



Newgate News

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



March 2015

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Important for Investment Managers: Market Abuse Controls

The FCA has published a thematic review looking at asset management firms and the risk of market abuse. The review considered how firms control the risks of insider dealing, improper disclosure and market manipulation, with a primary focus on equities and insider dealing.



The FCA has concluded that firms need to pay more attention to the possibility of receiving inside information through all aspects of the investment process and take steps to manage this risk. The FCA has also encouraged firms to improve the effectiveness of post-trade surveillance. The FCA report contains examples of good and poor practice that firms may find useful to consider. Senior management need to satisfy themselves that their firm's practices to manage the risk of market abuse are appropriate and robust.

The FCA have stated that an effective market abuse control framework would include ways to: identify inside information; control access to inside information; use pre-trade controls to reduce the risk of market manipulation and insider dealing; post trade surveillance to monitor suspicious trades; control PA dealing and staff training and awareness.

We will follow up on this through our routine visits.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-01>

Important for Investment Managers: Dealing Commission

The FCA has confirmed it intends to support ESMA's final advice which proposes restrictions on inducements for portfolio managers. This will prevent portfolio managers from receiving substantive research linked to their execution arrangements with brokers and transactions costs passed to customers.

Any changes to the FCA domestic rules on the use of dealing commission (COBS 11.6) will be in line with the final reforms under MiFID II. The FCA believe that EU reform proposals to separate portfolio managers' payments for research from execution arrangements will better align their incentives to control costs and procure research in the best interests of their customers, and will improve competition in the market for the provision of research.

Newgate will review your existing Dealing Commission Policy as part of our routine visits.

<http://www.fca.org.uk/your-fca/documents/discussion-papers/dp14-03>

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Important for all firms: Social Media and Customer Communications

The FCA has issued finalised guidance on their supervisory approach to the issuance of financial promotions via social media.

Firms are reminded that the FCA rules are media neutral and all financial promotions issued should be identifiable as such and are required to be fair, clear and not misleading and contain the appropriate balance of benefits and risks.

The finalised guidance gives examples of compliant and non-compliant promotions with specific examples.

Firms who make use of social media to make financial promotions are encouraged to take a read of the finalised guidance and ensure that all issues raised are factored into the financial promotions sign-off process.

<http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-04>

Important for Retail Firms: Performance Management risks

The FCA has issued a guidance consultation that focuses on the risks that are posed to consumers by firm's employing inappropriate staff performance management practices.

A key issue under scrutiny is that undue pressure is put on sales staff to meet targets or corporate objectives which conflict with the obligation to treat customers fairly.

The aim of the guidance consultation is to ensure that firms who deal directly with retail clients have the appropriate culture and staff performance management structure in place to manage the risk of miss-selling.

Firms with staff who deal directly with retail customers should read this report and take action where appropriate, to ensure the risks are adequately managed.

<http://www.fca.org.uk/static/documents/guidance-consultations/gc15-01.pdf>

Important for MiFID Firms: MiFID II Implementation Update

The FCA is working towards meeting the legislative deadlines of 3 July 2016 for transposing MiFID II into UK laws and regulations and 3 January 2017 for MiFID II legislation and regulation to take effect.

Transposition will require changes to UK legislation and the Handbook of the FCA. As with the implementation of the AIFMD in the UK, the FCA acknowledges that it needs to communicate effectively with firms about the changes that MiFID II will bring.

<http://www.fca.org.uk/firms/markets/international-markets/mifid-ii/mifid-review>

Important for AIFMs and Depositaries: Potential Changes to FCA Handbook

The FCA has published a consultation paper (CP15-08) in which it is seeking views on certain changes to the Investment Funds sourcebook (FUND) and the FCA Handbook.

In particular the FCA is consulting on: (i) Q&As to clarify valuation requirements applying to AIFMs; (ii) address potential risks to FCA objectives by AIFMs relying on an exclusion in article 72AA(2) of FSMA that might allow it to inadvertently carry out other regulated activities (e.g consumer credit) without a separate permission; (iii) applying fines for late submission of returns by non-EEA AIFMs and small registered UK AIFMs; (iv) to clarify a number of provisions in the Handbook related to AIFMD; and (v) incorporate some of the AIFMD section of the FCA website within the Handbook guidance.

Responses are invited by 5 May 2015.

<http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-08>

Important for CRD IV Firms: EBA guidelines on remuneration policies for public consultation

The European Banking Authority (EBA) issued draft guidelines on remuneration policies for public consultation.

These guidelines seek to clarify how firms and regulators should interpret the remuneration rules in CRD IV. These **guidelines** would effectively remove the proportionality principle for smaller firms.

CRD IV gives Member States flexibility to apply the rules in a proportionate way, including the rules on remuneration. This is an important part of the Directive and it helps to manage the impact on smaller firms. The FCA prudentially regulates approximately 1,000 firms under CRD IV and applies the proportionality principle to the smaller of these firms, given, in particular, its importance to its competition duty.

These guidelines are not final at this stage. However, the FCA strongly encourage firms to consider them, the likely impacts on their business, and respond to this consultation. It is open for three months after which the EBA will consider the feedback received and draft final guidelines for publication.

[EBA guidelines on remuneration policies for public consultation](#)

Note: Firms are subject to CRD IV if they: hold client money; safeguard and administer assets; deal on own account or undertake placing activities.

Important for Consumer Credit Firms: Proposed Changes to FCA Rules and Guidance

The FCA has been responsible for regulating the consumer credit market since April 2014.

It is now consulting on changes it intends to implement designed to address potential areas of harm to consumers that it has observed in the market.

The consultation will be of interest to firms with permission in relation to credit related activities. FCA want to hear comments on their proposals by 6 May 2015.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-01>