



IMPACT ANALYSIS:

FSA PUBLISHES GC 12/5 ON ANTI-BRIBERY AND CORRUPTION SYSTEMS AND CONTROLS

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The Financial Services Authority (FSA) has published guidance consultation 12/5 on anti-bribery and corruption systems and controls: proposed guidance and amendments to 'financial crime: a guide for firms'. The proposed new guidance is based on the findings of the FSA's thematic review of ABC systems and controls in investment banks.

The FSA undertook a themed review of the ABC systems and controls in place in a range of investment banks after the introduction of the Bribery Act on July 1, 2011. The new Act consolidated and replaced long-standing anti-corruption legislation with four bribery offences being defined:

- bribing another person
- being bribed
- bribing a foreign public official, and
- commercial organisations failing to prevent bribery.

The FSA is careful to point out that it does not enforce the Bribery Act but rather has a suite of principles and rules which are designed to ensure that regulated firms adequately address the risk that they — or anyone acting on their behalf — act corruptly. A key defence under the Bribery Act is for firms to be able to show that they had adequate anti-bribery procedures in place and it is here that there is alignment with the FSA's stance. The FSA does not prescribe how firms should comply with the principles and rules but it does expect that they should be able to demonstrate that they can identify and assess bribery and corruption risk, and take reasonable steps to prevent bribery and corruption taking place.

In its review, the FSA found that, although some investment banks had undertaken a great deal of work to implement effective ABC controls, most had more work to do. The main findings include:

- Most firms had not properly taken account of the FSA rules covering bribery and corruption, either before the Bribery Act or after. The differences between the two regimes are highlighted in the report. For example, the FSA rules require firms to put in place systems and controls to mitigate bribery and corruption risk and the FSA does not need to find evidence of bribery taking place to take action against firms that fail to meet the requirements.
- Nearly half the firms in the sample still did not have an adequate ABC risk assessment, although progress has been made since the implementation of the Bribery Act.



- Management information on ABC provided to senior management was poor, making it difficult for the FSA to see how firms' senior management could carry out their oversight functions effectively.
- The majority of firms had not yet thought about how to monitor the effectiveness of their ABC controls. Only two firms had either started or carried out specific ABC internal audits.
- Firms' understanding of bribery and corruption was often very limited.
- There were significant weaknesses in firms' dealings with third parties used to win or retain business, including in relation to compliance approval; due diligence; politically exposed persons (PEP) screening; ensuring and documenting a clear business rationale; risk assessment; and regular review.
- Many firms had recently tightened up their gifts, hospitality and expenses policies by prohibiting facilitation payments, increasing senior management oversight of expenses and introducing or revising limits. But few had processes to produce adequate MI, for example, to ensure gifts and expenses in relation to particular clients/projects were reasonable on a cumulative basis.
- Firms had well-established vetting processes in place when staff were recruited, but bribery and corruption risk had not usually been a factor in identifying high-risk roles which should be subject to enhanced vetting.
- Since the implementation of the Bribery Act, firms had generally provided adequate basic training to staff. Most firms were still developing training for staff in higher risk roles and had no processes in place (such as post-training testing and follow up) to assess the effectiveness of existing training.

Compliance tips and next steps

The guidance consultation and thematic review report should be considered as a whole with the findings of the report informing the good and poor practice guidance changes proposed. Overall it will be hard for firms to argue with the substance of the FSA's proposed expectations on ABC but firms will need to give careful consideration to their ability to evidence their compliance with the guidance. Thematic reports from the FSA should be treated with the same mind set as enforcement actions with firms seeking any possible read-across to their own business and identifying lessons to be learned or actions to be taken. While the thematic report assessed investment banks it is more than likely that all firms will need to consider the implications for their own identification, mitigation and management of ABC risks.

The FSA has perhaps not been as stark in its inherent warnings in the report despite the apparent widespread incomplete compliance with the relevant rules and requirements. This is despite numerous public reminders from the consultation on and implementation of the Bribery Act to the substantial ABC systems and controls fines imposed on [Aon](#) in January 2009 and [Willis](#) in July 2011. The FSA expressed its concern that "the investment banking sector has been too slow and reactive in managing bribery and corruption risk" but that is only "considering whether further regulatory action is required in relation to certain firms in our review."



The lack of a referral to enforcement may simply be a matter of timing but it may also be evidence of the FSA slightly feeling its way as to the precise borderline between its jurisdiction and that of the Ministry of Justice (MoJ) with regard to the practicalities of the Bribery Act. That said it could also be seen as the FSA pacing itself given the breadth of work underway ahead of the creation of the Financial Conduct Authority (FCA).

The lack of current enforcement action should not deter firms from their critical assessment of both the findings of the thematic report and the proposed updates to the financial crime guidance. As part of its credible deterrence stance, the FSA has made clear, too many times to count, that it expects firms to learn lessons from enforcement actions and read-across identified issues and concerns. As part of their assessment of the proposed guidance firms would be very well advised to use the good and poor practice examples, consolidated in Section 4 of the report, to build a comprehensive monitoring plan to undertake a documented gap analysis to highlight areas where further work may be required.

There may well be areas of good practice which a firm does not include as part of its business as usual and care should be taken to document why the example is either not relevant or the risk is mitigated by verified policies and procedures elsewhere. Any resulting remedial action plan should be discussed with the board and resourced as a priority. Senior managers should be prepared to discuss their firms approach to ABC, the gap analysis and any resulting actions with the FSA. There are highlighted updates throughout the new guidance which show the need to ensure adequate coverage is given to the assessment of ABC risks. As with all compliance, firms need to be able to consistently and coherently evidence the suite of measures taken to identify, manage and mitigate ABC risk. The testing and follow up of all ABC training and the review of ABC MI are two possible quick wins for firms.

One area which may need a more in depth revamp is that of gifts and hospitality which merits a whole new series of good and poor practice examples in the guidance. It might be tempting to think that in these straightened economic times that firms have much less to worry about with potentially inappropriate gifts and hospitality but as the FSA report shows it is an area which needs to remain under constant review. The FSA has made clear that it is not consulting on the findings of its thematic review and has requested comments on the proposed changes to the guidance by April 29, 2012.