

## December 2018 - Issue Highlights

- Update on MIFID II – 12 months later
- Global Financial Innovation Network
- FCA's approach to the UK's exit from the EU
- Update on Brexit – Temporary Permissions Regime
- Update on the Senior Managers and Certification Regime
- Open Ended funds – investing in illiquid assets
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## Important information for all firms: MIFID II – 12 months later

We are fast approaching the one-year anniversary since the new MIFID II regulation came into effect on 3rd January 2018. Recent activity indicates the implementation of MIFID II remains high on the Financial Conduct Authority (FCA)'s agenda and the key areas of focus include:

- **Investment Research** - The FCA are undertaking a review to gain an understanding on how firms are complying with the new rules for research unbundling. A total of 30 asset management firms received a survey in August 2018 ("Research Request") to establish the impact of MIFID II on the investment research market. The FCA confirmed that the research will also consist of a number of visits to a selection of these firms.
- **Transactions reporting** – The FCA's Market Report Team held a Transaction Reporting Forum which gave authorised firms the opportunity to discuss any issues arising since implementation. The FCA has been able to build a clearer understanding of the behaviour of firms and clients but emphasise the importance of reporting data quality, accuracy and completeness.

**How can we help:** We are offering a MIFID II annual review to all clients in January 2019. We will be able to discuss the ongoing impact to your firm, provide a review and update to your policies and processes and discuss any concerns you may have since implementation.

## Important information for all firms: Global Financial Innovation Network

The FCA announced the creation of the “Global Financial Innovation Network” (GFIN). This is a collaborative effort with 11 financial regulators and related bodies globally. It follows the FCA’s proposal to create a ‘global sandbox’.

The proposed main functions of the GFIN include:

- To act as a network of regulators to collaborate and share experience of innovation in respective markets, including emerging technologies and business models;
- To provide a forum for joint policy work and discussions; and
- To provide firms with an environment in which to trial cross-border solutions.

The GFIN issued a consultation which sought views on its proposed functions and where it should prioritise its activities. The consultation closed in October 2018. The FCA are now considering responses and will agree on next steps including when the GFIN will be launched.

<https://www.fca.org.uk/publications/consultation-papers/global-financial-innovation-network>

## Important information for all firms: FCA launches consultations ahead of the UK’s exit from the EU

The FCA published a consultation paper on its approach to the UK’s exit from the European Union (EU). The paper sets out proposals as the FCA prepares for the possibility of the UK leaving the EU on 29 March 2019 without an implementation period. The FCA is working to ensure a smooth a transition as possible as the UK prepares to leave.

The Consultation Paper consults on a number of proposals, including:

- amendments to the Handbook relating to the Temporary Permissions Regime, new Credit Rating Agency and Trade Repository regimes; and
- the FCA’s approach to non-Handbook guidance and approach to forms in the Handbook.

Firms can submit a response to the consultation until 21 December 2018.

<https://www.fca.org.uk/news/press-releases/fca-launches-further-consultations-ahead-of-brexit>

## Important information for all firms: Update on the Temporary Permissions Regime

The FCA are currently working on ensuring they have a functioning regulatory framework in place if the UK end up leaving the EU in March 2019 without an implementation period.

The proposed FCA implementation period starts on 29 March 2019 at 23:00 until 31 December 2020. During this period the pre-Brexit current rules/market access shall apply. However, this implementation period is still subject to negotiations and agreement between the UK and EU.

As part of their current consultations, the FCA have created a Temporary Permission Regime (TPR). The TPR has been designed to allow firms that passport into the UK (including UK firms passporting the marketing of their EEA funds into the UK) to continue their UK regulated activities for a limited period while working towards authorisation in the UK. As such, the primary route out of the regime will be for a firm to secure full authorisation in the UK for the regulated business that it wants to undertake.

It is worth noting that, if the UK and the EU agree on the terms of the withdrawal agreement and there is an implementation period, the amendments consulted on and reflected in the FCA's current consultations will not come into effect on 29 March 2019.

Funds that can use the TPR include:

- EEA-domiciled UCITS; and
- EEA-domiciled AIFs (including EuVECAs, EuSEFs, ELTIFs).

### What should you do next?

1. Complete the [FCA's online survey](#) about your UK operations that could be impacted by the TPR.
2. Apply to enter the TPR will be done via FCA CONNECT.

Firms should be aware that being party to the TPR will bring some additional compliance and FCA fee paying obligations.

### How Newgate can help?

We are happy to assist in reviewing the answers you intend to provide for your respective online survey as well as queries that you may have concerning this regime (for example, which Firm Reference Number to use when completing the survey). Additionally, once the process for TPR notifications have been released – we can support you in ensuring that the applicable funds gain access to the TPR. We can also help advise on the additional compliance obligations of being party to the TPR and update policies as required.

<https://www.fca.org.uk/brexit/temporary-permissions-regime>

## **Important information for all firms: Senior Managers and Certification Regime – Proposed guidance on statements of responsibilities for FCA firms**

The FCA has released a guidance consultation paper on the Statements of Responsibilities (SoR) and Responsibilities Maps for FCA solo-regulated firms. This follows the FCA's extension of the Senior Managers and Certificate Regime ("SM&CR") to all FSMA authorised firms from 9 December 2019.

Under the SM&CR, all Senior Managers must have a SoR and a Responsibilities Map (for Enhanced Firms). The guidance sets out the purpose of SoRs and Responsibilities Maps, along with some practical guidance and information to help firms prepare these documents. It also outlines examples of good and poor practice.

The guidance is primarily for FCA solo-regulated firms, subject to the SM&CR but may also be of interest to firms that are dual-regulated by the PRA and FCA.

The consultation period closed on 10 December 2019. The FCA will now consider the feedback to the consultation and issue a response.

### **How Newgate can help?**

The FCA has ramped up their efforts leading up to the SM&CR implementation evidencing that this is firmly on the FCA's radar. This follows the FCA contacting firms over the Summer to participate in a telephone survey to gauge the market's readiness for the SM&CR.

We are recommending firms start their SM&CR planning process in Q1, 2019. Please contact your Newgate consultant to schedule a meeting in Q1, 2019 to carry out a readiness assessment and to determine an appropriate Action Plan for your firm.

<https://www.fca.org.uk/publications/guidance-consultations/gc18-4-senior-managers-and-certification-regime-proposed-guidance-statements-responsibilities-firms>

## **Important information for all firms: FCA consults on new rules in relation to open-ended funds investing in illiquid assets**

Open-ended funds that invest in illiquid assets can encounter difficulties if a significant number of investors simultaneously try to withdraw their money at short notice.

In response to these potential difficulties, the FCA has begun a consultation aimed to bring new rules and guidance in force to reduce the potential for harm to investors in funds that hold illiquid assets, particularly under stressed market conditions. The consultation focuses on a package of measures that will require:

- Funds to suspend trading when the independent valuer expresses uncertainty about the value of 'immovables', such as commercial property, that account for a significant part of the fund's assets.
- Managers of funds investing mostly in inherently illiquid assets to produce contingency plans in case of a liquidity risk crystallising.
- Depositaries to oversee the liquidity management process in these funds.
- More information to be disclosed about the liquidity risks in these funds, the liquidity management tools available to the fund manager, the circumstances in which they may be used and what impact they may have on investors.

The consultation period ends on 31 January 2019.

<https://www.fca.org.uk/news/press-releases/fca-consults-new-rules-improve-approach-open-ended-funds-investing-illiquid-assets>

## Important information for all firms: Memorandum of Understanding between the UK and Hong Kong on Mutual Recognition of Funds

The FCA and the Securities and Futures Commission (SFC) in Hong Kong have entered into a Memorandum of Understanding ("MoU") which will allow for the cross-border distribution of eligible UK retail funds and Hong Kong public funds. The MoU also establishes a framework for the exchange of information and dialogue between the two regulators.

<https://www.fca.org.uk/news/press-releases/fca-sfc-sign-mou-united-kingdom-hong-kong-mutual-recognition-funds>

## Important information for all firms: Treasury Led Taskforce publishes report on UK approach to Cryptoassets

The Treasury led Cryptoasset Taskforce (forming part of the FCA) has published a report setting out the UK policy and regulatory approach to distributed ledger technology and cryptoassets. The FCA has previously made it clear that it views cryptoassets as having no intrinsic value and that investors should therefore be prepared to lose all the value they have put in.

Although acknowledging that cryptoassets have the potential to benefit markets, firms and consumers, the Taskforce outlines that there remain considerable risks which it aims to mitigate. In order to mitigate the risk of cryptoassets being used for illicit activities, threatening financial stability, and harming consumer and market integrity, the Taskforce outlines a number of proposed activities in the report, including:

- Perimeter guidance by the end of 2018 to clarify which cryptoassets fall within the existing regulatory perimeter, and those cryptoassets that may fall outside;

- Whether the regulatory perimeter requires extension to capture cryptoassets that have comparable features to specified investments, but currently fall outside the perimeter;
- A separate consultation by Q1 2019 on a potential prohibition of the sale to retail consumers of derivatives (including contracts for differences, options, and futures) referencing certain types of cryptoassets;
- Given the complexity and new challenges presented to traditional forms of financial regulation, more time is needed to consider how regulation can meaningfully address the risks posed by exchange tokens, such as Bitcoin. The government will issue a consultation in early 2019 to further explore whether and how exchange tokens, and related firms such as exchanges and wallet providers, could be regulated effectively; and
- Implementing one of the most comprehensive responses globally to the use of cryptoassets for illicit activities by applying and going further than the fifth EU Anti-Money Laundering Directive.

<https://www.fca.org.uk/news/news-stories/cryptoasset-taskforce-publishes-report-uk-approach-cryptoassets>

## Important information for all firms: Cyber and technology resilience in the UK financial services

On 27th November 2018, Ms Megan Butler, the Executive Director of Supervision – Investment, Wholesale and Specialists at the FCA gave a speech at Bloomberg on the resilience of cyber and technology in the UK financial services sector.

Ms Butler highlighted that firms have reported significantly more outages over the last year, an increase of 138% of which 18% were cyber-related attacks. The FCA also noted the importance of tightening controls and managing incidents effectively in a timely manner.

The FCA are not expecting “zero failures” to occur but expect for any incidents to be handled correctly. In demonstrating a firm’s cyber and technology resilience, the important questions firms should ask themselves are:

- Are you operating strong lines of defence?
- Are issues being resolved swiftly?
- Are you responding to emerging effects?
- Are you managing third parties effectively?

The FCA are happy for firms to find appropriate solutions that work for its business, so long as the firm can demonstrate it has effective systems and controls.

To access the speech, please click [here](#).

## Important information for all firms: The role of regulation in encouraging good culture

On 6th November 2018, Andrew Bailey, Chief Executive Director of the FCA delivered a speech at the Investment Associations Culture Conference on the role of regulation in encouraging good culture within financial services firms. In the speech, Mr Bailey noted:

- a firm's culture plays an important part in developing consumers' trust in investment managers to provide advice and guidance on investment decisions;
- the FCA is playing their part in improving culture via regulation and supervision - the FCA is increasingly supporting innovation and technological change through its regulatory sandbox;
- transparency on charges and independent fund directors were areas the FCA aims to target to improve trust in the investment industry; and
- ethical investment, social responsibility and patient capital could improve public trust in the investment management industry. For example, new rules could require trustees to report on their approach to climate change risks, and contract-based pensions to consider the ethical concerns of investors and to report on how they are managing environmental risks in their investment strategies.

<https://www.fca.org.uk/news/speeches/role-regulation-encouraging-good-culture>

## Important information for all firms: Newgate Training Centre

The Newgate Training Centre offers a suite of online courses designed to help firms and their staff to meet their mandatory training requirements under FCA rules. The course offering covers over fifteen essential core compliance courses including:

- Introduction to Compliance
- Anti-Bribery and Corruption
- Anti-Money Laundering – UPDATED FOR 4MLD
- Approved Persons
- Market Conduct
- Cybersecurity
- Financial Promotions – UPDATED FOR MiFID II
- Conduct of Business
- Anti-Tax Evasion
- General Data Protection Regulation (GDPR) – UPDATED FOR 2019
- Senior Managers & Certification Regime (SMCR) – UPDATED FOR 2019
- FCA Business Plan for 2018/19 – NEW
- FCA Systems and Returns – NEW



# NEWGATE NEWS

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

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Cost: GBP 100 + VAT per user (per annum) for unlimited access to our entire range of 15 courses.

Existing subscriptions to the Newgate Training Centre will be renewed in January 2019 for continued access to the courses.