

## June 2019 - Issue Highlights

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- Permanent restrictions on the sale of CFDs and CFD-like options to retail
- First annual FCA report on the perimeter



## Important information for all firms: The Financial Services Regulatory Partners Phoenixing Group has been launched

The Financial Conduct Authority (FCA) held a round table event to build on the existing collaboration with its regulatory partners – the Financial Services Compensation Scheme (FSCS), the Financial Ombudsman Service (FOS), the Insolvency Service and Scotland’s Accountant in Bankruptcy. In addition, they have launched the Financial Services Regulatory Partners Phoenixing Group to tackle the ongoing issue of phoenixing in financial services and to help them work more closely in the future by more effectively sharing data and intelligence on individuals and firms.

*Phoenixing: when firms and individuals close down firms or resign senior positions with the intention of deliberately avoiding their liabilities to consumers or avoid poor conduct history, only to later re-emerge in a different legal entity.*

Though the partners have shared information on and discussed phoenixing in the past, this will be the first time that they have come together in a group to formally discuss the issue and agree to work with each other. Sharing data has proved highly effective in both preventing and detecting phoenixing and to help the FCA build cases to refuse applications for authorisation, and as such expanding the types of data and information shared between the working group can only improve on this.

<https://www.fca.org.uk/news/statements/fca-launch-financial-services-regulatory-partners-phoenixing-group>

## **Important information for all firms: Cost Transparency Initiative launch the finalised templates for disclosure of costs and charges to institutional investors**

The Cost Transparency Initiative (CTI) is an independent group launched on the 7<sup>th</sup> November 2018 working to improve the cost transparency for institutional investors with the responsibility for progressing the work already undertaken by the Institutional Disclosure Working Group (IDWG).

The main focus of the CTI has been to provide helpful information to assist institutional investors by detailing what costs they are paying, aligned with relevant disclosure obligations where appropriate.

Templates and guidance provided on the CTI website may be of use to our clients when producing periodic reports or ex-post costs and charges disclosures to institutional clients.

<https://www.fca.org.uk/news/statements/statement-launch-finalised-cti-templates>

## **Important information for all firms: FCA has confirmed an extension of the deadline for notifications for the Temporary Permissions Regime (TPR)**

The deadline for notifications for the temporary permissions regime will not be extended until the 30<sup>th</sup> October 2019.

The TPR allows EEA-based firms passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, whilst they seek full FCA authorisation. It also allows EEA-domiciled investment funds marketing in the UK under a passport to continue temporarily marketing in the UK.

The FCA will continue to provide updates on their [Brexit pages](#).

<https://www.fca.org.uk/news/press-releases/fca-confirms-extension-temporary-permission-regime-deadline>

## **Important information for all firms: 5 Conduct Questions Programme: FCA publishes latest Industry Feedback**

In May 2019, the FCA released a report addressing industry feedback on culture and governance which remains a top priority for the FCA as set out in the FCA Business Plan 2019/2020. This report follows the FCA's initial 5 Conduct Questions Programme (5CQ) back in 2015 (with follow up reports in 2017 and 2018) relating to conduct and culture by the leading wholesale banking firms operating in the UK. In 2019, the FCA have introduced the programme more widely across other sectors of wholesale financial markets.

The report dated May 2019 consists of three main sections:

1. Higher-level or strategic observations the FCA has made after their several years of observing the industry's efforts.
2. Catalogue of industry ideas and FCA observations arising from their supervision activity across the past year.
3. A brief assessment of 'speak up culture' and the whistleblowing procedure in wholesale banks.

The FCA highlights the following key messages from the report:

- Good conduct and culture is increasingly recognised as a competitive advantage;
- Framing conduct as an integral part of broad corporate goals has a positive impact on effective implementation;
- Non-financial misconduct needs much more attention from staff at all levels.

Supervisory engagement from the FCA with firms using the 5CQ will continue and firms should note that the FCA's attention is increasingly turning to the effectiveness of programmes so far and the potential for more sustainable mindset change.

<https://www.fca.org.uk/firms/5-conduct-questions-programme>

## Important information for all firms: Implementation of the Fifth Money Laundering Directive (5MLD)

The government's latest consultation period, which began in April, on how to best transpose the European Union's Fifth Money Laundering Directive (5MLD) closed on the 10<sup>th</sup> June 2019. The Directive, which contains amendments to the Fourth Money Laundering Directive (4MLD), boosts transparency and bolsters the existing preventative framework to tackle the risk posed across the EU by money laundering and terrorist financing.

Member states of the EU are obliged to implement 5MLD by January 2020 and, though the UK is still set to withdraw from the EU, it had a significant role in developing 5MLD and remain keen to prevent the financial system being misused in that way.

Unlike 4MLD which imposed large scale changes, 5MLD simply adds certain provisions which are not covered by 4MLD and thus extends the reach.

Transparency International UK's [report](#) identifies 4 key recommendations:

1. Ensure UK beneficial ownership data is adequate, accurate and current in order to help prevent legal structures being abused for the purpose of corruption and money laundering.
2. Overhaul the UK's anti-money laundering supervisory system to ensure it acts as an accountable and credible deterrent against non-compliance.
3. Refine the conditions for accessing beneficial ownership information on trusts with tax consequences so that potential financial crime can more easily be identified and investigated.

4. To tackle corruption in sport by including senior members of international sporting federations explicitly within the UK definition of a Politically Exposed Person (PEP).

<https://www.transparency.org.uk/publications/ti-uk-government-5mld-implementation-consultation/>

## Important information for brokers in wholesale financial markets: Dear CEO letter - harm posed by wholesale market brokers

The FCA released a “Dear CEO” letter on 18<sup>th</sup> April 2019, summarising their view of both the key harms and the FCA’s strategy to deal with those harms posed by brokerage firms in wholesale financial markets.

The FCA also expresses concerns around four key drivers of harm they identified around compensation and incentives; governance and culture; capacity and conflict of interests; market abuse and financial crime controls. We encourage our clients that operate as brokers in the wholesale markets to note the contents of the letter, discuss the issues raised with management boards and get in touch with Newgate to discuss how we can help strengthen system and controls in the areas of harm identified.

<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-wholesale-market-broking-firms.pdf>

## Important information for asset managers: Policy Statement on Proposals to promote shareholder engagement

PS 19/13 summarises the feedback received by the FCA during their consultation period, which ended on 27<sup>th</sup> March, and their response, as well as the final rules.

Requirements are set out in several areas:

- Transparency of engagement policies and investment strategies across the institutional investment community – in order to enhance the flow of information across the institutional investment community.
- The approval and disclosure of Related Party Transactions (RPTs) – thus recognising that certain persons (related parties) may influence companies in which they invest, thus the nature of transactions with related parties may affect shareholders’ assessment of company valuation.

The new rules came into force on the 10<sup>th</sup> June 2019, so asset managers should publish their engagement policy or be able to explain why they have not yet done so.

For related party transactions the requirement to comply will apply from the start of their first financial year post-implementation.

Please do get in touch to discuss the impact SRD II will have on your firm. Furthermore, Newgate can assist you with your engagement policy should you so require. The FCA acknowledges the swift implementation of the rules post-publication and as such are allowing an initial period whereby firms can remain compliant by explaining what they are doing to develop said engagement policy and Newgate can help you in this area also.

<https://www.fca.org.uk/publications/policy-statements/ps19-13-improving-shareholder-engagement-and-increasing-transparency-around-stewardship>

## Important information for principal firms: Dear CEO letter – FCA expectations of principal firms in the investment management sector

A multi-firm review was undertaken by the FCA into the supervision by principal firms of their appointed representatives (“ARs”) in the investment management sector. In response, a Dear CEO letter was published addressing the FCA’s expectations of principal firms with regards to the understandings of their responsibilities for their ARs and the shortcomings in principal’s control and oversight.

If you are a principal firm, it would be prudent to review the Dear CEO letter and implement any required changes to your governance and oversight programme for your AR. Further practical guidance on the Dear CEO letter is set out in our summary [here](#).

<https://www.fca.org.uk/publications/multi-firm-reviews/review-principal-firms-investment-management-sector>

## Important information for FCA solo-regulated firms: Consultation Paper released on assessment of adequate financial resources

This paper applies to all FCA solo-regulated firms subject to threshold conditions and/or the Principles for Businesses.

The paper covers the FCA’s consultation regarding the purpose of adequate financial resources, what they are looking for from firms, and their expectations as to the practices firms should be adopting within their adequate financial resources assessments. All this is in the hope it will mitigate the risk of harm to both consumers and the integrity of the UK financial system.

The following are expected from firms:

- Proportionate and regular assessments of risks;
- An understanding of the business model and strategy;
- Measures in place to prevent harm from occurring;
- The ability to rectify situations by identifying potential harms and estimating their impact; and

- Minimisation of harm in failure by considering financial stress on the firm and resource maintenance through a firm's market exit.

Comments need to be submitted by 13<sup>th</sup> September 2019 and the FCA intends to publish the Policy Statement including the new rules in late 2019.

<https://www.fca.org.uk/publications/consultation-papers/cp19-20-our-framework-assessing-adequate-financial-resources#>

## **Important information for all firms: Call for input on Evaluation of the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR) closes**

The FCA's call for input closed on the 3<sup>rd</sup> June after a review on how the reviews had impacted the market to date and assessing how the market may develop in the future.

The FCA's focus was on consumer engagement with the market and whether the industry is delivering what consumers want and need.

RDR was launched by the FSA in 2006 with the majority of the rules it introduced coming into effect in 2012. The aim was to establish a more resilient, effective and attractive retail investment market, with several significant changes made to the way investment products are distributed to retail customers with the hope of improving consumer's confidence and trust.

FAMR was launched jointly by the FCA and HM Treasury in 2015, building on the work of RDR. The objective of the review was to use a wide scope to find ways to make the financial advice market in the UK work better for consumers, focusing on accessibility of advice and guidance to help people with their financial decision-making.

The FCA expects to publish its conclusion in 2020, as such consumers and representative consumer bodies; firms, professional associations and trade bodies that work in retail financial services; and businesses which support those firms such as consultants and IT suppliers should consider the conclusion of relevance.

<https://www.fca.org.uk/publications/calls-input/evaluation-rdr-famr>

## **Important information for all firms: FCA proposes ban on sale of crypto derivatives to retail consumers**

The FCA are considering banning the sale of derivatives and exchange traded notes that reference certain cryptoassets (crypto derivatives) to retail consumers. The FCA believes these products are ill suited to retail consumers who cannot reliably assess the value and risks of crypto derivatives and therefore may suffer harm through sudden and unexpected losses if they invest in the products. The FCA is consulting therefore on banning the sale, marketing and distribution to all retail consumers of all derivatives (i.e. contract for difference - CFDs, options and futures) and ETNs that reference unregulated transferable cryptoassets by firms acting in, or from, the UK.

Firms should bear in mind this consultation if they are considering launching new products or services in the crypto-derivative space.

<https://www.fca.org.uk/news/press-releases/fca-proposes-ban-sale-crypto-derivatives-retail-consumers>

## **Important information for all firms: FCA confirms permanent restrictions on the sale of CFDs and CFD-like options to retail consumers**

The FCA is requiring firms that market, distribute or sell CFDs and CFD-like options to retail clients to:

- Limit leverage to between 30:1 and 2:1 depending on the volatility of the underlying asset.
- Close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions on their CFD account.
- Provide protections that guarantee a client cannot lose more than the total funds in their trading account.
- Stop offering current and potential customers cash or other inducements to encourage retail consumers to trade.
- Provide a standardised risk warning, telling potential customers the percentage of the firm's retail client accounts that make losses.

Firms that carry out sales, marketing or distribution in, or from, the UK of relevant products to retail clients will need to comply with the new requirements by 1 August 2019 (CFDs) and 1 September 2019 (CFD-like options). Certain sales activities for CFD-like options are excluded from the requirements. Please contact Newgate if your business model involves the relevant products and activities so we can assess the impact on your firm.

<https://www.fca.org.uk/news/press-releases/fca-confirms-permanent-restrictions-sale-cfds-and-cfd-options-retail-consumers>

## **Important information for all firms: FCA publishes its first annual report on the perimeter**

The FCA perimeter determines which firms require authorisation and what level of protection consumers can expect for the financial services and products they purchase. The perimeter is complicated and the FCA will publish an annual report going forward to clarify issues and seek to address consumer harm when they note poor behaviour of firms operating around it.

In the report, the FCA discusses the actions it is taking in respect of firms that are currently outside of its perimeter. This includes firms such as pre-paid funeral plans, unregulated introducers, unregulated mortgage book purchasers and investment consultants and proxy advisors. The FCA also addresses the delivery of financial services using digital channels and adds that it is considering how the financial promotions regime can become more effective in the digital age. The FCA also highlights crypto assets, noting that it has previously announced that later this year it will consult on a potential ban on the sale to retail consumers of products referencing some crypto assets that are outside the regulatory perimeter.

In Annex A of the report, the FCA sets out issues and activities it has undertaken involving the perimeter in 2018/19. In next year's perimeter report, the FCA will provide an update on these issues

<https://www.fca.org.uk/news/press-releases/fca-publishes-first-annual-report-perimeter>