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NEWGATE NEWS

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December 2019 - Issue Highlights

- **FCA request for information regarding Section 165 of the Financial Services and Markets Act 2000 (FSMA)**
- **Early insights of the FCA and the Bank of England's joint review on open-ended investment funds**
- **FCA extends SM&CR to 47,000 firms**
- **TISA Forum highlights the FCA's direction for Operational Resilience**
- **New requirements regarding operational resilience published by the Bank of England**
- **FCA updates to the Gabriel system**
- **FCA updates notification form for MIFID investment firms**
- **Quarterly Consultation Paper No 26**
- **FCA publish Executive Director of Supervision's letter to the CEO regarding non-financial misconduct**

Important information for all firms: Section 165 of the Financial Services and Markets Act 2000 (FSMA): Requirement to produce information request

A number of firms have been contacted by the FCA to provide information under section 165 of FSMA. Firms are requested to provide information such as:

- The firm's business model and staff count
- Client information such as client classification, client numbers, client types, client location
- Proportion of revenue derived from services in relation to different product categories
- Services outsourced to third parties

The deadline for this request is 5pm Friday, 31st January 2020.

Impact for firms: Should you receive this request it would be prudent to respond to the survey accurately and in a timely manner. Should you require assistance, please do not hesitate to contact Newgate.

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Important information for investment managers: FCA and the Bank of England's joint review sets out initial findings on open-ended investment funds

The Financial Policy Committee's (FPC) *Financial Stability Report* has set out initial findings of a joint review by the Financial Conduct Authority (FCA) and the Bank of England on open-ended investment funds and the risks posed by their liquidity mismatch.

In its review, the FPC outline ways to achieve greater consistency between the liquidity of fund's assets and its redemption terms.

The initial findings highlight how greater consistency between the liquidity of a fund's assets and its redemption terms are to be achieved:

1. The liquidity of funds' assets should be assessed by reference to the price discount needed for a quick sale of a representative sample (vertical slice) of those assets or the time period needed for a sale which avoids a material price discount.
2. Redeeming investors should receive a price for their units in the fund that reflects the discount needed to sell the required portion of a fund's assets in the specified redemption notice period.
3. Redemption notice periods should reflect the time needed to sell the required portion of a fund's assets without discounts beyond those captured in the price received by redeeming investors.

The principles outlined by the review will be used to inform the development of the FCA's rules for open-ended funds. The conclusions of the review will be released in 2020.

https://www.fca.org.uk/news/statements/fca-boe-statement-joint-review-open-ended-funds

Important information for all firms: FCA extends SM &CR to 47,000 firms

As of the 9th December 2019, the FCA have extended the Senior Managers and Certification Regime (SM&CR) to 47,000 firms. This includes the senior managers and certification staff in those firms. The SM&CR replaced the Approved Persons Regime (APR) for solo-regulated firms to set a new standard of personal conduct for those working in financial services.

The extension of the SM&CR, previously only applying to the banking and insurance sectors, has been described by the FCA as 'a key step to creating a culture across financial services' ensuring 'individuals step forward and take accountability for their own actions and competence.'

The SM&CR encourages greater individual accountability and sets a new standard of personal conduct in financial services by: ensuring senior managers are accountable for conduct in their areas of responsibility; ensuring a minimum standard of behaviour for everybody working in the sector through the 5 Conduct Rules; and finally, enhancing professionalism in the industry by requiring firms to certify that their staff are fit and proper.

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From the 9th December 2020, solo-regulated firms will need to ensure that all relevant staff are trained on the Conduct Rules and how they apply to their roles. Similarly, all staff in certified roles must be fit and proper to perform that role and hold the required certificate. Finally, those with certified roles must submit data to the FCA.

For early preparation you can find more information here: https://www.fca.org.uk/firms/senior-managers-certification-regime/solo-regulated-firms

https://www.fca.org.uk/news/news-stories/fca-extends-senior-managers-and-certification-regime-47000-firms

Important information for all firms: TISA Forum highlights the FCA's direction for Operation Resilience

On the 5th December 2019, Megan Butler, the Executive Director of Supervision – Investment, Wholesale and Specialists delivered a speech at the TISA forum highlighting that the intention of the FCA is to 'bring about change in how the industry thinks about operational resilience'. Ms Butler emphasised the FCA's intent to focus on the continuity of supply of financial products and services industry during moments of difficulty or disruption. Ms Butler also noted:

- The joint FCA, the Prudential Regulatory Authority (PRA) and Bank of England Consultation Papers on Operational Resilience. The proposals set requirements for firms and financial market infrastructure (FMI) to identify their important business services by considering how disruption to their services impact beyond their own commercial interests. Firms are required to set a tolerance for disruption for each important business service and ensure they can continue to deliver their important business whilst remaining within their impact tolerances during severe scenarios. The proposals also include requirements to map and test important business services to identify vulnerabilities in their operational resilience and drive change where it is needed. The consultation closes on the 3rd April 2020.
- The proposals in this Consultation Paper will apply to banks, building societies, PRA designated investment firms, Solvency II firms, Recognised Investment Exchanges, Enhanced scope Senior Managers & Certification Regime (SM&CR) firms, entities authorised or registered under the Payment Services Regulations 2017 (PSRs 2017), and Electronic Money Regulations 2011 (EMRs 2011).
- Firms should implement 'mapping' their important business services and map successful delivery back to the key underlying resources; test their ability to withstand a severe event with reference to impact tolerance; and finally, test results to identify resilience gaps and make investment choices that increase their ability to provide these important business services even in extreme cases of disruption.
- New requirements will sit alongside existing operational risk management practices.

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Impact for firms: Operational resilience remains a high priority area for the FCA as indicated in its Business Plan 2019/2020. Firms should review the proposals in the consultation papers and carry out improvements where its existing arrangements fall short of regulatory expectations and guidance.

https://www.fca.org.uk/news/speeches/view-regulator-operational-resilience

Important information for all firms: New requirements regarding operational resilience published by the Bank of England

The Bank of England, PRA and FCA have published a shared policy summary and co-ordinated consultation papers (CPs) on new requirements to strengthen operational resilience in the financial services sector.

The policy proposals highlight firms that are financial market infrastructure (FMIs) are expected to take ownership of their operational resilience. They also highlight the need to prioritise plans and investment choices based on their impact on the public interest.

Under the proposals, firms and FMIs would be expected to:

1. Identify their important business services that if disrupted could cause harm to consumers or market integrity.
2. Threaten the visibility of firms or cause instability in the financial system.
3. Set impact tolerances for each important business service, which would quantify the maximum tolerable level of disruption they would tolerate.
4. Identify and document the people, processes, technology, facilities and information that support their important business services.
5. Take actions to be able to remain within their impact tolerances through a range of severe but plausible disruption scenarios.

Further guidance:

To complement policy proposals on operational resilience, the PRA has published a consultation paper on ‘Outsourcing and third-party risk management’. It reinforces the PRA’s expectation that firms should ensure their important business services are able to remain within their impact tolerances even when they rely on outsourcing or third-party providers. See also the FCA’s Consultation Paper on operational resilience for reading on outsourcing.

https://www.fca.org.uk/news/press-releases/building-operational-resilience-impact-tolerances-important-business-services

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Important information for all firms: FCA updates to the Gabriel system

At roundtable events held across London, Manchester and Edinburgh the FCA explored how proposed improvements to the incumbent Gabriel system would address the key feedback themes raised by users in the July 2019 surveys.

The new platform will centre around ease of user experience, the ability to make regular updates and minimised disruptions to everyday use. The discussion between the FCA and users of their online software is ongoing, and the FCA have promised timely communication regarding its update.

Feedback by users outlined the following areas for improvement:

1. Improved access to Gabriel and to notifications, viewing schedules and previously submitted information as well as viewing new data items to be submitted.
2. Modernising the experience and 'look' of using the system.
3. Heightened efficiency to the submission of data and how the provision of guidance and processes could be improved for the future.

https://www.fca.org.uk/news/news-stories/fca-meets-firms-discuss-feedback-gabriel-and-improvements-new-data-collection-platform

Important information for MIFID investment firms: FCA updates notification form for MIFID investment firms during management body changes for Non-SMF Directors from the 9th December 2019

As of the 9th December 2019, MIFID investment firms and optional exempt firms will need to use a new form to submit information to the FCA when appointing Non-SMF Directors to, or withdrawing them from, their management body.

This form will be available to download from the Handbook on the 9th December 2019 and can be accessed from the following link:
https://www.handbook.fca.org.uk/form/sup/SUP_15_Annex_14R_Notification_procedures_for_changes_to_the_management_body_non-SMF_directors_20191209.pdf?date=2104-01-01

If a firm's management body changes, the firm will need to submit the relevant form via Connect.

Impact for firms: MIFID investment firms and optional exempt firms should use the new FCA notification forms available in the FCA Handbook and online via Connect for changes to

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management bodies. Please contact Newgate should you have any queries on how to complete these notifications.

https://www.fca.org.uk/news/news-stories/mifid-investment-firms-will-need-use-new-form-notify-fca-management-body-changes-non-smf-directors

Important information for all firms: Quarterly Consultation Paper No 26

The FCA have outlined the topics of their next quarterly Consultation Paper. These include:

1. Clarification of the rules relating to Financial Services Compensation Scheme claims against appointed representatives and principals.
2. Changes to the Listing Rules' requirements, which cross-refer to the Prospectus Regulation, for information to be put on display.
3. Amendments to the Listing Rules to include a requirement mandating the disclosure of rights attached to the securities.
4. Minor amendments to the Handbook to reflect changes made by the Financial Guidance and Claims Act.
5. Changes to the Perimeter Guidance Manual (PERG) 15.3 on payment accounts.
6. Changes to regulatory reporting requirements.
7. Further Brexit-related changes to Handbook & BTS following extension of Article 50, which will only come into effect if the UK leaves the EU without an implementation period.

Impact for firms: The FCA invite feedback on these proposals which can be submitted via the following link. For feedback on chapters 2, 4, 5 and 6, the deadline for responses is 6 February 2020. For feedback on chapters 3, 7 and 8, the deadline date was 6 January 2020.

https://www.fca.org.uk/publications/consultation-papers/cp19-33-quarterly-consultation-paper-no-26

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Important information for wholesale general insurance firms: Dear CEO Letter: non-financial misconduct in wholesale general insurance firms

On 6th January 2020, the FCA issued a Dear CEO Letter which discussed practical internal changes that should be made for instances of non-financial misconduct within wholesale general insurance firms. The FCA highlights the importance of a 'proactive' culture and considers how misconduct can be traced to root causes such as a lack of diversity and inclusion within firms.

The FCA attributes poor culture in financial services a key root cause of recent major conduct failings within the industry. How a firm handles non-financial misconduct throughout the organisation, including discrimination, harassment, victimisation and bullying, is indicative of a firm's culture.

The FCA notes that fundamental changes in firm culture are needed for those who work in financial services to embrace the substance of what the FCA are trying to achieve. Firms must consider the '4 key drivers' of firm culture: leadership, purpose, approach to rewarding and managing people and governance, systems and controls. By improving the 4 key drivers, the FCA considers the threat of non-financial misconduct can be reduced.

Leaders that are fit and proper (competent and capable, honest and have integrity) and accountable for what happens in their areas are encouraged. Businesses are urged to have clear purpose and strategy, possess strong whistleblowing processes and appropriate incentive structures.

Impact for firms: Whilst the Dear CEO letter is addressed to the wholesale general insurance industry, the general principles are applicable to all firms. Corporate governance and culture remain a priority area for the FCA following its implementation of the SM&CR and in its Business Plan 2019/2020. The Board and senior managers within firms should review the Dear CEO Letter to address any shortfalls of its existing arrangements against FCA expectations.

https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-non-financial-misconduct-wholesale-general-insurance-firms.pdf