Newgate News

Up to date compliance news for firms in the financial services sector.

NEWGATE COMPLIANCE

September 2016

Important for firms conducting FX trades - FX remediation programme: the next steps

Following a remediation programme issued in 2014 to ensure UK foreign exchange (FX) firms addressed the root causes of their failings, the FCA have issued additional steps on how firms should respond to the findings.

Back in November 2014, the FCA enforced fines totalling $1.7 billion on five banks for failing to control business practices in regards to their G10 spot foreign exchange trading operations. The banks failed to manage obvious risks around confidentiality, conflicts of interest and trading conduct. In response to this, the FCA launched an industry-wide remediation programme to ensure firms addressed the root causes of these failings and to drive up standards across the market. Firms that weren't involved in the programme should still consider the following:

- Firms will need to take account of future developments in the FX market, including the publication of the FX Global Code of Conduct, expected to be published in May 2017 by the Foreign Exchange Working Group (FXWG).
- Firms and responsible senior managers should ensure their staff satisfy appropriate standards of market practice.
- Firms should recognise that the risks in their FX business are likely to be relevant to other trading businesses, and they should ensure that the lessons learned from the FX remediation programme are applied right across their organisations and appropriate risk mitigation plans implemented appropriate to the size and complexity of their business.

https://www.fca.org.uk/news/news-stories/fx-remediation-programme-our-next-steps

Important for Asset Managers - UK dark pools and reference prices

Following our previous newsletter item on the FCA's thematic review in to dark pools, the FCA have published Occasional Paper No. 21 – Asymmetries in dark pool reference prices. New analysis suggests that despite dark pools experiencing delays in receiving prices, the costs associated with these inferior prices are small, and do not outweigh the useful service dark pools provide.

Newgate Compliance Limited

Contact us:

- email; or
- 020 3696 8750

Dark pools are best described as trading venues with no pre-trade transparency where the price and volume of all orders are both hidden and anonymous. Concern had been previously raised about the reliability of reference prices in dark pools; the worry being that investors could be persistently trading at stale, out-of-date prices. However, new research suggests that the overall costs associated with stale prices are not significant – standing at approximately £4.2m per year. Overall, these costs do not outweigh the useful service dark pools provide to market users by providing price improvement and reducing price impact.

https://www.fca.org.uk/news/news-stories/uk-dark-pools-and-reference-prices

Important for all Firms - FCA publishes second consultation paper on the Markets in Financial Instruments Directive II (MIFID II) implementation

The FCA has published a second consultation paper on the implementation of the amended and restated Markets in Financial Instruments Directive (MiFID II).

The original MiFID, introduced in 2007, set the regulatory framework for the buying, selling and organised trading of shares, bonds, units in collective investment schemes and derivatives across the European Union. MiFID II which is due to take effect on the 3rd January 2018, is revising the original directive to introduce substantial and wide ranging measures in order to improve investor protection and promote market integrity.

The consultation paper published covers a range of issues including: position limits and reporting for commodity derivatives, systems and controls requirements for firms providing MiFID investment services, client asset protections, enhanced complaint handling rules to cover a wider range of clients and the protection of whistleblowers.

The closing date for responses to this consultation paper is 28th October 2016.

https://www.fca.org.uk/news/press-releases/fca-publishes-second-consultation-paper-markets-financial-instruments-directive

Important for all firms – Good and poor practice for businesses under the Money Laundering Regulations 2007

The FCA has published a summary of the policies and procedures it expects firms providing safe custody services to have in place. It provides examples of good and poor practice for businesses under the Money Laundering Regulations 2007, tailored to safe deposit businesses.

In order to prevent money laundering and terrorist financing, businesses should apply a risk-based approach and have appropriate and up-to-date policies and procedures in place to detect signs early. This includes policies for: customer due diligence measures, ongoing monitoring of the business relationship with a client, regular money laundering training for all staff, reporting money laundering suspicions, client file record-keeping, periodic risk assessment communicating these policies and procedures to members of staff.

The findings remind firms that:

- All policies and procedures should refer to the **current legislation**
- **Due diligence** on existing customers should be to the same level as that for new customers
- A procedure should be in place to identify **Politically Exposed Persons** (PEPs)
- **Records** should be kept for five years after the end of the business relationship

https://www.fca.org.uk/news/news-stories/safe-custody-services-firm-review-findings

Important for Asset Management Firms - Transaction data throws new light on corporate bond liquidity

In recent years, warnings of liquidity falls in the UK's corporate bond markets have become commonplace. But analysis of transaction data suggests a more positive picture, according to FCA Occasional Paper No.14 - Liquidity in the UK corporate bond market: evidence from trade data.

On the basis of a series of widely accepted liquidity measures, there is no evidence that for the period 2008 to 2014 liquidity outcomes have deteriorated in the market, despite the decline in inventory of dealers in this period. If anything, the market appears to have become more liquid. There is little sign of liquidity having a larger effect on bond spreads now than a few years ago.

https://www.fca.org.uk/insight/transaction-data-new-light-corporate-bond-liquidity

Important for all firms - FCA anti-money Laundering Annual Report 2015/16

The FCA has released its third annual anti-money laundering (AML) report, highlighting financial crime as one of the regulator's top priorities for 2016/2017 and outlining how it plans to address risks over the next year.

The FCA aim to ensure that firms have adequate safeguards to prevent themselves from being used for financial crime and that any unintended consequences are kept to a minimum.

In the report, the FCA discuss how it has sought to achieve these objectives over the past year. It covers:

- developments in their anti-money laundering (AML) supervision strategy
- findings and outcomes from recent specialist supervision work
- policy developments in the last year
- independent assessments of their AML supervision

Firms are encouraged to read the report and note its findings.

https://www.fca.org.uk/anti-money-laundering-annual-report-2015-16

Important for Fund Managers: ESMA advises on extension of funds passport to 12 non-EU countries

In July 2015, we issued a special Newgate News bulletin concerning the European Securities and Markets Authority (ESMA) advice on extending the AIFMD passport to non-EU funds and their managers. So far ESMA has undertaken an assessment of 12 non-EU countries: Australia, Bermuda, Canada, the Cayman Islands, Guernsey, Jersey, Hong Kong, the Isle of Man, Japan, Singapore, Switzerland and the US.

The following has been observed:

- There are no significant obstacles regarding investor protection, competition, market disruption, and the monitoring of systemic risk impeding the application of the AIFMD passport to Canada, Guernsey, Japan, Jersey and Switzerland.

- In respect of the United States ESMA's advice with regard to market disruption and obstacles to competition is qualified. ESMA suggests extending the AIFMD passport to US funds that only accept not involving any public offering, to US funds that are not mutual funds and to funds that restrict investment to professional investors as defined in the AIFMD.
- Based on an assessment of AIF's only there are no significant obstacles impeding the application of the AIFMD passport to Hong Kong and Singapore
- For both Bermuda and the Cayman Islands, with respect to investor protection and the assessment of the effectiveness of enforcement, ESMA cannot provide advice until the final version of their AIFMD equivalent rules are in place.
- For the Isle of Man, the absence of an AIFMD-like regime made it difficult to assess whether the investor protection criterion could be met.
- The next batch of countries for ESMA's assessment is likely to include any of the Bahamas, Brazil, British Virgin Islands, Curacao, Mexico, Mauritius, South Africa, South Korea and the US Virgin Islands, which ESMA has identified as the other most relevant domiciles for this process.

https://www.esma.europa.eu/press-news/esma-news/esma-advises-extension-funds-passport-12-non-eu-countries

Important for all firms - Financial Crime Reporting (REP-CRIM): the final rules

The final and redrafted rules of the new financial crime data return (REP-CRIM) comes into force on 31 December 2016 and a new section added to the Supervision Handbook – SUP 16.23. The FCA will use the data from the return to support its financial crime supervision objective.

The return is mandatory for all banks, insurance companies and mortgage lenders. For other firms, including investment firms, only those with a revenue of more than £5 million will be subject to the new reporting requirement in areas of their business subject to the Money Laundering Regulations.

Under the new reporting requirements, firms will have to submit information about the number of "politically exposed persons" (PEPs) and other "high-risk customers" that they deal with, as well the geographic areas in which those individuals are located. Firms will also have to provide data on the number of suspicious activity reports (SARs) that they have submitted internally as well as those disclosed externally to the National Crime Agency (NCA) or under a consent order.

The FCA said it expects the data to help it "identify emerging intra- and cross-sector risks" and that the introduction of the new reporting requirement is likely to "reduce the need for us to make ad hoc data requests from firms".

https://www.fca.org.uk/publications/policy-statements/ps16-19-financial-crime-reporting-feedback-chapter-6-cp15-42-and

Important for Fund Managers (Venture Capital) - European Commission legislative proposal to amend EuVECA and EuSEF Regulation

The EC has published a proposal to amend the European Venture Capital Funds (EuVECA) and the European Social Entrepreneurship Funds (EuSEF) regulations by extending the range of managers eligible to market and manage EuVECA and EuSEF funds, increasing the range of companies that can be invested in by EuVECA funds and making the registration and cross border marketing of these funds easier and cheaper.

Changes include allowing AIFMs of qualifying venture capital and qualifying entrepreneurship funds to use the EuVECA and EuSEF designation when marketing their fund in the EU (meaning full scope AIFMs can use these designations), allowing an EuVECA to invest in larger companies than previously permitted, registration conditions for these funds and prohibiting member states charging AIFM wishing to provide cross-border marketing of these funds.

http://ec.europa.eu/finance/investment/venture_capital/index_en.htm

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:

https://www.fca.org.uk/publications/handbook/policy-development-update-%E2%80%93-issue-36

https://www.fca.org.uk/news/policy-development-update