get very different levels of surveillance that could lead to some positive reinforcement.

"This is where one bank identifies something and then the regulator goes to another and asks why they cannot identify the same thing. We have missed this sort of feedback in the fixed income and non-equity space."

Behavioral alerts

He continues: "We are also leaning towards behavioral alerts, too. But the balance is always between explainability/reliability versus innovation, and they are not aversive. But baby steps is the right approach here. We cannot go all in on AI overnight as we want to get every step right as we go along.

"We are lucky to have our very own real examples of spoofing we can train our data on. But this means some banks have different experience and sight and data – the tier 2s might not even have the data to train their models."

For Aaron Stowell, Director of Forensic Technology and Surveillance at KPMG, the key is convergence. He explains: "Convergence is taking place at the software level but no one has cracked it. The search for a holistic solution continues, and so right now it requires manually wiring everything together.

Better tuning

"There are some trading risks that require better tuning that are not well represented in existing rules or models," »

> *"The focus is intense. This is because surveillance has always been the poor relation to advisory, and this is just banks reaping what they sow"*

Stowell continues. "If you have never traded a particular asset before then you are going to get outliers, and that leads to some firms performing analysis in Excel spreadsheets and custom systems.

"The real innovation is allowing firms to build those rules quickly to import them into their trade surveillance system so it is all in one place, and the platform that allows you to do that will be the one that wins out."

I ask Stowell whether he has noticed any regulatory interest in voice and other data types and his answer provides a stark warning: "I have not seen regulatory focus to be so high – it is the detail of the questions, and what they expect us to find that is eye-watering. So now we face the reality that we are going to have to do stuff with trade and voice and comms that we were not doing previously.

"It is also about understanding where the issues are. The latest WhatsApp fines are interesting as what was made really clear is that it was a recordkeeping breach. In surveillance a lot of our problems come from bad data when we actually don't have the opportunity to do surveillance as we don't retain the data. That is not a surveillance issue – we need to be senior enough to make that challenge to the front office.

"The regulators are actually doing us a favor even though it might not feel like it when the enforcement strikes! But projects that had been on the backburner for some time are now coming to the fore – such as voice – and part of this might be due to the new hybrid work environment as a catalyst.

"But we had it on our to do list, plus with regulatory clouds darkening and new tech available the timing is right."

Holistic approach

I want to find out if either of our experts thought the prospect of carrying out holistic or integrated surveillance is any closer. Our surveillance practitioner has this to say. "Regarding the quest for a holistic solution, senior management and compliance want big wins quickly and some of the basics are not sexy but they are necessary.

"The start of doing holistic is actually doing case management properly and most banks are shockingly bad at this in surveillance. This, along with bad data handling, means there is siloed work with no standards.

"We are finally bringing everything together, tracking what we have to do, standardizing the data and we now have a closure rating matrix as a standard to bring out the risk from alerting, which is step one of holistic. Most places don't have it all in one place – they have to go to 10 systems to get the full picture. Bringing the alerts together is quite profound as you do spot stuff you could not have identified."

Structure and tradition

He continues: "Step two is the structure of the surveillance teams. I am not convinced that having a comms team and a trade team standing alone is the right structure. But that is tradition. Equities and fixed income might be a better approach, where one team looks at comms and trade together for that asset class.

"The offshore setups in many banks also hinder this. It is a slow burn as some bad structural habits persist that are beyond pure tech here."

Few readers will need reminding that enforcement issues around the use of personal devices is a particularly hot topic right now. Our surveillance practitioner provides an inside view: "It is very difficult still as we have the view that if someone wants to subvert the system and communicate on unrecorded channels they will, whatever the controls you have in place.

> *"I am not convinced that having a comms team and a trade team standing alone is the right structure. But that is tradition. Equities and fixed income might be better"*

Change expectations

"We have not been clear enough historically about our expectations and so there has always been an allowable gray area where if what you are doing is not business related you can use WhatsApp. This leads to other things though, even if the originating message or engagement was not about business," he continues.

"We look at change of venue surveillance and when we challenge people we find that by message 50 there is pricing and it is clearly business content in there. It happens. We need to change that expectation and so now, without exception, it is forbidden for you to have any contact with your clients on WhatsApp.

"This is step one and a short-term fix as we are trying to hold back the tide – banks actually banned the use of email when it first came out, which sounds appealing now.

"We never went BYOD but it was clear the devices we supplied were crap, so we heard the complaints and now we make them more appealing, with upgrades to new iPhones with better software and improved Office365 and ways to enable WhatsApp and WeChat via a Symphony connector, even though they are not very good long-term fixes. We are experimenting.

Bye bye BYOD

"It has killed the tech team's quest to go BYOD forever. We make the work device usable so there is no excuse or gray area. So if we investigate change of venue and we find people using a personal device there is no excuse – this is a culture change and a move we are making. The US regulations are extraterritorial and they sit very uncomfortably with GDPR as privacy has not got teeth in the US like in the EU. The broader ethical point around mass surveillance is also somewhat oppressive.

Stowell adds: "It comes down to the culture of the organization and many used to ban the use of personal devices on the trading floor. Others felt that practice was bordering on inhumane, and people

> *If someone wants to subvert the system and communicate on unrecorded channels they will, whatever controls you have in place to prevent it"*

need to get in touch with families in an emergency, so more leeway was allowed.

"Since the WFH environment kicked in, that has made everything harder. There is often a disconnect between the investment bank and group technology teams, but these new comms channels need to be assessed, approved and onboarded at deal speed – not two years later for WhatsApp, people are already using it. The time lag between initial use and capture is inevitably going to exist.

"However, people are only doing basic reconciliation, and most are not running effective rules or models to pick up venue change. Very few are taking advantage of what is possible, linking email signatures to mobile numbers and cross-referencing call logs to see which mobile devices are being used.

"Then there is aggregate analytics for traders and desks, so for trades being conducted you can do basic trade reconstruction for Dodd-Frank in 72 hours. Most are doing this manually and it is a hard problem to solve. If you have a trade and you cannot match that to a recorded comm you have an issue. That is the forefront – that is the expectation."

Is it likely that SMCR would kick in here around enforcement actions? Our surveillance practitioner warns: "The FCA has hinted that a review of business comms use is coming.

"SMCR has had a lot of impact despite no actual cases getting headlines – everyone is very scared so it has been a deterrent. Banks are often allowed to deal with the issues first and if FCA disagrees then they step in. But it does not look great – being fired seems reasonable punishment here.

"It is a missed opportunity for FCA if they don't use it, as for it to remain as something to be feared and respected, they need some precedent. Juniors on a desk cannot be blamed for following suit if their manager or supervisor is merrily using WhatsApp. Culture comes from the top.

Stowell adds: 'Why have the regulation if you are not going to use it? Now is the moment as there were some egregious instances. I am not sure when but I would be astonished if it does not happen. The indication is that one of the traders contacted their broker and encouraged them to delete the messages, suggesting a move to Signal which is encrypted. This is really unbelievable behaviour, and the fines reflect this. It suggests more must come.' ●

IMAGES: GETTY

THE FUTURE

for central bank digital currencies

Crypto has evolved over the course of a decade into a popular and widespread retail investment and payment method. Central banks have taken note and have started issuing their own regulated digital currencies

Words by
CARMEN CRACKNELL

The news in November of the Federal Reserve Bank of New York's participation in a 12-week digital dollar pilot project with Citigroup, HSBC, Mastercard, and others was overshadowed by the collapse of crypto exchange FTX earlier that month. The latter grabbed all the headlines, triggering a deepening of the bear market, also referred to as a "crypto winter".

But the New York Fed is just the latest entity to explore central bank digital currencies (CBDCs), despite the bad press around stablecoins, Bitcoin, and the underlying blockchain technology. Eleven countries have so far launched digital currencies, according to the Atlantic Council. These include Nigeria, The Bahamas, Jamaica, and several Caribbean Islands, while China, Russia, Saudi Arabia, and a number of others are in the development or pilot stage. A total of 19 of the G20 countries are currently exploring a CBDC.

According to the Digital Euro Association (DEA), around €1trn of funds has shifted towards cryptocurrencies and stablecoins, causing parallel circulations of money to emerge next to the ones monitored by countries' monetary authorities. The market cap of stablecoins in early 2022 was $190bn.

The European Central Bank (ECB) is among those seriously focused on the endeavor. "We recognize the benefits of discussing […] cross-currency payments made in retail CBDCs and the potential effects of giving foreign users access to domestic retail CBDCs under specific conditions," said ECB President Christine Lagarde in October.

Not so stable

Currently the closest thing to a CBDC is a stablecoin. Collectively, nearly $3trn in stablecoins such as tether and USDC were transacted in the first half of 2021, according to McKinsey. But they have also faced turmoil and scandal, not least the collapse of Luna and its associated stablecoin terraUSD in May, while Tether Limited Inc was fined $41m in October 2021 for violating the Commodity Futures Trading Commission (CFTC) regulations and the Commodities Exchange Act (CEA).

In contrast, a CBDC would in theory be risk-free, since central banks are authorized to print money and, in times of recession and economic downturn, act as the lender of last resort. Stablecoins simply rely on the entity that issues them, and on the credibility and enforceability of their pledge to maintain value over time.

"I don't see a risk related to a potential collapse such as that of a stablecoin, because the price of the CBDC is always the price of the euro," says Dr Jonas Gross, Chair, DEA. "There is no exchange rate to the euro. However, as it is a digital form of money, we need to be sure that the likelihood of exploits and hacks is limited. Another risk is a destabilizing of the financial sector via disintermediation or via accelerating bank runs. This is why the ECB thinks about limits on CBDC holdings."

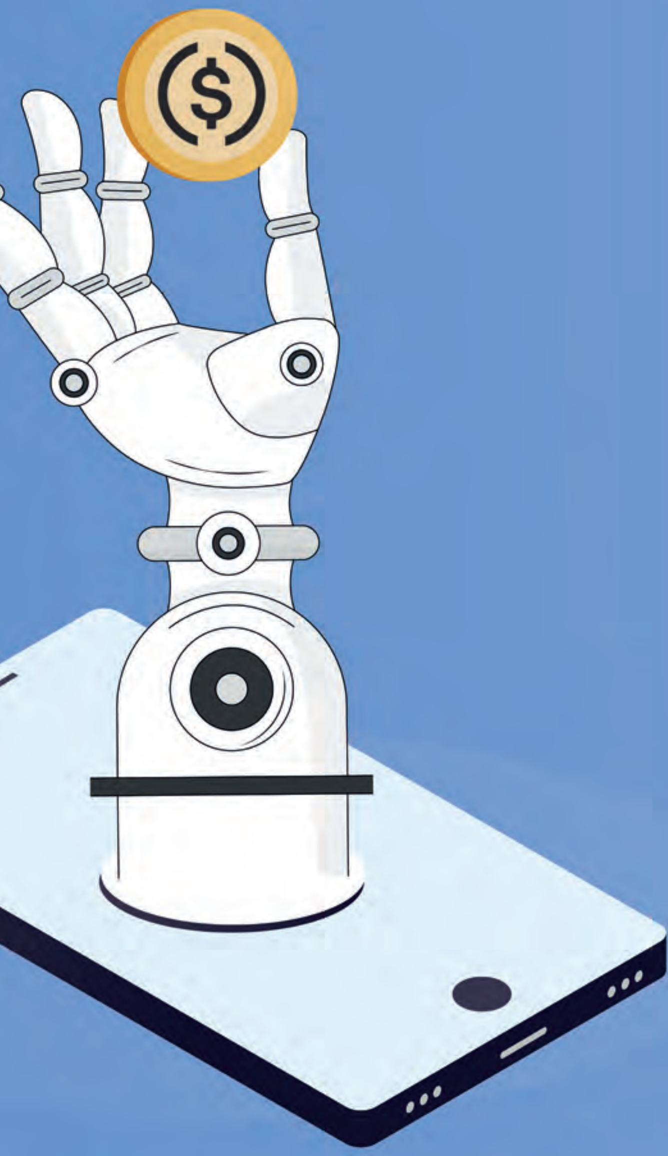
But there are some who think the bad press stablecoins has received has spurred governments into regulating an industry that its founders had hoped would remain decentralized and therefore unregulated. SEC Chair Gary Gensler even said in October that despite their beginnings, digital currencies have become highly centralized.

"Central banks and regulators will use the collapse of FTX as a way to promote CBDCs as a "safer crypto environment for users," says Stefan Rust, CEO, Laguna Labs and former CEO of Bitcoin.com. "This may precipitate a cold war between decentralized stablecoins and CBDCs, as users concerned about their liberty move more towards the former as governments push the latter harder to give them full control over their citizens' spending."

Inclusivity and useability

When Rishi Sunak took over as UK Prime Minister, the British government was quick to recognize crypto as a regulated financial

IMAGE: GETTY



instrument, in a bold move to make the UK a "cryptoasset technology hub". This means developing CBDCs on both the wholesale and retail side.

"Financial inclusion remains a key priority area for the Bank of England, and maintaining access to public money is a means of ensuring that such policy objectives can be delivered," says Jannah Patchay, Policy Lead, Digital Pound Foundation. "Public money also represents a fundamental policy implementation and delivery mechanism for the UK government, which could be strengthened in the future through the introduction of a functionally-rich CBDC."

The Bank of England has been clear that any UK CBDC would work alongside – not replace – cash and bank deposits, and that it would continue to provide cash for as long as the public still wants it. What is key is that there should be cross-border collaboration. The ECB's Lagarde has said that international cooperation on digital currencies would "remain essential".

"On a cross-border basis, there is a need for central banks to collaborate on implementing mechanisms for interoperability between different CBDCs. There is potential for the private sector to assist with this, for example SWIFT's recent work in this area," says Patchay.

"If a digital euro is launched, which will be decided in October 2023, it will be interoperable with currently existing forms of money," says Gross. "It is important for a CBDC to have tangible benefits for users. We currently have very efficient and diverse payment methods available in the euro zone. A CBDC needs strong benefits to get a substantial market share. These benefits could, for example, relate to providing strong guarantees in the digital world, providing a means of payment that has both online or offline capabilities, or allow for integration with programmable payment use cases."

The FTX collapse has shed light on the need for regulation of the crypto industry. This could lead to advocates of digital currencies splitting into various camps.

"I feel that governments are beginning to realize that they can track this open, transparent technology and use it to follow funds and wallets around the world," says Rust. "It's been a long hard fight to get recognition for a new monetary system since the 2008 financial crisis that brought the need for one about in the first place. It is likely we will see a split among blockchain users between those that will love working with CBDCs and others that will prefer blockchain-enabled, centralized currencies, and there will be another portion that will prefer censorship-resistant, decentralized options."

Industry experts have described the past few years as a digital currency race. By early 2022, over 80% of central banks were considering a CBDC, but Europe and North America lag behind most other regions. Nigeria is currently the most advanced country in the retail space with its eNaira, while Hong Kong, Thailand and Singapore lead in terms of wholesale. We'll have to wait to see who wins this race, but also what it means for consumers. ●

"Central banks and regulators will use the collapse of FTX as a way to promote CBDCs as a safer environment for users"

Read more from Stefan Rust on p9

Waiting for the DELUGE

The SEC's aggressive rulemaking agenda is piling more pressure than ever on already resource-constrained compliance officers

Words by **BEN EDWARDS**

Compliance teams across the US are facing a deluge of regulatory change. In the first eight months of this year, Securities and Exchange Commission (SEC) chair Gary Gensler proposed 26 new rules – double the number proposed in 2020 and 2021 combined. This breathless pace of rulemaking is leaving market participants questioning how many of the proposed changes are necessary.

"It's incredibly ambitious and it contains both practical updates and partisan-leaning wish lists," says Kurt Gottschall, a partner at Haynes Boone.

Gottschall says practical updates include the proposed changes to Rule 10b5-1 (c) under the Securities Exchange Act of 1934. The current rule allows for corporate executives to set binding plans to sell their company's shares, assuming they are not in possession of material non-public information. Gensler argues the rule exposes gaps in the SEC's insider trading enforcement regime, with the proposed changes seeking to tighten areas that are open to potential abuse, for instance by prohibiting certain overlapping trading plans.

By contrast, proposed rules around environmental, social and governance (ESG) disclosures will inevitably be viewed through a partisan lens, says Gottschall.

"Some believe that climate change is a hoax and that ESG investing is a sham," he says. "Others believe that climate change presents an existential threat, and that ESG investing will accelerate long overdue social change."

Reach for the stars

Another complaint is that Gensler is overreaching and focusing on headline-grabbing areas at the expense of regulation that needs updating and where there is bipartisan support for change.

"Proxy plumbing is one area that everybody has recognized for years requires attention from the regulator, all sides agree it needs to be fixed, but Gensler is not taking that on and is looking at more voguish topics," says Joe Hall, a capital markets partner and head of ESG at Davis Polk & Wardwell. "There's a lot of unneeded rulemaking in the pipeline, and Gensler's not focusing on the things that people actually do agree need to be done."

Some market watchers are speculating the reason for the scale of reform is that Gensler is angling for Janet Yellen's job as US Treasury Secretary and is therefore proposing rules that he knows will appeal to certain Senate members who would be in charge of confirming Yellen's replacement if she was to step down.

Another reason for the rulemaking surge in the opening eight months of the year was the political backdrop, and the prospect of mid-term elections in November shifting the balance of power in Congress and the potential of the White House then changing hands in 2024.

"The way the political construct was in the United States going into the mid-terms, with the party control and having three Democrat commissioners, there was a sense of there being no time like now for him to get the things done he wanted to get done," says Nick Losurdo, a regulatory partner at Goodwin Procter and former counsel to SEC Commissioner Elad Roisman.

> *"There is a sense of there being no time like now for Gensler to get things done"*

Yet Losurdo says a lot of the fine detail was missing, leaving the rules open to interpretation.

"Those uncertainties might lead firms to say if they don't know how they can clearly comply with these new requirements, they will just stick to the old way of doing things," he says. "Often, some of these rulemakings muddy the waters even more than before."

The volume of rules being proposed by the SEC is adding to an already crowded compliance agenda. Take dual-registered firms and professionals serving retail investors; not only do they have to keep up with the SEC's changes, they need to comply with rules imposed by other regulators, such as the Financial Industry Regulatory Authority (FINRA), the Department of Labor (DOL), the Financial Crimes Enforcement Network (FinCEN), individual states and the Municipal Securities Rulemaking Board (MSRB).

ESG-related headaches

A number of those regulatory reforms are causing organizations compliance headaches. Take the ESG disclosure rules, particularly around 'scope 3' emissions, says Gottschall.

"However you feel about ESG, compliance with the public company climate change disclosure rules will present huge data management challenges," he says. "Many corporate executives and asset managers will see it as being driven by a partisan agenda, as opposed to investor demand for disclosures with that level of detail."

Regulation may also stifle ESG fund market growth by placing too many reporting obligations on investment firms that want to offer ESG-labeled funds.

"Categorizing ESG funds may have unintended consequences, such as dissuading asset managers from launching 'ESG-focused' or 'ESG-impact' funds with tougher disclosure requirements," says Gottschall.

Other rule changes are creating confusion. In October, the SEC adopted its broker-dealer recordkeeping requirements, as part of an effort to modernize rules around how firms preserve electronic communications data.

Compliance under pressure

"There is just so much to contend with," says Jennifer Szaro, chief compliance officer at XML Securities. "There are certainly rules and regulations that need to be modernized. However, all at once it is a big burden and a challenge. When you have high-impact, sweeping regulations like the SEC's Reg BI, the DOL's Prohibited Transaction Exemption 2020-02 and the SEC's new Marketing Rule, we need to absorb these into day-to-day operations. That takes time, so for firms that are subject to multiple regulators and new regulations, in aggregate, the changes to your operations can be hard to digest for employees."

Another challenge is finding time to comment on rule changes, with comment periods getting shorter, in some cases as little as 30 days.

"You read about new or revised rule proposals and likely have an opinion when they relate to your firm," says Szaro. "But most compliance professionals and firm owners simply don't have the bandwidth to provide comments. The silence from so many firms should be deafening."

All of this is piling pressure on already stressed out and under-resourced compliance teams.

"Compliance staff, particularly at smaller investment advisers, are feeling very overwhelmed at the moment – they're already stretched thin because they have a day job of maintaining the existing compliance environment at their respective firms and so any time you add a new rule, it just adds to their to-do list," says Gottschall.

Others suggest it is not necessarily the volume of rulemaking that is the problem, instead it is the standard of the rulemaking that is causing issues because the SEC's justification for making the changes often doesn't stack up.

"They are riddled with holes, and they are often incomplete," explains Losurdo. "They may have a fully formed idea within the agency, but in a lot of these rulemakings, there are not fully formed explanations. The criticism therefore lies in the quality of what they're putting out, not the quantity. This is creating potential future problems where these rulemakings may not pass muster under judicial scrutiny if somebody sues the SEC to get them overturned."

It is not just compliance teams that are feeling exasperated by the volume of change, SEC staffers are also questioning the need to push through so much regulation so quickly.

"I've heard a lot of internal criticism about the pace at which the SEC is going about the rulemaking," says Losurdo. "The SEC is still predominantly working remotely. When you don't get to actually sit in the same room and talk things through with your colleagues, there's something to be said about the combination of issues with the really intense pace that is not only contributing to some of the wider industry challenge but also potentially some of the criticism from within." ●

IMAGE: GETTY

In Practice

Our regular technical, regulatory and compliance roundup features highlights from a hedge fund roundtable, a focus on CCOs, and views on SFDR, the marketing rule and sanctions regimes

Hedge fund roundtable

BURNING ISSUES IN FUND COMPLIANCE

By **ALEX VIALL**

Our autumn roundtable for UK hedge fund compliance practitioners was as lively as ever. Indeed, we ran out of time as there were so many issues to cover. Some were old favorites, some brand new.

Recordkeeping

First up was the furore around the recordkeeping fines delivered by the SEC and CFTC in the US. The obvious concern here was the impact for asset managers and investment advisers being held to the same standards, and the question of what the UK FCA might do from a supervisory and enforcement perspective. The SEC initiated a sweep of select prominent asset managers and sent a document production request to be returned by October 18, 2022. The FCA has already indicated it will be looking at personal communication recordkeeping compliance as part of its supervision. It was interesting to hear one attendee say their business continuity backup is communication on WhatsApp.

Sustainable finance disclosure

The debate moved on to Sustainable Finance Disclosure Regulation (SFDR) and the extent to which Level 2 reporting is taking place. Many said they were downgrading funds, as they couldn't get the data required to report fully. The shift from Article 9 to 8, and 8 to 6 is now common. This is a major overhaul. Article 6 funds are expecting investors to want a report, even though it is not a regulatory obligation. Compliance teams are at loggerheads with sales and marketing teams that try to convince others their fund is Article 8. Many are finding it hard to retain talent around ESG, as the market is hot for people with any experience. The way that funds are labeled is under review in the UK, and there is recognition that the rules in the US and UK/EU are now inconsistent. The political sentiment around sustainability between the two areas is also vastly different right now.

Prescribed Responsibility

The next topic for discussion was CASS Prescribed Responsibility. It relates to whether the firm holds client money and the need to document the firm's mandate. This implies that firms can still control client money, even though they don't hold it and that needs to be assigned under the Senior Managers and Certification Regime (SMCR). There was no clear agreement among roundtable attendees as to who might take this responsibility. Is this one for the COO or the CCO?

FCA improvements

Several of the group mentioned having spotted a notable uptick in FCA's efficiency answering calls and processing applications, with some noting the

> *There is a question of distinguishing between 'debatably' and 'wildly' inappropriate conduct"*

regulator seems to have started using at least one outsourced legal firm. All of which was welcomed by practitioners.

On a similar subject, one attendee mentioned an FCA visit related to fund liquidity issues. They were visiting 14 other firms as a mini-thematic review and would elicit industry feedback. The focus was mainly on governance and the role of ACDs and investment managers, with analysis of dilution levies, thresholds and pricing. Another attendee said the FCA had been interested in her firm on a more macro-level, as a market-impacting fund. She said the FCA was doing its job well and was aware of the connection to the market and the banks that her fund works with, so was just staying ahead of the game.

Personal account dealing

The roundtable concluded with an old favorite: personal account dealing. The key question was the uncomfortable discrepancy on US Treasuries, which are not reportable in the US but are in the UK under MiFID. One firm has taken the line that as they are securities and they do trade them, they need to be reported even though the market is so vast it is not likely any firm, let alone individual, could have any material influence or inside line on US Treasuries. One person added that any Treasuries with less than six months to maturity get an exemption.

From the evidence here, the next roundtable, scheduled for mid-winter, will have another packed agenda to discuss. Bring it on. ●

Compliance update

REGULATORS SWITCH FOCUS TO CCOs

By **JENNIE CLARKE**

In February 2022, FINRA issued compliance officer Arnold Feist with a $25,000 fine and a two-month suspension for failing to oversee his employer's anti-money laundering (AML) program. FINRA found that Feist, an AML compliance officer, had failed to familiarize himself with his firm's day-to-day operations and had failed to supervise its AML analysts. Feist also "took no steps to investigate or address" the firm's surveillance and review process around AML.

In the case of Feist, it appears this was not wilful bad practice, but that he laid dormant; not proactive ill-will, but instead a lack of action and understanding. In a letter between FINRA and Feist, it was noted that despite having learned about the company's AML controls, he did not recognize that it was insufficient, and failed to see that it wasn't detecting or reporting suspicious activity within the firm. As such, the regulator held him personally responsible.

Of course, when it comes to regulatory focus for roles, responsibilities and ultimate accountability, the wheels were set firmly in motion with the introduction of the Senior Managers and Certification Regime (SMCR) in 2008. But while debate continues as to whether the SMCR is actually working, broader industry focus around individual accountability for CCOs is hard to avoid in 2022. FINRA's action against Feist was just the tip of the iceberg.

Fast forward four months to June 2022, and the CCO focus continued to dominate regulatory proceedings and issuances. The UK's Law Commission published an Options Paper for the government, including measures to widen the scope of liabilities between corporations and senior managers. Concurrently, the New York City Bar (NYCB) issued a Framework for Chief Compliance Officer Liability within Financial Services.

SEC Commissioner Hester Peirce took this opportunity to reflect on the landscape for CCO accountability, setting out how the Framework could operate in practice, with a series of eight questions that should be asked in all instances. Her comments came as the SEC published administrative action against a CCO who had been made aware of non-compliant activity but failed to take sufficient remedial action for over a year. The CCO was banned from acting in a supervisory or compliance capacity for at least five years, and received a $15,000 fine.

Commissioner Peirce used this enforcement as a test case for the NYCB's proposed Liability Framework to establish whether charging a CCO would "help fulfil the SEC's regulatory goals". This isn't always an easy question – especially in cases where the misconduct isn't necessarily wilful.

In creating a CCO accountability framework there arises a "difficult question of distinguishing conduct that is only 'debatably inappropriate' from conduct that is 'wildly inappropriate'", Peirce said.

New frameworks for increased accountability of CCOs and senior management follow a wave of increased transparency measures for financial services. While accountability is important, these proposals come with disadvantages. In an industry that often struggles to recruit and retrain highly skilled »

> **$25k**
> *The fine for Arnold Feist, for failing to oversee and spot flaws in his employer's AML program*

compliance staff, greater accountability measures could act as further deterrent. As Commissioner Peirce acknowledged at the time, "fears of facing liability for someone else's missteps can dissuade excellent candidates from seeking compliance jobs".

Unjustified liability for CCOs should be avoided at all costs, but direct accountability for missteps will play a significant role in the future financial services – one that is moving to prioritize openness and information sharing – from ESG and D&I disclosures through to justifying bonuses for execs. In September, the SEC issued yet another enforcement action against a CCO – this time requiring them to undergo 30 hours of training, to align them with regulatory expectations.

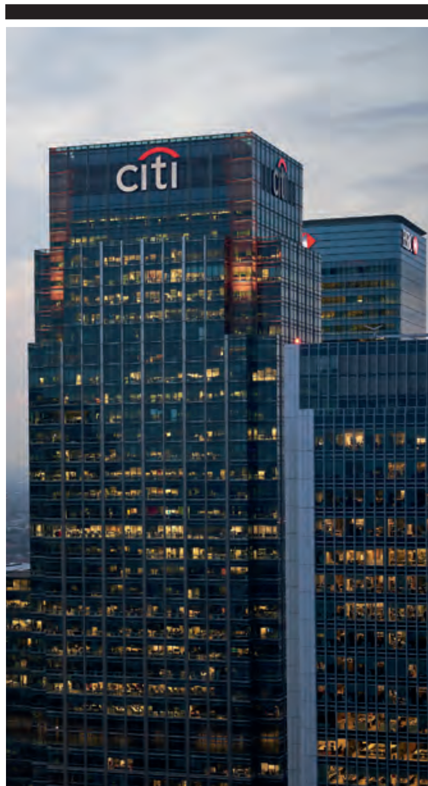
Bad compliance sticks. CCOs have rare misfortune where, if they get their job wrong, the whole industry will likely know about it through regulatory press releases or otherwise. That reputation will often follow you from job to job. Put this alongside frequent lack of resource, challenges in accessing data and the siloed nature of the compliance function – it's a wonder there are any CCOs left at all.

How can a CCO's life be made easier? And how can they avoid personal accountability woes? Whether driven by SMCR or simply by best practice, firms should understand who is responsible for what, from the top down. Having holistic oversight and auditable trails of roles and responsibilities will ensure you know where to turn where things go awry.

In the case of bad actors, having watertight surveillance of end-to-end operations will mitigate gaps and minimize opportunity for non-compliant activity to go unnoticed. Having processes in place that demonstrate proactive compliance also shows willing. Regulators will be more forgiving where you can show that you tried.

Finally, avoid risk at all costs – whether it's third-party risk or otherwise. Simplify and consolidate your compliance functions, know where your gaps exist and take active steps to resolve them … do not bury your head in the sand. Bad compliance will not resolve itself and regulators are unforgiving of dormant CCOs. ●

IMAGES: FCA, GETTY



ESG

THE PROBLEM WITH SFDR

By **JENNIE CLARKE**

People working in compliance at global banks tend to fit a certain type. They are usually calm, considered individuals, given to offering level-headed assessments of the challenges they face. But if recent conversations are any indication, there are problems ahead in the area of European reporting requirements on sustainable finance. The issue is causing more than just some gently raised eyebrows.

When I recently asked one compliance expert for his view on the new Sustainable Finance Disclosure Regulation (SFDR), he responded with an uncharacteristic tirade of expletives. To paraphrase (and save offence), "it's a nightmare", he said.

Even the EU's own regulators have struggled with it. Particularly challenging is the fact that the data is not available and so it is difficult to say whether a product meets the criteria to warrant the label of being a 'sustainable investment', even if you are pretty sure it does. Do you take a risk? If so, will you get dinged for greenwashing and trash your brand? What are others doing in the market? A lot of firms are claiming products are SFDR sustainable in whole (Article 9 funds) or in part (Article 8 funds). But do they have the data, or are they chancing it? What do you do when your firm's leadership are asking 'everyone else is doing it, so why can't we?'

The SFDR only applies to funds and portfolio management. But unfortunately, its nightmarish characteristics extend beyond its scope, since the EU has decided to borrow a chunk of its terms for its MiFID II ESG-related product governance and suitability rules. At the same time it has managed to add an additional layer of confusion, by only cherry-picking certain bits of SFDR in a nicely counter-intuitive manner.

In some instances, SFDR is referenced directly, in others the language of SFDR is used, but the regulation itself isn't directly mentioned or referenced.

Lawyers and consultants bought in to demystify its scope and application have had to hold their hands up and concede the whole set of requirements is equivocal and unsatisfactory.

Moreover, when it comes to selling ESG products, distributors like to have details of their features, generally, but also in some instances (e.g. MiFID II product governance rules) the law requires it.

So, as with MiFID II and PRIIPs, the industry is putting together a standardized Excel spreadsheet template with fields for each of these requirements called the EU ESG Template (EET). The thing is a beast containing hundreds of fields relating to various EU laws from the SFDR to MiFID II and the EU Taxonomy Regulation. Unfortunately, as currently formulated, it's a mess and many in the industry are not confident with how it is being formulated.

All of the above woes have meant that in some instances, firms are having to change their labelling, with some Article 9 funds (aka products targeting sustainable investments) being downgraded to Article 8 funds (environmentally and socially promoting) and some Article 8 funds now being downgraded to Article 6 funds (those that do not integrate any sustainability into the investment

process). To an outsider this suggests it's because the fund isn't sustainable. But that may not be the case. In some cases the firm knows the fund is sustainable, but doesn't have enough supporting data to classify it as such, based on the way the EU rules have been formulated.

For cautious firms, such as the one the above compliance manager works for, this means downgrading funds even where they are very likely to be fully SFDR compliant. For more aggressive firms, with greater risk appetite, they are simply opting to take the risk.

At our recent Round Table for Hedge Funds (see page 30), a number of conversations were had around the difficulties of managing SFDR requirements. A number of attendees highlighted frustrations with the new rules. But it's not only the lack of clarity and data that's proving challenging. Firms also can't find and retain talented people to manage ESG. It's a specialist area and talent is in demand. In short, SFDR is causing headaches for compliance, legal and beyond.

It's an important cause, but if regulatory clarity isn't provided, the true purpose of SFDR could be drowned out by the complexities of implementing it. ●

> *"The EU has added an extra layer of complexity by cherry-picking certain bits of SFDR in a counter-intuitive way"*

Regulatory update

EXPLAINING THE MARKETING RULE

By **JENNIE CLARKE**

The SEC's Marketing Rule came into force on November 4, 2022, after a nail-biting 18-month transition period. Rumor has it the regulator will be undertaking thematic reviews imminently to establish compliance.

This is not spurious industry rumor, but a firm commitment, cemented by a September 19 Risk Alert from the SEC, which is understood to have put firms on notice. D-Day is here and the regulator will be checking that you're doing it right.

Rather than allaying fears of investment advisers who have so far struggled to unpick the complexities of the new Marketing Rule, the Risk Alert arguably compounded industry anxiety, the new Rule having gained notoriety as being unduly complex. The criticism generally seems to be that while the new Rule is clear, the application of the Rule is complex and clarifying regulatory guidance is almost non-existent.

What is the SEC's Marketing Rule?

In keeping with the general move towards investor-driven transparency, the Marketing Rule is the result of reforms under the Investment Advisers Act of 1940. It is the most substantial amendment to Rule 206(4)-1 in more than 60 years and consolidates existing rules into the "Marketing Rule" in a bid to provide clarity and empower investors with relevant, transparent information.

Are there compliance challenges?

Yes, though it depends who you ask. The Investment Adviser Association's 2022 Investment Management Compliance Testing Survey placed the SEC's Marketing Rule as the biggest worry for investment adviser compliance officers. And 75% of respondents identified advertising/ marketing as the "hottest" compliance topic for the second year running.

In short, there is a lot of messaging about what the Marketing Rule is, but there is far less guidance about what it means, or what investment advisers should be doing to ensure their marketing efforts comply with the new rule.

What will happen next?

The SEC has made it clear that the new marketing rule sits top of its agenda. Advisers should expect thematic reviews in the near future that will focus on the topics raised in their Risk Alert. Specifically:

- Have you implemented written policies and procedures that will prevent violations and do these include "objective and testable means" designed to prevent violations?
- Do you have a reasonable basis for believing you will be able to substantiate any facts made in advertisements? (This could be a difficult one to prove and firms should look to make a record demonstrating the basis of their belief or create policies, procedures or controls to show how it will be met.)
- Are you complying with the new performance advertising requirements?
- Are you keeping up with new, more strenuous RIA recordkeeping requirements?
- Are you taking steps via training or other methods to show that all employees are cognizant of the new requirements?
- Can you prove how you're making the necessary changes to comply?

It is hoped that the SEC will take an educational stance when conducting initial reviews and provide constructive feedback rather than punitive measures. As is often the case, the industry is looking for clarity and leniency in the face of complex regulatory reform, with hopes that the regulator will go easy on good faith and unintentional violations. ●

Global sanctions: the compliance risks from oil trading

Sanctions, geopolitics and emerging market risk specialist Philip Worman assesses key challenges for compliance professionals from sanctions and associated regulations

PHILIP WORMAN
is Senior MD at consulting firm JS Held

We are in one of the most acute eras of political and economic risk since 2008. There is war in Ukraine, growing conflict between Russia and the West over energy, high inflation (exacerbated by the war), and continuing tensions between the US and China.

Against this backdrop, the G7 and EU are preparing a new sanctions regime, consisting of a coordinated G7 global price cap on Russian oil, together with an effective embargo on Russian oil. One of the great challenges for regulators and compliance professionals will be "who is trading what?" While the risk from direct sanctions exposure has diminished – lots of companies have divested from Russia – proxies, intermediaries and obfuscated trading remains a risk.

The outlook for 2023

There are few positive signs for the war. The most likely scenario in Ukraine is a protracted conflict, with no clear-cut resolution. The economic decoupling of the West from Russia will be long lasting and any rollback of sanctions unlikely. Further, the risk to the energy sector is a key factor in the sanctions-setting policy of the US, EU and G7. Their goal is the restriction of oil revenues flowing to the Russian war effort, while maintaining flows of Russian oil, to keep a lid on prices.

From January 2023, European and Swiss traders will not be able to trade seaborne cargoes of oil (with refined products being banned from February). By that point a wider G7 oil price cap will apply to Russian oil. But there is lots of Russian oil and many exemptions (Japan has secured several). The countries the G7 and EU need to woo into signing up – China and India – receive discounts on Russian oil, and there are no secondary sanctions planned for those that don't sign. The oil producers of OPEC dislike it for political reasons. They don't want a shift in power from oil producers to oil buyers. But the cap, combined with production cuts, will push up oil prices.

Despite wide-reaching trading bans and price caps, oil (and the essential supplies of hard-to-replace Russian diesel) will be sold through proxies.

Frontiers for busting sanctions

Rocketing oil prices combined with war risk premiums have added additional costs to tankers opting to transport Russian oil. The oil price cap will prohibit Western insurers from touching oil cargoes, creating a challenge for insurance companies: how can they identify Russian oil? What was the price paid for the cargo and does it breach the price cap? It is likely that larger insurers and shippers will 'self-sanction' to avoid potential exposure under the cap and embargoes. There will be reluctance to underwrite any cargo that may have touched Russian oil at some point. As international insurers start to avoid Russian cargoes, Russia itself is providing its own cargo insurance, via state-owned companies such as Ingosstrakh. Oil traders are increasingly shifting headquarters from Geneva and Singapore to the UAE. India – a large importer of Russian oil – is providing safety certificates and paying for Russian oil in UAE dirhams.

"There is contagion risk from accidental exposure"

There has also been a growth of 'shadow' traders. While major international companies have stopped buying Russian oil owing to an EU deadline, smaller, more opaque companies have filled the gap. One obscure Swiss company traded almost three million barrels of Urals-grade crude in May. That volume is a quarter of all Urals from Primorsk, the Russian seaport on the Baltic, where the company is listed. The company emerged from nowhere and has links to former Rosneft executives.

Hedged language

Despite their commitments, some larger traders have continued to trade Russian crude and products, including diesel. This is owing to carefully hedged language in their commitments. At least one trader has been delivering Russian diesel to Ecuador, contrary to the spirit of its own stated commitments and to the request of the Ecuadorian government.

There is not just exposure to direct sanctions, but contagion risk from inherited sanctions and accidental sanctions exposure. Companies may be inadvertently doing business with subsidiaries of subsidiaries of subsidiaries, where the US 50% rule applies. This states that any subsidiary held by 50% or more of a sanctioned entity is itself sanctioned. Analysis of thousands of entities shows the sanctions trail leading out of Russia to unrelated areas; for example, many Russian banks have extensive oil and gas interests, with numerous affiliates and trading arms in Western Europe.

Compliance professionals should expect to encounter new jurisdictions for high-risk transactions, including India and UAE, as well as heightened US and international scrutiny from January. And the prospect of sanctions becoming more obfuscated and problematic will grow as oil trading goes "under the radar". ●