# Newgate News

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

NEWGATE COMPLIANCE

**May 2015**


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**Newgate Compliance Limited**

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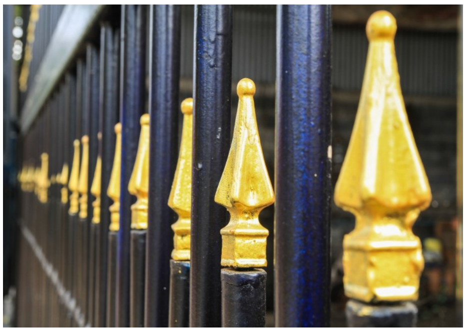
## Important for Full Scope AIFMs: AIF Annual Reports



AIFMs are reminded that for each AIF that it manages and for each non-EEA AIF it markets in the UK, it makes available an annual report to AIF investors, the FCA and, in the case of an EEA AIF, to the Home State regulator of that AIF as required by FUND 3.3.

The deadline for making these reports available is 6 months following the AIF year end so for many firms this means finalising arrangements in time for 30 June 2015. As well as financial information relating to the AIF, the annual report is also required to disclose certain material changes during the year, periodic information as well as remuneration information.

We assume that the service providers appointed by each affect AIF will be guiding you through the requirements but please do get in touch if there are any areas we can help address.

FUND 3.3 - AIF Annual Reports

## Important for all Firms: Market Abuse Regulation (MAR)

Continuing its focus on market integrity the FCA has published a one minute guide to MAR which it due to apply from 3 July 2016.

MAR is intended to strengthen the existing UK market abuse framework by extending its scope to new markets, new platforms and new behaviours.

The rules span several anti-abuse measures including rules on the use of inside information, disclosure of inside information and market manipulation. They will apply to all derivatives trades as well as spot commodities.

Alongside the guide, the FCA is also hosting a MAR overview webinar.

We will work with you to update your Market Conduct Policy in time of implementation of the new MAR regime.

MAR One Minute Guide

## Important for all firms: GABRIEL Reporting peak

The number of firms reporting data through GABRIEL has increased significantly in the last year during quarterly peaks, no doubt partly due to the amount of data being reporting under AIFMD.

As a result the FCA are encouraging firms to take the following steps:

- prepare reports well in advance of deadlines;
- complete reporting as early as possible in the period;
- avoid using GABRIEL during the daily peak hours i.e. mid-morning and mid-afternoon;
- when you have finished your session, click on the 'Log Out' button before closing the browser; this will ensure your session is closed correctly.

Whilst easier said than done we would recommend you follow the above steps as far as possible. As part of the implementation of our compliance timetable we will endeavour to provide early reminders and assist where possible with the GABRIEL returns.

## Important for firms affected by FATCA: Updates to FATCA Reporting requirements

Ahead of the Foreign Account Tax Compliance Act (FATCA) return deadline of 31 May, two recent HMRC updates have changed the reporting criteria which may mean firms do not have to complete the returns.

UK Financial Institutions are no longer required to file a nil return so long as they are not applying the de-minimus US$50,000 or US$250,000 threshold on pre-existing accounts.

In addition, it is likely that holding companies and relevant treasury companies will no longer meet the definition of financial institutions and will therefore not be required to report under FATCA.
Firms that need to submit a FATCA return will need to register and report by 31 May 2015. To access the FATCA service firms will need to create an 'organisation' type Government Gateway account. Once in the Government Gateway, register for HMRC online services. FATCA is then listed as a service firms can register for.

Firms must register 24 hours before submitting a FATCA return.

HMRC FATCA link

## Important for AIFMs: European Long-Term Investment Funds

The European Council has adopted the Regulation on European Long-Term Investment Funds (ELTIF) aimed at increasing the pool of capital available for long term investment in the European Economy.

This will be of particular interest to investment managers who want to offer long term investment opportunities to institutional **and private** investors across Europe, e.g infrastructure projects, through a cross border passport. ELTIFs by virtue of the asset classes they will be allowed to invest in, are expected to provide investors with long term stable returns. ELTIF funds would need to meet rules designed to protect both investors and companies and projects they invest in.

Only managers who are authorised under the AIFMD can offer an ELTIF in order that the onerous operating requirements that relate to depositaries, valuation, disclosure, management of conflicts etc. are applied to protect the interests of all parties in the investment chain.

## Important for AIFMs: European Long-Term Investment Funds—cont.

We await details from the FCA whether a special application pack will be necessary for firms to avail themselves to the ELTIF regime but do not hesitate to contact us if you wish to discuss your interest in this regime further.

Press release

## Important for Investment Firms Holding Client Money: CASS briefing video

In June 2014, the FCA finalised its rules on the client assets regime for investment business (PS14/9). Firms are required to implement these changes by the relevant timescales. To help you understand the changes, the FCA has published a recording of a CASS briefing held in January for CASS medium firms.

In its Prudential Supervisory Forum (see below) the FCA highlighted that firms not protecting client money and dipping into such client money in times of financial stress is of course a breach of rules which it regards with the utmost seriousness.

CASS Video Briefing

## Important for Firms Offering Binary Options: Potential Changes in Regulation

Binary options allow consumers to speculate on the short term movement in the price of financial instruments such as those relating to stocks, commodities, currencies, indices, or just about anything that is capable of being measured in financial terms.

The FCA does not currently regulate binary options as this falls under the remit of the Gambling Commission. The UK government is currently consulting on whether the FCA should regulate binary options in the future as other countries in the European Union consider binary options to be a financial rather than gambling products. Under EU financial services law firms which are legally established and authorised in the one European Economic Area (EEA) country are entitled to do business in any other EEA country once certain procedural safeguards are met. This means that although the FCA currently do not regulate binary options, firms offering binary options trading which operate as financial services firms in other EEA countries, are able to do business in the UK and consequently appear on the FCA Register.

The UK government is consulting on proposals to treat binary options as a financial rather than gambling contracts. This would mean binary options would be regulated by the FCA in line with most practice of the EU and would no longer be regulated by the gambling commission.

The consultation period closes on 18 June 2015. Firms can reply to the consultation through the link below. Firms who deal in binary options should get in touch with us so we can assess the impact of the consultation and the need to seek a variation of permission to cover such activities in due course.

Proposed Binary Options Changes

## Important for Investment Firms: Prudential Supervision Forum

On 13 May, the FCA held their first Prudential Supervision Forum. At the Forum, the FCA gave an outline of their approach to prudential supervision.

It was also an opportunity to share practices and set expectations in relation to a few of the rules and Directives affected. These include the Capital Requirements Directive IV and the Recovery and Resolution Directive, as well as liquidity and operational risk practices. The FCA have published the content from the Forum to share with all investment firms that may be affected by some or all of the areas covered.

The FCA takes a risk based approach to prudential supervision of firms. It monitors firms through regulatory returns and identifies financial stress and alerts through these systems and intelligence received from other sources. The key message from the forum is that the FCA will be focusing on how firms assess the risks they are running and how well placed they are to manage those risks and avoid large, unexpected costs (FCA fines, redress and investigations costs for example). The FCA will be seeking to verify on its visits that a firm's financial position is not creating conduct risk and adversely affecting the interests of consumers (excessive charging, miss-selling etc).
Firms are encouraged to ensure that their capital and liquidity assessments are robust and that the whole firm buys into, and runs with it, from the governing body downwards. For most of our clients the assessment of operational risk systems and controls should be high on the Agenda, including IT vulnerabilities such as cyber-crime. The FCA will also closely focus on wind-down planning and the financial analysis, reverse stress tests, management actions in place to ensure that minimal disruption is posed to customers and markets if a firm fails.

Please do get in touch if you require us to review your current ICAAP and Liquidity documentation and the senior management challenge and sign-off process.

FCA Prudential Supervision Slides

## Important for All Firms: FCA New firm webpages

In response to feedback that their website can be hard to navigate, find and use information quickly and easily the FCA is piloting a new section for firms that is more task based, meaning users will be directed to the content that is more relevant to them based on who they are and what they want to do.

The FCA test website is available on the link below. It is not in final format yet but the FCA are asking for feedback using the form available FCA feedback.

During this period **fca.org.uk** will be available and operating as normal, so you can still access anything you need there.

New FCA website

## Important for MiFID firms: FCA issue MiFID mapping letter

FCA are about to issue letters to firms authorised for the purpose of the Markets in Financial Instruments Directive ("MiFID").

The letter is seeking confirmation of the exact investment services and activities firms are authorised to provide under MiFID. EU law requires the FCA to provide this information to the European Securities and Markets Authority ("ESMA"), whether or not a firm is exercising passport rights under MiFID. ESMA will then include the information in an EU-wide register of investment firms available for public inspection on its website.

## Important for MiFID firms: FCA issue MiFID mapping letter—cont.

For the required notification the FCA has mapped each firm's scope of permission notice to the corresponding MiFID investment services and activities. The FCA is asking firms to complete an online form to confirm whether or not the results are correct.

Firms are asked to respond to the information request by 17 June 2015. The FCA letter is accompanied by FAQs and links to the FCA Handbook outlining how MiFID activities are mapped to FCA regulated activities. Please do not hesitate to contact us to assist you in completing this information request.