



NEWGATE NEWS

NEWGATE
COMPLIANCE

UP TO DATE COMPLIANCE NEWS FOR
FIRMS IN THE FINANCIAL SERVICES SECTOR

Newgate Compliance Limited
56 Buckingham Gate
London, SW1E 6AE
Phone: +44 (0)203 696 8750
Email: info@newgatecompliance.com

February 2017 - Issue Highlights

- FCA publishes fourth MiFID II consultation paper
- **FCA publishes interim feedback following a call for input to the post-implementation review of the rules for crowdfunding**
- FCA launches consultation on changes to its FSCS rules
- **Policy Development update**



Important for all firms: The FCA publish a fourth MiFID II consultation paper

In our previous newsletter, we reported on the publishing of a third consultation paper of MiFID II which is due to take effect on the 3rd January 2018. A fourth paper has now been published covering a number of areas including:

- **Tied agents** –technical changes to the tied agents regime dealing with appointed representatives (ARs).
- **SME growth markets** – proposed rules to apply the MiFID II SME growth markets regime, including guidance on how to register as an SME growth market.
- **Market data** – proposed guidance on the scope of the Approved Reporting Mechanism (ARM) regime, the circumstances in which trading venues can make transaction reports using ARMs and that Data Reporting Service Providers (DRSPs) should be required to undertake an annual assurance review of their compliance with their obligations under the DRSP regime, verified by a member of the management body of the DRSP.
- **Miscellaneous changes to the Handbook** – proposed changes including Perimeter Guidance, clarification of the territorial scope of rules on remuneration and training and competency and amendments to BCOBS
- **Fees** – the FCA propose opening the authorisation gateway in January to assist firms and propose a transitional rule for the collection of authorisation fees prior to MIFID II coming into effect.

<https://www.fca.org.uk/publications/consultation-papers/cp16-43-mifid-ii-implementation-iv>

Important for all firms: Applications and notifications under MiFID II

In advance of when the MiFID II regime comes into effect on 3 January 2018, firms must ensure they have the correct permissions in place to carry out the relevant regulated activities from that date. Firms will be able to apply for authorisation and variations of permission (VoPs) from 30 January 2017, and for passport notifications from 31 July 2017.

FCA have 6 months to determine a complete authorisation or variation of permission application. To be guaranteed approval before 3 January 2018 the deadline for submission is 3 July 2017, though FCA encourage firms to submit applications and notifications as early as possible.

<https://www.fca.org.uk/markets/mifid-ii/applications-notifications>

As reported in our previous newsletter, the FCA consulted with stakeholders on a number of key themes including the protection of customers, intervention, consumer redress, competition and a proposed review of the FCA handbook. The FCA has now set out the key themes following the feedback.

The key themes include:

- (i) desire for clarity and sense of direction; respondents asked for clearer rationale and better communication from FCA as to the decisions it makes
- (ii) affording more protection to vulnerable consumers;
- (iii) rules versus principles - some respondents are keen on clear sets of principles for business rather than prescriptive rules, while others prefer more clarity on existing rules as they feel these are often too vague; and
- (iv) more active engagement with firms by the FCA, including more tailored communications.

<https://www.fca.org.uk/news/news-stories/our-future-mission-key-themes-your-feedback>

Important for Investment Firms: FCA publishes interim feedback following a call for input to the post-implementation review of the rules for crowdfunding

The FCA has given an update on the post-implementation review of the loan-based and investment-based crowdfunding market. Since the initial review of the market in February 2015, the use of crowdfunding platforms has grown rapidly. These platforms have allowed companies to raise large amounts of money but the FCA is concerned that it is difficult for investors to fully understand the risks and returns involved.

For both loan-based and investment-based crowdfunding platforms, they found that:

- it is difficult for investors to compare platforms with each other or to compare crowdfunding with other asset classes due to complex and often unclear product offerings;
- it is difficult for investors to assess the risks and returns of investing on a platform;
- financial promotions do not always meet our requirement to be 'clear, fair and not misleading'; and
- the complex structures of some firms introduce operational risks and/or conflicts of interest that are not being managed sufficiently

In particular, the FCA believe some aspects of the loan-based crowdfunding market pose risks to their objectives. They are concerned that:

- certain features, such as some of the provision funds used by platforms, introduce risks to investors that are not adequately disclosed and may not be sufficiently understood by investors; and
- the plans some firms have for wind-down in the event of their failure are inadequate to successfully run-off loan books to maturity

The FCA plan to consult on a range of areas to address its concerns on loan-based crowdfunding and aims to publish a consultation paper in the first quarter of 2017

<https://www.fca.org.uk/news/press-releases/fca-publishes-interim-feedback-following-call-input-post-implementation-review>

Important for Retail Investment Firms: FCA proposes stricter rules for contract for difference products

The FCA is proposing stricter rules for firms selling 'contract for difference' (CFD) products to retail customers after analysis found that 82% of clients lost money on these products. They seek to improve standards across the sector and ensure consumers are appropriately protected. This is in line with several other EU member states who have already introduced restrictions on CFD retail products.

Contracts for differences, such as spread bets and rolling spot foreign exchange products, are complex financial instruments offered by investment firms, often through online platforms. Following an increase in the number of firms in the CFD market, the FCA has concerns that more retail customers are opening and trading CFD products that they do not adequately understand. The FCA are proposing a range of measures in order to enhance customer protection, including:

- Introducing standardised risk warnings and mandatory disclosure of profit-loss ratios on client accounts by all providers to better illustrate the risks and historical performance of these product
- Setting lower leverage limits for inexperienced retail clients who do not have 12 months or more experience of active trading in CFDs and capping leverage levels elsewhere.
- Preventing providers from using any form of trading or account opening bonuses or benefits to promote CFD products.

The consultation closes on the 17th March 2017.

<https://www.fca.org.uk/news/press-releases/fca-proposes-stricter-rules-contract-difference-products>

Important for all firms: FCA launches consultation on changes to its FSCS rules

The Financial Services Compensation Scheme (FSCS) is the UK's statutory compensation scheme of last resort, which can be used when an authorised financial services firm is unable to pay claims against it. The FCA have laid out a number of measures to change the way the FSCS is funded and to broaden the industries it covers.

The proposals for discussion include:

- Introducing product provider contributions towards the costs of claims involving intermediary firm failures;
- Risk based levies – so that those distributing higher risk products pay more;
- Merging intermediation classes – e.g. so that investment, life and pensions, home finance and general insurance are grouped together; and
- Introducing and extending consumer protection for some aspects of fund management and introducing it for debt management and structured deposit intermediation.

The FCA is asking for responses by the 31st March 2017 and aims to issue its new rules in autumn 2017.

<https://www.fca.org.uk/news/press-releases/fca-launches-consultation-changes-its-fscs-rules-and-invites-discussion-future>

Important for Investment Firms: FIA publishes due diligence questionnaire for IT outsourcing and procurement

The Futures Industry Association has published a due diligence questionnaire for MiFID II investment firms that outsource IT software and hardware. Under MiFID II, investment firms will be responsible for ensuring that all software or hardware used in algorithmic trading activities meets certain regulatory standards. This includes software and hardware procured from or outsourced to third parties, and investment firms therefore must ensure that their vendors meet these standards.

The questionnaire aims to provide a standard form for firms to request information from their vendors as part of these regulatory requirements. By virtue of agreeing on this document, firms do not automatically meet the relevant MiFID II requirements. The questionnaire is intended to serve as a template for obtaining information in a standard format on the basis of which each firm will then make its own due diligence.

<https://fia.org/articles/fia-publishes-due-diligence-questionnaire-it-outsourcing-and-procurement>

Important for all firms: Policy Development Update

Each month the FCA issues a Policy Development Update (PDU) which provides information on:

- publications issued since the last edition;
- information about recent Handbook-related and other developments;
- other publications – consumer publications, guidance consultations and finalised guidance; and
- an updated timetable for forthcoming publications.

A link to the latest PDU is here: <https://www.fca.org.uk/news/policy-development-update>