

Regulation & compliance: Parting of the ways



BY GILL WADSWORTH

AUGUST 11, 2022

The UK is carving out its own path in financial services. Gill Wadsworth assesses the divergent gameplan the government is developing.

In May 2022, the UK government announced The Financial Services and Markets Bill, which aims to make the “most of the opportunities of Brexit by establishing a coherent, agile and internationally-respected approach to financial services regulation”.

This follows last year’s announcement of a Future Regulatory Framework (FRF) Review which will consider how rules governing financial services “should adapt to be fit for the future, and in particular to reflect the UK’s new position outside of the EU”.

While this looks like a clear intention to deviate from the EU’s regulatory regime, Gwyneth Nurse, director general of financial services at the Treasury, says the proposed new framework should “not be seen as divergence”.

Speaking at a Bloomberg UK Policy event on 31 May, Nurse said: "[The UK is] now separate and we have our own way of thinking about things."

She went on to claim that any differences in how the UK chose to regulate financial markets was not driven by a desire to compete with the European Union, but rather the need for "UK firms to compete on the global stage by enabling agile updates to regulations to reflect changing trends and practices".

Nurse's rejection of accusations of divergence is not shared by many in the industry, however.

Linda Gibson, director and head of regulatory change at Pershing, says "divergence in rule-making is now a fact of life" and argues that financial services companies will have to adapt and learn to operate on the basis that EU and UK regulators now work in parallel.

"Gone are the days when regulatory implementation projects could be applied, sweepingly, across all business lines and entities, creating a challenge insomuch that financial services firms now have to rethink their approach to regulatory change entirely."

Linda Gibson, Pershing



What's more, firms across the industry are now grappling with the implementation of new rules from both regulatory bodies alongside retrospective amends being made to existing regulation like MiFID II, making the task of compliance more complex and time-consuming."

Gibson adds, "Gone are the days when regulatory implementation projects could be applied, sweepingly, across all business lines and entities, creating a challenge insomuch that financial services firms now have to rethink their approach to regulatory change entirely."

Philip Flood, business development director for regulatory and STP services at Gresham Technologies, says "more divergence is inevitable which will only add to the complexity and operating costs" that financial services already bear.

Flood points to the Financial Conduct Authority's (FCA) decision to shun the additional requirements made to MiFIR which aim to clarify, improve and simplify the transparency regime for equity and non-equity instruments.



"The FCA has not implemented the additional ESMA requirements. Instead of just having a single reporting process, rules, and framework for MiFIR, firms will potentially have MiFIR UK and MiFIR EU which creates double the reporting headache."

Philip Flood, Gresham Technologies

Flood says, "The FCA has not implemented the additional European Securities and Markets Authority (ESMA) requirements. The minor jurisdictional differences are causing a split between reporting processes and framework. Instead of just having a single reporting process, rules, and framework for MiFIR, firms will potentially have MiFIR UK and MiFIR EU which creates double the reporting headache."

Wholesale market review

Nurse says the government has shown willingness to listen to industry views and points to the UK Wholesale Market Review consultation – which closed in September last year – which considers "how the UK's regime for wholesale capital markets can be reformed to deliver a framework that is fair, outcomes-based and supports openness and competitiveness, whilst maintaining the highest regulatory standards".

Linda Coffman, executive vice-president SmartStream RDU, welcomes the review and agrees it provides an opportunity to make industry views known.

"The wholesale market review illustrates the UK's effort to be thought leaders in the area of financial services and regulation," Coffman says. "Thus far [the Treasury] has struck the right balance between initiating a comprehensive set of oversight and continuing to listen to market and participants' perspectives. Hopefully this will continue as further clarity related to upcoming decisions are provided."

Pershing's Gibson shares Coffman's enthusiasm for the review and says it presents UK regulators with an opportunity to learn from other jurisdictions outside of the EU. "The review serves as an initial opportunity for the UK regulator to look towards other financial services hubs, like those in the US and Asia, for indications and examples of best practice as well as unique market solutions which it, in turn, can build upon and integrate into regulatory decision-making," she adds.

Gibson argues that the UK has a "clean slate and a license to approach regulatory change holistically" which eliminates the need to "chip away at rules and regulations that require tweaking here and there".

She adds: "In combination with the FRF review, it is clear that much of the rule-making for UK capital markets, going forward, will sit with the FCA."

Dual system

While the Treasury might deny regulatory divergence is about creating competitive advantage over its near neighbours, there is no refuting an opportunity to capitalise on its new found "freedom".

Gibson says the timing of Brexit leaves the UK with a unique chance to evaluate what has gone well with MiFID II and react accordingly.

She says: "Now that the FCA can diverge away from ESMA in MiFID-land, they are free to align themselves more with the regulatory framework of other jurisdictions."

However, Gibson concedes that "having two separate regulatory frameworks can be challenging for the industry" a view shared by Scott Bradley, head of securities trading sales & platform distribution for capital markets at London Stock Exchange Group.

Bradley says the FCA's move to loosen regulations governing dark trading and the double volume caps which were introduced under MiFID II, created challenges.

In December 2021, the FCA reduced the large-in-scale thresholds that allow dark trading in transactions above a certain size in the UK to €15,000. In the EU the threshold stands at €650,000.

In February this year the FCA announced an extension to all equity trades. "There are challenges from regulatory divergence, such as the potential parameters being suggested in Europe for 20% or two times the standard market size reference price," Bradley says. "This will create further problems in finding liquidity. At the same time, we recognise that the UK is taking a more decentralised approach to accessing liquidity."

Flexible systems

Given the complexities, challenges and potential 'headaches' from working under a dual regulatory regime, Coffman says financial services firms will need to build flexible internal systems and processes.

"This is often discussed but with lack of clarity," she says. "Flexibility means that the platforms used to capture information, enrich that information, and generate regulatory reports are built in a way that allows for change. Whether the platform is internal or provided by a third party, the design should be such that translation of data between systems is configurable and that data quality and governance measures can be adaptable to new processes and workflows."

Meanwhile Gibson agrees that the way in which firms manage data is key. "Regulated businesses must learn to use data smartly. With each new regulatory requirement that comes on board, additional data must be gathered, stored and reported. However, the process does not need to be unnecessarily onerous. Savvy firms will ensure they make good use of this data collection process, using the management information gathered to better inform business strategy and manage risks."

She adds that firms also need to keep a close eye on potential regulatory changes on the horizon but says "looking forward is just part of the process".

"Businesses that ensure traceability, documenting changes made, will have an audit trail and a look-back that demonstrates compliance and acts as a sound starting point for future implementation processes and strategies," concludes Gibson.

Whether the UK's regulatory divergence from the EU brings opportunities or challenges, financial services will be expected to adhere to a dual regime. It will be down to the industry to adapt to all the governing frameworks and ensure that firms can still thrive across all jurisdictions.

©Markets Media Europe 2022