



August 2016

Important for Investment Management Firms and Depositories: UCITS V Level 2 regulations and the Securities Financing Transactions Regulation (SFTR)

The FCA have issued Consultation Paper CP 16/14, UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook setting out changes to the CASS and COLL sourcebooks to meet the Level 2 regulations. The Level 2 Regulation was published by the European Commission on 24th March 2016 and come into force from 13th October 2016.



Broadly, the areas where the UCITS V Level 2 Regulation affects CASS include:

- Depositories must have adequate organisation arrangements to minimise the risk of loss of assets as a result of fraud, poor administration, inadequate registering or negligence;
- Depositories must maintain records and segregated accounts in a way that ensures accuracy, and in particular record the correspondence with UCITS assets; and
- Strict requirements on depositories when conducting reconciliations of records

The FCA are also consulting on copying out into the COLL Handbook the SFTR provisions which require managers of UCITS and AIFs to disclose details of their use of SFTs and total return swaps in the funds' pre-contractual documents and annual reports to investors. The required disclosures in the annual report (and half-yearly report for a UCITS) apply from 13 January 2017. Required disclosures relating to pre-contractual documentation and prospectuses came into effect from 13th July 2017.

<http://www.fca.org.uk/news/cp16-14-ucits-v-level-2-regulation-sftr>

Important for all Firms: Guidance Consultation Paper on wind-down planning

Firm's that decide to wind down their business should do so in an orderly manner. The FCA have issued guidance consultation on its plans to issue a non-binding approach document for firms to follow, suggesting the resources it needs to wind down, particularly in resource-stressed situations.

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An effective wind-down plan should help a failing firm to cease its regulated activities and achieve cancellation of permission with minimal adverse impact on its clients, counterparties and markets.

<http://www.fca.org.uk/your-fca/documents/guidance-consultations/gc16-05>

Important for firms conducting FX trades – BIS Global FX

Code

The FCA has welcomed the publication of the first part of the Bank for International Settlements (BIS) Global FX Code (the 'Code') designed to raise standards in FX markets through the Code.

Many FX activities are of course already subject to regulatory requirements, such as the client order handling and best execution standards under MIFID, FCA rules against market manipulation and abuse conduct of business rules to ensure the fair treatment of customers and senior management responsibilities to ensure staff meet appropriate standards of market practice. The Code will make an important contribution to such standards.

<http://www.fca.org.uk/news/fca-welcomes-bis-global-fx-code>

Important for all Firms: New complaints handling returns

Firms will have to submit a new complaints return on GABRIEL for reporting periods starting from 30th June 2016, for submission in early February 2017. The return has been implemented to give FCA more detail about complaints and how they are handled by firms to further aid its ability to spot developing concerns.

The 'next business day rule' where firms are permitted to handle complaints less formally, without sending a final response letter has been extended to three business days after the date of receipt. Firms must report all complaints received, including those closed within three business days. Firms are required to send complaints data twice a year.

Important for all Firms: Financial Advice Working Group established

The Working Group has been established to take forward three recommendations made in the Financial Advice Market Review (FAMR) published in March 2016. FAMR recommended a package of measures in order to improve access to advice and guidance to consumers primarily in relation to investing, saving into a pension and taking an income in retirement.

The three strands are to work with employer groups to develop a guide to the top ten ways to support employees' financial health, and devise a strategy for rolling this out; to publish a shortlist of potential new terms to describe 'guidance' and 'advice' by Q3/Q4 2016; and lead a task force formed of interested stakeholders to design a set of rules of thumb and nudges aimed at increasing consumer engagement, taking into account the life stages at which these nudges and rules of thumb could be delivered.

The Working Group includes a selection of consumer and industry experts from the FAMR Expert Advisory Panel, the Financial Services Consumer Panel, the FCA Smaller Business Practitioner Panel, and the FCA Practitioner Panel.

<http://www.fca.org.uk/news/financial-advice-working-group-established>

Important for all Firms: Competition Policy in Financial Markets

The FCA has published a speech delivered by Mary Starks, Director of Competition, on competition policy in financial markets. The speech discussed how the FCA came to have a competition remit, the work the FCA has done in carrying out its competition mandate, described some of the challenges that have been faced along the way, and outlined some of the big picture questions that need to be addressed in the future.

A link to the text of the speech as drafted is here.

<http://www.fca.org.uk/news/competition-policy-in-financial-markets>

Important for all firms: FCA fees and levies for 2016/17

The FCA has published Fee Consultation Paper CP16/9 setting out that they will require £519.3m for 2016/2017, an increase from last year of £37.7m which is solely down to the inclusion of Consumer Credit for the first time. The 2016/7 fee calculator is on the FCA website. It confirms the "good" news referred to in the last edition of Newgate News that, compared to last year, asset managers will see a decrease in the FCA periodic fee of 5.1% (fee block A7 – Portfolio Managers) and 9.5% (fee block A.9 Managers and depositories of investment funds, and operators of collective investment schemes).

Periodic fees Firms in the Advisors/Arrangers A13 fee block and the Corporate Finance A14 fee block will see a 1.6% decrease.

Important for all firms: Guidance to firms outsourcing to the 'cloud' and other third party IT services

In the December 2015 Newgate News, we referred to the issuance of draft FCA guidance designed to help firms oversee all aspects of their decision to outsource to the 'cloud' and other third party service providers, from making the decision to outsource, selecting an outsource provider, and monitoring outsourced activities on an ongoing basis, through to exit.

The FCA have published final guidance following feedback received. The FCA note feedback received did not require it to make substantial changes to the original draft guidance. The amendments made have been, in the main, to clarify what the FCA expects from firms.

<http://www.fca.org.uk/news/fg16-5-guidance-for-firms-outsourcing-to-cloud-and-third-party-it-services>

Important for fund management firms: Guidance on fund suspensions

Following the EU Brexit result, which resulted in a number of property fund managers temporarily suspending trading in their funds, FCA issued guidance reminding all fund managers of their obligations to investors and outlines the FCA's expectations in relation to the suspension of dealings in their funds.

Fund managers must ensure that assets are valued fairly and accurately and to ensure that any subscriptions or redemptions of units take place at a fair price. If assets are disposed of to meet unusually high levels of redemption requests, it must be done so as not to disadvantage those investors who remain in the fund. Only in exceptional circumstances should fund managers consider whether it would be in investors' best interests to suspend dealing in a fund or range of funds.

<http://www.fca.org.uk/news/fca-issues-guidance-following-property-fund-suspensions>

Important for all firms: FCA Annual Report 2015/16

The FCA has issued its Annual Report detailing its achievements over the past year in meeting what it set out to do in the 2015/16 Business Plan.

Examples of the achievements are;

- A number of thematic reviews including suitability of investment portfolios and oversight and control of financial benchmarks. A further 7 benchmarks entered regulation during the year.
- New market studies looking at investment and corporate banking, and asset management
- Implementing recommendations from the Fair and Effective Markets Review aimed at ensuring wholesale financial markets operate fairly
- FCA Innovation Hub assisted 230 firms, 18 of which are now authorised
- Implementing the Senior Managers and Certification Regime, which seeks to deliver a step change in individual accountability. Over 41,000 people in more than 1,000 firms are covered by these requirements.
- Integrating over 25,000 consumer credit firms into the regulatory regime
- Enforcement action against firms for past failings resulting in penalties of £884.6mn (substantially less than last year's £1.4 billion). FCA also issued fines totalling £4.2mn to individuals and secured 8 convictions for unauthorised business.
- New banking sector remuneration rules, which include changes to deferral and claw back of variable remuneration, such as bonuses, to align risk and individual reward and discourage irresponsible risk-taking
- Significant progress on major initiatives such as MiFID II, the Market Abuse Regulation (MAR) and the transposition of the 4th Anti-Money Laundering Directive into UK law.

Important for firms dealing with retail investors: Packaged Retail and Insurance-based Products (PRIIPS) - Changes to the Disclosure Rules

The PRIIPs Regulation, which comes into force on 31 December 2016, is aimed at encouraging efficient EU markets by helping investors to better understand and compare the key features, risks, rewards and costs of different retail products (if PRIIPs) through the issuance of a Key Information Document (KID).

The Regulation applies to firms who manufacture these products. The KID is required to give specific information about the product, risks and returns, what happens if the manufacturer of the PRIIP cannot pay out, how the investor can redeem early and how to complain.

Although UCITS schemes are PRIIPs, an exemption under the regulation means the requirements will not apply until 31 December 2019. The existing requirements to produce a UCITS Key Investor Information Document (KIID) continue to apply to UCITS schemes.

<http://www.fca.org.uk/your-fca/documents/consultation-papers/cp16-18>

Important for Asset Managers: Thematic Review into Dark

Pools

The FCA has issued a Thematic review into the role, promotion and oversight of dark pools in the equity market. Dark pools are trading venues with no-pre trade transparency where the price and volume of all orders are hidden and anonymous.

The review examined the promotion undertaken by dark pool operators, governance and oversight controls and the disclosure / management of conflicts of interest. The review also looked at the impact on firm's best execution obligations and the infrastructure related to trading in dark pools.

The review found market participants using dark pools benefited from the additional liquidity, reduced risk of information leakage on trading activity and the potential benefits on pricing and costs that dark pools offer. Pre-trade transparency was not viewed by firms as a significant concern so long as dark pools, which rely directly on prices occurring in the lit markets, remain relatively small versus those lit markets.

Overall, the FCA review found those firm operating dark pools had made significant process in addressing the promotion and management of conflicts of interest, though it recommended firms do more to strengthen policies and procedures for oversight and escalation. Other recommendations are a) for dark pool operators to provide clear detail about the design and operation of a dark pool to users and, for investment banks, this includes describing precisely how their broker crossing network interacts with other components of their electronic trading platform; and b) improve the monitoring of activity in their pools with a focus on operational integrity, best execution, client preferences and unwanted trading activity including market abuse.

<http://www.fca.org.uk/news/fca-publishes-thematic-review-into-dark-pools>

Important for all Firms: Policy Development Updates

Each month the FCA issues a Policy Development Update (PDU) which provides information on;

- publications issued since the last edition
- information about recent Handbook-related and other developments
- other publications – consumer publications, guidance consultations and finalised guidance
- an updated timetable for forthcoming publications

A link to the latest PDU's are here:

<http://www.fca.org.uk/news/pdu-34>

<http://www.fca.org.uk/news/pdu-35>