NEWGATE
COMPLIANCE

NEWGATE NEWS

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October 2019 - Issue Highlights

- New FCA rules applying to certain open-ended funds investing in inherently illiquid assets
- Multi review findings show MiFID II research unbundling rules are working well for investors
- FCA remind firms to register for Connect
- Letter released to Chair of Remuneration Committee addressing assessment plans for 2019/20
- Complaints figures for regulated firms in first half of 2019 show rise
- Feedback Statement setting out future work on climate change and 'green finance'
- FCA increases efforts to ensure firms are prepared in the event of a no-deal Brexit
- FCA updates existing direction under Temporary Transitional Power
- ICO releases guidance for SMEs preparing for data protection compliance in the event of a no-deal Brexit

Important information for fund managers: FCA confirms new rules applying to certain open-ended funds investing in inherently illiquid assets from 30 September 2020.

The FCA has published new rules relating to disclosure, liquidity management and suspension of dealing concerning open-ended funds investing in inherently illiquid assets such as property, known as non-UCITS retail schemes (NURSs). The rules come into effect from **30 September 2020**. The rules do not focus on UCITS which are already subject to specific restrictions.

The new rules require a greater degree of disclosure to be provided to investors and for managers to maintain plans to manage liquidity risks. The rules also aim to reduce the potential for some investors to gain at the expense of others whilst simultaneously reducing the likelihood of investors rushing and creating a 'fire sale' of assets which disadvantages other investors in the fund.

The new rules:

- Require firms to provide investors 'with clear and prominent information on liquidity risks, and the circumstances in which access to their funds may be restricted'.
- Creates a new category of funds called 'FIIA' ('funds investing in inherently illiquid assets') which will be subject to increased disclosure requirements as to how liquidity is managed, the risks warnings to be included in financial promotions, enhanced depositary oversight, and a requirement to produce contingency plans covering liquidity risk.

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- Requires NURSs investing in inherently illiquid assets to suspend dealing where the independent valuer determines the value of more than 20% of the fund's assets is materially uncertain. Fund managers will be allowed to continue to deal where they have agreed with the fund's depositary that is it in the investor's best interests to continue.

https://www.fca.org.uk/news/press-releases/fca-confirms-new-rules-certain-open-ended-funds-investing-inherently-illiquid-assets

Impact for firms: If you are the investment manager of NURs, please review the guidance above and amend your disclosure, financial promotions and liquidity management policies and procedures accordingly.

Important information for MiFID II firms: Multi review findings published by the FCA find the MiFID II research unbundling rules are working well for investors.

The findings published by the FCA indicate the Markets in Financial Instruments Directive's (MiFID II) research unbundling rules have improved asset managers' accountability regarding costs, resulting in millions of pounds worth of savings for investors. According to the FCA, a key principle of the MiFID II unbundling reforms is 'to ensure that portfolio managers act as good agents in the best interests of their clients and that their investment decisions are not unduly influenced by third parties'. The review found that the majority of asset manager have chosen, following MiFID II, to use their own revenue to pay for research instead of using funds from clients. Accountability of firms has also improved as well as scrutiny of both research and execution costs. This includes where firms have chosen to charge research costs to clients. The FCA propose that investors in UK-managed equity portfolios have seen a saving of around £70m in the first half of 2018.

The review also found the following:

- Budgets set by firms for research spending have fallen on average by 20%-30% since the introduction of the reforms
- Despite these reductions most asset managers said they are still getting the research they need
- The research coverage of small and medium enterprises (SMEs) listed in the UK hasn't seen a material reduction
- The pricing for research is still evolving post reforms with brokers and independent providers offering wide price ranges.

The FCA states that it will continue to monitor both competition impact and research coverage of SMEs following MiFID II.

https://www.fca.org.uk/news/press-releases/fca-finds-mifid-ii-research-unbundling-rules-working-well-investors

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Important information for all firms: FCA reminds firms they need to register for Connect to update firm details by January 2020.

Firms must register for the FCA's online platform Connect in order to send the FCA their firm details by **January 2020** as part of the FCA's mandatory annual update.

The FCA will be contacting firms that aren't currently Connect users to encourage them to sign up **as soon as possible**.

https://www.fca.org.uk/news/news-stories/firms-need-register-connect-update-their-firm-details

Important information for all firms: FCA releases letter to Chair of Remuneration Committee addressing assessment plans for 2019/20.

On 19th August, the FCA released a letter addressed to the Chair of the Remuneration Committee within firms setting out the 2018/19 Remuneration Round's findings alongside the FCA's observations and how the regulator plans to assess firms throughout 2019/20.

The letter highlights culture and governance as a key cross sector priority in the 2019/20 Business Plan. The following topics are addressed were also addressed in the letter:

- Accountability
  - The letter addresses the recipient's status as SMF12, the prescribed responsibility for remuneration, and their role to oversee the development and implementation of their firm's remuneration policies and practices.
  - Firms should consider how policies and practices reinforce the values, ethics and culture of their firm whilst promoting the right kind of behaviour for employees.
- Ex-post risk adjustments
  - The FCA is aware that some firms are struggling to provide appropriate justifications on the level of adjustments.
  - Firms should make their judgements with consistency and justify why any differences exist between incidents or the individuals concerned.
- Diversity and inclusion
  - The FCA sees diversity and inclusion as important tools to mitigate the risk of 'groupthink' by helping firms to make better long-term decisions.
  - Firms need to make improvements based on 'diversity in its broadest form' tackling issues such as ethnicity, disability and social mobility.

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- Remuneration Policy Statement
    - FCA will continue to coordinate their annual review with the PRA.
    - Firms are asked to submit the following:
        - a short summary of the key points in the RPS with cross-references to the full RPS, including the key changes made last year; and
        - an explanation of how the recipient has assured their self that their firm's overall remuneration policies drive behaviour that reduces potential harm.

The letter focuses on transforming culture and references the FCA's Discussion Paper on Transforming Culture in Financial Services and the Transforming Culture Conference held in March 2018.

A copy of the letter is available here. The FCA welcomes feedback– transformingculture@fca.org.uk

https://www.fca.org.uk/firms/culture-and-governance/recognition-and-incentives

IMPACT FOR FIRMS – review your remuneration policies and procedures to ensure they comply with the FCA's expectations and guidance above.

Important information for all asset managers: Feedback Statement setting out future work on climate change and 'green finance'.

On 16th October, the FCA released a Feedback Statement setting out its proposals to improve the disclosures relating to climate change which are made by issuers, and also to improve the information available to consumers regarding 'green' financial products and services.

'Green finance' generally refers to the process of taking due account of environmental, social and governance considerations when making investment decisions, leading to increased investment in longer-term and sustainable activities.

The Statement identifies several priorities including improving issuer's climate change disclosures, regulated firms' integration of climate change risk and opportunities into their decision-making, and consumers ability to access green financial products and services.

The FCA sets out the following key actions:

- To consult on new rules to improve climate-related disclosures by certain firms and to clarify the existing obligations.
- To finalise the rule changes requiring the Independent Governance Committees (ICGs) to oversee and report on firms' environmental, social and governance (ESG) and stewardship policies, and the separate rule changes to facilitate investment in patient capital opportunities.

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- To publish a feedback statement in response to a joint Discussion paper on Stewardship with the Financial Reporting Council which plans to set out actions needed to address the most significant barriers to effective stewardship.
- To clarify their expectations around consumer access to green financial and services and to take appropriate action to ensure that consumers are not misled.

https://www.fca.org.uk/news/press-releases/fca-today-announces-future-work-climate-change-and-green-finance

Important information for all firms: Complaints figures for regulated firms in the first half of 2019 reach 4.29 million.

The complaints figures for regulated firms in the first half ("H1") of 2019 show an increase in complaints from the second half ("H2") of 2018. In H2 2018, there were 3.91m complaints compared to 2019's 4.29m.

The increase was primarily driven by complaints regarding PPI, which rose 34% in H1 2019 compared to H2 2018. PPI continued to receive the most complaints; accounting for 49% of all complaints received during this period.

Current accounts are the second most complained about product (after PPI) comprising 14% of the complaints received, with credit cards in third place with 8% and motor and transport insurance coming in fourth with 6%.

https://www.fca.org.uk/news/press-releases/fca-data-show-429m-complaints-first-half-2019

Important information for all firms: FCA increases efforts to ensure firms are prepared for a no-deal Brexit.

The following articles deal with regulatory updates in relation to Brexit. These are potentially subject to change considering the Brexit extension to 31 January 2020.

The FCA has announced that it is 'stepping up' its efforts to ensure that firms are getting ready for a no-deal scenario and know what they need to do in order to prepare.

The FCA is encouraging firms to review information on the FCA's Brexit webpage and have also set up a dedicated Brexit telephone line – 0800 048 4255.

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This is of relevance to:

- Firms which are a UK business but undertake business in the EEA
- Firms that passport into the UK but haven't notified the FCA for entry into the Temporary Permissions Regime (TPR)
- Firms who have consumers in the EEA
- Firms that transfer personal data from the EEA

The FCA implemented a variety of measures, such as the Temporary Transitional Powers and the Temporary Permissions Regime, which aim to minimise potential disruption caused by a no-deal Brexit.

Whether or not firms will need regulatory permissions to continue to do business in an EEA country will depend on a variety of factors including the activity they are carrying out; the relevant local laws; and the approach of the local authorities in the jurisdiction.

A list of transitional regimes and 'next steps' can be found on the FCA website.

The FCA also warns that firms should consider regulatory changes that could apply in the event of a no deal – one example of this is MiFID II transaction reporting which will change upon a no deal exit and the FCA expects firms to be ready to implement the necessary changes.

A no deal Brexit would also mean changes to the FCA Handbook, the Temporary Permissions Regime would come into effect and the FCA would find itself responsible for Credit Ratings Agencies and Trade Repositories as part of its scope.

The FCA expects firms to take note of these changes in advance and have preparations in place should they come to fruition.

https://www.fca.org.uk/news/press-releases/fca-steps-efforts-ensure-firms-are-getting-ready-no-deal-brexit

Important information for all firms: FCA releases update to the existing directions under the Temporary Transitional Power.

The Temporary Transitional Power (TTP) offers flexibility for the FCA in applying post-Brexit requirements which allows firms to transition to a new regulatory framework in the UK. These directions will only come into effect on exit day if the UK leaves the EU without an implementation period.

Firms do not generally need to prepare now to meet changes related to Brexit. However, in certain instances where the FCA considers it important for its objectives, such as key reporting obligations, it will expect firms to take reasonable steps to comply with post-exit obligations from exit day.

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The FCA's approach was set out in its February statement.

The draft directions released in the FCA's September 2019 press release provides an update to the directions made on 28th March 2019 and updates were also made to the explanatory note it released providing guidance on the use of the TTP. The FCA states that it is releasing these draft directions to give firms time to consider the changes which may apply before they are finalised.

The FCA describes the main updates as relating to the following:

- Extending the proposed duration of the directions issued under the TTP from 30 June 2020 to 31 December 2020
- Updating the provisions relating to prudential requirements in our directions to reflect new HM Treasury legislation and FCA exit instruments published since 29 March 2019
- Revoking certain directions relating to payment services, provided by EEA credit institutions in the financial services contracts regime, as these are no longer needed because of legislative amendments made by the Government
- Applying a standstill direction to allow EEA Central Banks and the European Central Bank to continue to rely upon their status as exempt persons until 31 December 2020

Nausicaa Delfas, the Executive Director of International at the FCA, said: "There are specific areas where [the FCA] will not be granting transitional relief and, in these areas, we continue to expect firms and other regulated entities to take reasonable steps to comply with the changes to their regulatory obligations by exit day".

The FCA invites firms to contact them regarding the impact of the use of the TTP to make them aware of any specific changes firms may believe have not been fully accounted for.

https://www.fca.org.uk/news/press-releases/updates-fcas-directions-under-temporary-transitional-power

Important information for small to medium sized UK enterprises: ICO releases guidance resources to help SMEs prepare for data protection compliance after a possible no-deal Brexit.

The ICO released guidance aimed at helping small to medium-sized UK businesses and organisations keep personal data moving across the EEA after Brexit.

If the UK makes a no-deal exit from the EU, most of the data protection rules affecting SMEs will stay the same.

The UK aims to maintain the high standards of the General Data Protection regulation ("GDPR") and there are plans for the government to incorporate GDPR into UK law post-Brexit.

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Guidance documents have been produced for the following categories:

1. **If you are a UK business or organisation that already complies with the GDPR and have no contacts or customers in the EEA**: you do not need to do much more in order to prepare for data compliance post-Brexit - your ICO guidance can be found see ICO Guidance
2. **If you are a UK business or organisation that sends or receives personal data from contacts in the EEA:** your ICO guidance can be found here – you will need to take extra steps in order to ensure data can continue to flow after Brexit.
3. **If you are a UK business or organisation with an office, branch or other established presence in the EEA, or if you have customers in the EEA:** your ICO guidance can be found here – you will need to comply with data regulations in both the UK and the EU after Brexit and may need to consider designating an EEA representative.

https://ico.org.uk/for-organisations/data-protection-and-brexit/data-protection-and-brexit-for-small-organisations/