

Law firm of the year

Morrison & Foerster

OR&R recognises a law firm that successfully guided clients through regulatory confusion and the interpretation of sometimes competing items of financial legislation

When it comes to the US Dodd-Frank Act, complaints about lack of clarity are not new. And of course Dodd-Frank is not alone. The European Market Infrastructure Regulation (Emir) and Markets in Financial Instruments Directive (Mifid) offer up their own sources of confusion.

Operational Risk & Regulation's law firm of the year, Morrison & Foerster, says this has been a continuing challenge for its clients.

"The most important issues in the last few years, and especially this year as things come to a head, have been helping clients – domestic US banks and

also non-US banks – deal with new regulations and requirements in the derivatives area," explains Anna Pinedo, a US-based securities and derivatives partner at the firm.

She explains that the firm has been actively working with financial institutions on the interpretation of Dodd-Frank, Emir and Mifid. Institutions are still trying to understand the differences in the regulations, Pinedo explains. "We've been working with our London colleagues advising banks and giving them a very comprehensive view of the regulatory framework that has been established in the US, under title VII of Dodd-Frank and how that compares with Mifid and with Emir. They need to think about how to structure their operations, their business and their compliance function. That has been very important."

Clients describe Morrison & Foerster as "totally tied in" to what's happening in Washington and around the world. Its FranknDodd.com website has given clients a resource that they can log into at any time to get the most recent updates on the US regulation. The firm has also been described as an important information broker between regulators and its financial services clients. Clients cite the quality of the relationships the firm has with Washington as one of its core strengths, enabling it to get clear insight on regulatory matters and so making its knowledge base invaluable for clients – and also praise its insights into foreign regulation and extraterritoriality.

Overseas concerns

The extraterritoriality question continues to be asked of Pinedo by clients. She says this is a key area where the lack of certainty is troubling institutions and in the US it is perhaps the most prevalent issue for banks in the derivatives area.

"The extent to which some of Dodd-Frank has extraterritorial applications for foreign non-US financial institutions that deal in derivatives in the US is still troubling many institutions," Pinedo says. "Plus there is the question of the extent to which US regulators will accept home-country rules."

She adds: "On top of this are the timing issues – when Emir and Mifid are being rolled out versus when the clearing requirement in the US began and when registration began."

And it seems there is no let-up for financial institutions when it comes to confusion about regulation. Pinedo explains that US financial institutions are still waiting for guidance from the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) on cross-border issues. She says this still leaves many questions unanswered. "Unfortunately things are not as far along as they could be because the CFTC and the SEC have not come out yet with guidance on this, so this is one of the most important things that we are looking at getting resolved or at least getting some clarity on."

She adds that the Volcker rule is also still causing issues for Morrison & Foerster's financial services clients. An expected revision of the rule has not yet materialised, leaving institutions seeking guidance on yet another regulatory matter. "The anticipated re-proposal of Volcker is of great significance for our financial services clients. It is anticipated for some time later this year and then on top of that there are the capital requirements in the US. While they are waiting for all this, how do they implement Basel III?"

She says that non-US banks are also waiting for various pieces of regulation or re-proposed regulation. An area that they will be looking out for this year is the regulation from the Federal Reserve relating to how non-US banks structure their operations in the US. The proposed rule-making was released for comment in December 2012, and that comment period is now coming to a close, which Pinedo says is significant for financial institutions.

"Those rules haven't been finalised but the comment period is now closing, so I would anticipate that those rules will get finalised towards the back half of this year. That will be very significant because it will factor into how financial services organisations decide to structure their operations in the US and elsewhere."

THE WINNERS

Bank of the year

UniCredit

Paper of the year

'Estimating operational risk capital',
by JD Opydyke and Alexander Cavallo

Law firm of the year

Morrison & Foerster

Fraud and financial crime software provider of the year

BAE Systems Detica – NetReveal

Consultancy of the year

Ernst & Young

GRC platform of the year

MetricStream

Operational risk software provider of the year

Thomson Reuters