City MLRO Networking Group 2015

Presented by
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Introduction

Unprecedented Demand
- NCA - Issuing of Improved Consent Application Guidance
- NCA - Strategic action plan on large scale complex money laundering
- NCA - Professional Enablers Threat Sub-Group
- HM Treasury/Home Office - National Risk Assessment Exercise
- Home Office - Professional Enablers’ information campaign
- Home Office - Serious Crime Bill
- Scotland Yard Counter Terrorism Command Training Unit - Training Programme and assistance with Counter Terrorism Week 2014
- SRA - ‘Focus Work on Anti-Money Laundering’
- IBA/CCBE/ABA - Collaborative Report ‘A Lawyer’s Guide to Detecting and Preventing Money Laundering’
- FATF - Review of Risk Based Guidance for Legal Professionals - Participated in early discussions regarding an update and have offered to be a part of review team.
- BIS - Corporate UBO Register proposals
Today’s Agenda

- The SRA’s Focussed Work on AML
- BIS - Persons of Significant Control Register
- Home Office and NCA
  - ‘Professional Enablers’
  - SARs Regime Review
- EU and HM Treasury - 4MLD
- FATF Mutual Evaluation Review of the UK
  - UK National Risk Assessment
- Questions
- Wine, nibbles and networking

SRA’s Focus work on AML

Steve Wilmott
Director of Intelligence and Investigation

June 2015
Before we start

Two warnings

• Since the end of January we have seen five phishing attacks on firms where substantial monies have been lost
• Firms are called by their ‘bank’ and told their account may be at risk
• Engage staff member and account accessed
• Very sophisticated and clever
• Know details about you, telephone numbers etc
• Your telephone may show a genuine bank number
• They may ask for you to call them back (they keep the line open)
• They may pass you onto other ‘staff members’
• I cannot reiterate how sophisticated this is
• We have also seen a number of e-mail diversions

The warning

• Banks do not operate like this
• They will NOT ask for you pass codes
• If in any doubt terminate the call
• Contact your bank and speak to someone you know personally
• Do not use the same phone/line
• Call on a genuinely recognised bank number
• If you think you have been compromised talk to your bank immediately
• Look out for the advice we have produced and circulated

Second warning!

• We still see bogus firms and firm’s details cloned on a regular basis
• Designed to add credibility to a fraud by convincing the public that a solicitor is involved and to part with money (investment, wills etc)
• Can be a completely bogus firm or a clone of yours with minor changes
• Sometimes move partners/directors from a genuine firm to a bogus firm
• Cause considerable damage to profession
• Check your firms details and your own regularly on the internet
• Report to Action fraud, SRA red alert and consider possible legal action
• Look at our warning notice
• Look at our website regularly for scam alerts
Overview

• Between October 2014 and May 2015 we have been undertaking focus work on AML compliance within firms
• We have been visiting all firms that are within Regulatory Management (the top 300 firms by risk profile)
• We will be testing AML compliance in firms subject to a forensic investigation (around 200 in this period)
• Around 300 seen – good overall picture

Why do we need to do this?

• We are seeing an increase in reports concerning AML compliance (ML Regs and or Proceeds of Crime Act)
• We are investigating a small number of substantial cases
• We have seen increased interest in this area from Law enforcement

We have some external drivers

• Financial action task force (FATF) inspection of the UK Spring 2017 (Legal profession will be a priority – see FATF report June 2013) – recent confirmation we will be under scrutiny
• 4th Money Laundering Directive – June 2017 (UK Law)
• SAR numbers and quality – Total 354,000 last year - profession 3600 reduction in SAR from the profession 8% 2014 (1 % of all SAR)
  One third of a SAR per firm per year
• Quality of consent SAR’s – NCA report February 2014
• Refusing SAR on quality
• Government drive on ‘professional enablers’
Why the reduction in SAR

- We don’t know
  - Early days 2007 over reporting?
  - Less conveyancing?
  - Less M and A?
  - Privilege – a better understanding?
  - Smarter clients?
  - Improvements in training?
  - Slack tide?
  - Culture its been around a while - feedback

- We need to find out

Other factors

- The FATF report (Legal Sector) of July 2013 is likely to be considered – attraction to organised crime
- The quality of consent SAR is remains under review
- UK FIU are returning consent SAR’s from 1st October 2014 on quality of information
- Do the figures speak – one third of a SAR per firm per year
- National Risk Assessment published July 2015 – some element of sector specific (action plan) – links to FATF ME

Professional Enablers

- New initiative – government led
- Organised Crime Strategy - October 2013
- Solicitors, Accountants
- NCA – enforcement – professional enablers
- Home office – prevention and awareness programme – targeting the profession (accountants from summer 2015)
- New legislation – Spring 2015 – Participation offence – reasonably suspect or did suspect – 5 years imprisonment
- SRA are engaged in all areas
What are we doing?

- Preparing for FATF
- Engaged with Home Office/HMG and NCA
- Working towards UK and Legal sector compliance
- Members of MLAC/NRAB
- Focus work with firms
- RM firms and those subject to investigation – 300 firms
- Between early October – May 2015
- Final report October (CoLP and CoFA conference)

Methodology

RM Firms

- RM firms visited by dedicated RM team for an AML compliance evaluation
- Transparent – letter in advance to the firm and partners, MLRO’s, compliance managers, varied staff, reporting and processes, training and records will be evaluated
- A debrief session at the end of the day
- An evaluation form will be completed and reviewed by core AML team
- Action may be taken including advice and guidance to regulatory activity if we uncover issues
- Purpose mainly is to ensure firms take this seriously and are compliant

The FI investigation

- Aligned to an investigation
- Letter of introduction
- Abridged version of the evaluation form
- Reviewed by core team
- We may have to take action if necessary
- Main purpose to ensure firms take this seriously and are compliant
Who are we working with

• This has been a completely transparent process
• We have made our work as public as possible
• We have engaged with partners including the Law Society
• We consider the work to be innovative and creative
• A number of other regulators, academia, government departments and even EU commission have shown interest
• Those not evaluated in the first phase we hope will look at what they do in terms of AML compliance
• We have been updating at conferences, through our website and via a final report
• We have worked with you and it has been well received

What we have been looking for

• Who is your MLRO – is there knowledge and how to report
• Are Systems and procedures in place
• Do you keep records
• Conversion rates – internal reporting to making a SAR
• SAR volumes
• Do you ensure good CDD (often criticised)
• Profile the MLRO
• The MLRO make the decisions – an MLRO should have sufficient seniority to access all files and information
• The MLRO Report to senior management their decisions but decision to submit SAR is theirs alone
• Training
• Bottom line is personal criminal and disciplinary responsibility

Where are we now?

• Ended – report being drafted
• Very Good response/reception
• Generally very good in terms of what we are looking for – commitment, systems, processes and training
• Around 20 firms will have a return visit (poor policies/old terminology/no or poor training/position of MLRO)
• Worked well for both SRA, TLS and the profession
Some highlights

• Policies being refreshed
• Training uptake
• Some MLRO’s using the work to ensure AML features within the firm/some isolated MLRO
• The compliance firms and trainers have been quite busy!
• Some nice comments about the SRA!!
• How do we take this forward – gap between this work and FATF in particular

Questions

Redalert – 0345 8500999
Redalert@sra.org.uk

Persons of Significant Control Register
Amasis Saba - Deputy MLRO
18th June 2015
Content

- Government’s objectives
- Part 21A
- Who’s in scope
- What is a PSC
- Obligations on PCSs/RLEs
- What goes on the register
- Obligations on the company
- Reasonable steps
- Consequences, notices and restrictions
- Keeping information up-to-date
- Next steps

Government objectives for the register

- Greater transparency of company ownership and control
- Assist in the fight against money laundering and SOC
- Avoid disproportionate burdens on companies
- Clear, comprehensible information for users of the register
- Publicly accessible and searchable register
- A digital completion option
- Maximum compliance
- Help in enabling a manned mission to Mars
- Used to defeat the Jabberwocky

Small Business, Enterprise and Employment Act 2015

- Schedule 3 creates Part 21A of the Companies Act 2006 (CA06)
- The legal entities in scope of requirements (790B)
- The definition of a ‘person with significant control’ (790C)
- Duty to obtain - Company’s obligation (790D)
- Duty to provide – PSC’s obligation (790G)
- What goes on the register (790K)
- Duty to keep a register (790M)
- Protection regime (790ZF/G)
Companies in scope

- All **UK companies**, except companies listed on UK regulated or prescribed markets, will have to keep a PSC register.
- Exceptions
  - DTR5 issuers
  - Companies that have voting shares admitted to trading on a regulated market in the EEA
- LLP's will be covered by secondary regulations coming soon. (Para. 55)

What is a **UBO** Person of Significant Control

- Person of Significant Control: an individual who meets one or more of the specified conditions in relation to the company.
- Specified Conditions are in Schedule 1A (790C)
- An individual with:
  - Ownership of more than 25% shares
  - Ownership of more than 25% voting rights
  - Ownership of right to appoint or remove a majority of the board of directors
  - Otherwise has the right to exercise or actually exercises significant influence or control.
  - Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions.

Obligations on an individual/RLE (790G 790H)

- Notify the company of the person's status (as a registrable person or registrable relevant legal entity) in relation to the company
- State the date, to the best of the person's knowledge, on which the person acquired that status, and
- Give the company the required particulars (see section 790K).
- Notify the company of a change to any of the particulars
- State the date on which it occurred, and
- Give the company any information needed to update the PSC Register
- The PSC must provide the information within 1 month of being aware
Company checklist

- Find out if there are people that have significant control of the company.
- Contact these people to confirm they have significant control and get information needed for the register from them.
- Put this information in a register.
- If people do not respond to requests for information, consider putting restrictions on their shares.
- Keep the information up-to-date. Explain why if there is missing information.
- Allow people with a proper purpose to inspect the register.
- Give the register information to Companies House from April 2016.

What goes on the register? (790K)

- Individual:
  - name
  - a service address
  - country, state or part of the UK where they usually live
  - date of birth (only the month and year will appear on the central register)
  - usual residential address (this will not appear on any public register)
  - the date they became a person with significant control who should be registered
  - if there are any restrictions in place to prevent any of the above information being made public

- Registrable relevant legal entity:
  - the name of the entity
  - the registered or principal office
  - the type of legal entity and by which country’s laws it is governed
  - if the entity is registered in a different country, the name of the register including the state in which the register is held and the entity’s registration number
  - the date the entity became an entity that should be registered

What should the company do to get the information?

- Companies must take reasonable steps to find out if they have any PSCs or RLEs and identify them.
- In some cases the company will already have this information.
- If it does not have all the required information the company will need to serve notice on individuals and others (790D (5)). A person in receipt of such a notice is required to reply.
- Failure to do so is a criminal offence.
- A company is entitled to rely on information received in good faith.
Confirmations

- If a company has all the information needed for the register about a registerable relevant legal entity the information may be entered on the register straight away. All information about people with significant control must be confirmed before any of it can be put on the register.
- For the purposes of the register, information about an individual with significant control is considered 'confirmed' if:
  - the person supplied or confirmed the information to the company (voluntarily, because they were asked or otherwise),
  - another person supplied or confirmed the information with the knowledge of the individual, or
  - the information was included in the information sent to Companies House on incorporation.

Reasonable steps...

- Looking at the register of members.
- Writing (emailing, txt?, twitter?) to company members to ask if they have transferred an interest in their shares to someone else.
- Considering whether shareholders that act jointly might have significant control.
- Writing to other professionals who may have information about people or entities with significant control. (7900 (5))
- Seeking advice from legal advisers.
- So, I've done all that and still don't have all the information...

Serving notices

- Company can send a warning notice that will tell them that they are proposing to issue them with a restrictions notice if they do not comply with the initial request for information within one month of the warning notice.
- If the warning notice is not responded to within one month (so the initial information request has still not been met) and the company has not been provided with a valid reason to justify this, the company can issue a restrictions notice.
- When deciding whether to issue a restrictions notice, the company must have regard to the effect that restricting the interest might have on other people.
- In considering whether a reason for not responding to a notice is valid the company must take into account whether the person was incapacitated in some way that justified them not responding such as:
  - being in a coma
  - mental incapacity
  - being kidnapped
  - off fighting the Jabberwocky (?)
What do the restrictions look like?

- Once a restrictions notice is in effect, the holder of the interest will not be able to receive any financial benefit from their interest:
  - They can receive no dividend, and cannot sell the shares.
  - They cannot vote on their shares. (Only if the company is liquidated during this period can the person receive a payment in relation to their interest.)
  - The interest cannot be transferred to another person and any agreement to transfer it or any associated rights to another person will be void.
  - No person may exercise any of the rights that come from the restricted interest.
  - No shares may be issued in right of that interest, for instance as part of a right's issue.

Keeping the information up-to-date

- Companies must give notice to people or entities as soon as they learn of change or have reason to believe that there has been a change.
- This notice must ask the person or entity to confirm that a change has occurred to give the date of the change and confirm, correct or supply any information as appropriate.
- Companies are not required to give notice if:
  - they have already been informed of the change.
  - and they have the information they need for the register
  - and, if the information relates to a person rather than an entity, the information was provided by the person or with their knowledge.
- People or entities must respond to notices for information about changes within one month.

Companies must record on their register that:

- The company has established that it does not have any people with significant control or registrable relevant legal entities
- The company has reason to believe there are PSCs but has not been able to identify them or to get their details confirmed
- The company does not know if it has any PSCs
- The company has issued a formal request for information and the addressee has not complied within the set timescale
- The company has placed restrictions on the interest in it held by a person or entity that has not complied with a formal request for information
- The company does not possess information that can be placed on the register and cannot make any other note as to the progress of its investigation
- The register should never be blank
But can I rely on it...?

- Suggested wording put forward to the BIS working party:

Regulated entities should carefully consider, taking a risk based approach, the extent to which the circumstances in which they rely on the PSC register to identify ultimate beneficial owners of their customers/clients. Regulated entities cannot rely solely on the PSC register to fulfil their Client Due Diligence obligations under the Money Laundering Regulations.

Next steps

- Consultation out (officially) very soon
  - Please let us know your (constructive) thoughts!
- Secondary Regulations laid before Parliament in the autumn
- Companies House demonstrate beta by end of summer(?)
- BIS Guidance expected October
- Obligations on companies starts from 1\textsuperscript{st} Jan 2016
- Central register starts April 2016
- All likely to change again following 4MLD (2017)
  - All companies
  - Annual to current(?)

Questions?
This document provides a general summary only and is not intended to be comprehensive. Specific advice should always be sought in relation to the particular facts of a given situation.

SRA Focussed Work on AML

- Collaboration
- Drivers
- 500 Firms to be visited
  - 300 under Regulatory Management
  - 200 Subject to a Forensic Investigation
- No room for complacency in run-up to MER

SRA Focussed Work on AML

- Early Picture is Good Overall
- Some ‘Poor Behaviours’
- Some Areas Requiring Attention
- What Does it Mean?
  - Engagement (Messaging)
  - Law Society Training/Advice/Education Suite Updated to Target Specific Areas

supporting solicitors
'Organised crime cannot function without the legitimate economy. Criminals will seek to launder money through the financial sector, or use the services of lawyers or accountants to invest in property or set up front businesses. A small number of complicit or negligent professional enablers, such as bankers, lawyers and accountants can act as gatekeepers between organised criminals and the legitimate economy.'

Unclear how far you would need to go to satisfy yourself that:
- the service you are providing is not assisting criminal activities down the line somewhere, and;
- you had carried out a level of due diligence to a level that would ensure that you could not be said to have turned a blind eye to criminal activity.

‘Knows or reasonably suspects are criminal activities’

‘Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.’
**Professional Enablers’ Initiative**

- Home Office - ‘Professional Enablers’ information campaign
- Initially targeting solicitors: October 2014 - February 2015
- Collaboration across government, regulators and private sector
- Focus on:
  - Value of professional enablers to SOC
  - Reality and consequences of SOC (personal, professional and social)
  - Preventative behaviours, recognising the red flags and reporting
  - Protective behaviours (e.g., cyber security)

**National Crime Agency**

- ‘Professional Enablers Threat Sub-group’
- Large Scale ‘ML in the City’

> “The involvement of a small minority of complicit, negligent or unwitting professionals in the financial, legal and accountancy sectors facilitates money laundering.”

- Keith Bristow, DG, National Crime Agency

- Initial focus on solicitors
- Short-lived terminology or coincidence?

**Review of SARs Regime**

- One month consultation
  - Little publicity
  - Limited participation?
- Law Society response
  - Lack of information from law enforcement
  - Change from the concept of benefit
  - Re-inclusion of the element of intent into the principal offences
  - Overhaul SARs online
  - Extend information sharing initiatives beyond the financial sector
  - MLTF offer to train Consent Desk staff remains on the table
The Law Society and the EU Political Process for 4MLD
- Analysis of the Commission proposals
- Meetings with key stakeholders (Commission, Parliament, HMT)
- Amendments
- UBO Registers for Trusts
- Trilogue

4MLD - Implementation
- MLTF has much work to do with HMT on implementation which will determine where we finally land
- HMT consultation before end of 2015
- EU Supra-National Risk Assessment

4MLD - Practical Issues
- Are your current systems working effectively?
- CDD - are the documents properly checked?
- Risk assessment - is it undertaken and recorded - for the practice and clients?
- Ongoing monitoring - are your staff alert?
- Training - is it relevant and effective?
- Assess what changes will be required
- Identifying/dealing with domestic PEPs
- Practical implications of beneficial owner registers
- Updating policies and procedures
- Plan the implementation and the training

FATF Mutual Evaluation Review of UK
- No fixed date as yet - Originally scheduled for mid-2016 but will be delayed
- Latest prediction is 2018
- Regime to be tested for ‘Effectiveness’
- Initial meetings with HMT have been positive
FATF Mutual Evaluation Review of UK -
National Risk Assessment

• Overarching aims:
  – to increase information sharing between public and private sector
  – to increase understanding of money-laundering risks
  – to enhance the risk-based approach

• The UK’s NRA will focus on:
  – Domestic arrangements - drawing on information from private and public; law enforcement and civil society.
  – Reflect our global role, recognising the UK’s position in the world economy and London’s position as a financial hub we must give regard to our international risks, flowing into and out of the UK.
  – New technologies - we need to take account of the innovation, development of the financial sector in the last ten years.
  – Our focus is on the threats and vulnerabilities including the criminal activity that drives/leads to money laundering at a national level.

FATF Mutual Evaluation Review of UK -
Legal Sector Issues

• FATF ‘Effectiveness Methodology’

• Recently updated regime

• Experience of others?

• Time to get ready… but no need to panic!

2015 - Law Society Focus

• Work with SRA on results of AML work

• SARS Regime Review

• Lobbying HMG on AML legislative update

• ‘Guidance Audit’: Update of training, guidance and practice note in wake of legislative update and SRA outcomes if applicable

• Working with FATF on updated ‘Risk Based Guidance for Legal Professionals’
Sources of advice

- www.lawsociety.org.uk/aml
- Practice Note on AML/Counter Terrorist Financing and sanctions - HM Treasury approved
- Practice Note on responding to a financial crime investigation
- IBA/CCBE/ABA Report - Lawyers Guide to Detecting and Preventing ML
- Bi-monthly AML e-update - 17,000 subscribers
- Practice Advice Service - 020 7320 5675
- AML Directory - 30 minutes free advice on AML
- Law Society nationwide AML training events
- Nationwide networking groups for money laundering reporting officers
- AML e-forum for money laundering reporting officers
- New webinars being developed
- antimoneylaundering@lawsociety.org.uk

Questions?