LAW360

Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3 Reasons Brexit Won't Halt EU Market Abuse Rules

By **Carmen Germaine**

Law360, New York (July 1, 2016, 1:33 PM ET) -- While the British vote to exit the European Union continues to sow uncertainty in financial markets and elsewhere, experts say firms can still count on one thing — that the U.K. will hold on to new EU regulations on insider trading and market abuse, set to take effect on Sunday, even if it follows through on opting out of the EU itself.

The EU Market Abuse Regulation, a new framework that strengthens prohibitions on insider trading and market manipulation and extends existing rules to new markets and products, is set to go forward on July 3, just over a week after U.K. citizens voted in a referendum to exit the EU altogether.

While the U.K.'s Financial Conduct Authority has stepped in to remind firms that EU-derived legislation remains in effect in the U.K. until any changes are made, experts said that firms coping with the new regulations shouldn't hold their breath for an overhaul — the rules are here to stay.

Here, Law360 looks at the top three reasons the U.K. will stick with MAR.

They're Integral to Cross-Border Business

Depending on how extensively the U.K. disentangles itself from the union, experts said, it's likely it will still be required to comply with the regulations even if it's no longer an EU member, because the rules also apply to members of the European Economic Area even if they're not part of the EU.

But the rules will no longer apply if the U.K. opts to exit the EEA in addition to a "hard Brexit," a move Dechert LLP senior lawyer Roger Matthews said isn't out of the question given the Leave campaign's focus on restricting the free movement of workers between EEA member states.

"That's been a bit of a touchstone in the referendum campaign, so it may well be that because of the public's desire to restrict free movement of workers, we can't stay part of the single market," Matthews said.

Even in the case of a hard Brexit, though, the U.K. is still likely to keep MAR and other EU legislation in place in an effort to continue to access the continent's single market, according to Lucy Frew, the head of Kemp Little LLP's financial regulatory practice.

"By having it in place, we'll be seen as having an equivalent regime and therefore still be able to access the EU under provisions for third countries," Frew said.

And London, which prides itself on being a European financial center, will have an additional incentive to retain the same framework as the EU, according to Gordon F. Peery, the chair of Seyfarth Shaw LLP's derivatives practice group.

As a financial crossroads, Peery said, London will need to harmonize any law and regulations arising out of Brexit with the regulations on the continent, or risk losing market share to other European cities that are already jumping at the bit to increase their standing as financial capitals.

"If after Brexit London imposes more onerous financial services regulation as opposed to keeping current EU financial services regulation, it may be more difficult to execute and clear trades in London, and London would thereby lose business to Frankfurt and elsewhere, which is certainly not what the U.K. wants," Peery said.

They're the Result of U.K. Pressure

In the unlikely event U.K. firms and regulators decide they don't need access to European markets, experts say the country will still likely keep the market abuse regulations around for a simple reason — the U.K. is one of the countries that pushed hardest for the rules when they were first negotiated.

"There are a number of pieces of EU legislation where the U.K. has really been the driving force, and that's been particularly true for MiFID and the EU market abuse regime," Frew said, referring to the EU's Markets in Financial Instruments Directive.

Frew noted that the U.K. already had a "relatively sophisticated regime" in place to detect and regulate market manipulation, and isn't likely to do away with MAR for anything less stringent.

Jeremy Jennings-Mares, a capital markets partner at Morrison & Foerster, agreed that MAR as written contains few provisions that the U.K. had pushed back against. In fact, he said, the U.K. had implemented the previous market abuse regime with "some gold plating, in terms of going further than what the old legislation required."

"I don't see a big drive to try and roll back the effects of the Market Abuse Regulation," Jennings-Mares said.

According to Matthews, who helped negotiate the regulations as a legal adviser to HM Treasury, the U.K. was "fairly pleased" with how the regulations turned out in the final draft, having pushed for tougher regulations in nearly every area.

"The particular thing that we didn't like was that it wasn't tough enough, that it basically gave other countries some caveats that we would have preferred they didn't have," Matthews recalled.

Matthews added that the U.K. is unlikely to go back to its previous market abuse rules, given that the new regulations provide clearer and broader proscriptions on insider trading and market manipulations than the U.K.'s Financial Services and Markets Act 2000.

"Given that the U.K. pushed a lot of this, I would be surprised if we didn't comply with the bulk of it," Matthews said.

They'll Be Hard To Get Rid Of

At any rate, experts said, whether or not British financial firms like the regulations, they're probably stuck with them for some time simply because regulators will be focused on the Brexit process itself.

While the British voting public expressed its desire to leave the EU, politicians have been decidedly less enthusiastic in the wake of the vote, with Prime Minister David Cameron saying he will not formally start the exit process before he resigns, and former London mayor and Conservative Party icon Boris Johnson — a key voice in the Leave campaign and a frontrunner for Cameron's post — saying Thursday he won't seek the country's leadership after all.

Once the eventual prime minister does invoke Article 50 of the Lisbon Treaty, the formal process for leaving the EU will still take another two years, meaning it will be a considerable amount of time before the U.K. is on its own. Jennings-Mares said that legislators will wait to trigger the process until they have a firm plan — and will approach any market regulation changes with the same caution.

"I think any decision to roll back or try and chip away at the edges of things is not going to be taken lightly, I don't think legislators are going to be rushing to try and change what's in place," Jennings-Mares said.

During that two-year period, Matthews said it's likely regulators won't even be able to make a move to change financial services regulation.

The political willpower needed to make any major changes or reconsider significant laws, he explained, will instead be focused on negotiating the exit terms to the U.K.'s advantage.

"I don't think there will be the manpower and the civil service to also go through, during that period, every regulation and directive that we might ideally want to adjust and tweak it or write a replacement," Matthews explained.

After the Brexit process is complete, experts said newly independent British regulators will still probably be reluctant to implement a wholesale replacement of the market abuse regulation, and will look instead for stability and consistency.

James Wootton, a partner at Linklaters LLP, said that market abuse rules of some kind are necessary for financial markets to function, and that regulators will likely keep the rules around in some form to encourage investor confidence.

"If and when MAR ceases to apply, there will no doubt continue to be a framework of market abuse regulation in the U.K.," Wootton said.

Meanwhile, Peery noted that by the time Brexit is completed, financial services companies will have designed their London operations to comply with MAR and other EU regulations, something he said the FCA and other London regulators will need to keep in mind if they make any moves to change those regulations.

After firms put in the work to achieve compliance with the market abuse rules, Peery said, it's unlikely that U.K. regulators would impose any regulations more burdensome that the MAR requirements. But he added that Brexit could present an opportunity for London to differentiate itself by tweaking any

market abuse regulations in ways that reduce the burden on market participants.

“If the regulators in London could seize upon Brexit as an opportunity to streamline or simplify financial services law, that would be a very attractive unanticipated byproduct of Brexit,” Peery said.

--Editing by Philip Shea and Kelly Duncan.
