



Newgate News

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



NEWGATE
COMPLIANCE

May 2016

Important for all Firms: Market Abuse Regulations (MAR)

As mentioned in our December 2015 Newsletter, the FCA published Consultation Paper CP15/35 seeking comments on alternative options for public disclosure of inside information and transaction thresholds over which a person discharging managerial responsibilities must report a transaction and on associated Handbook changes.



The FCA have now issued Policy Statement PS16/13 detailing changes to the Handbook effective from 3rd July 2016 and some of the main points to note are as follows;

- MAR extends the scope of the current regime to instruments traded on trading platforms (MTFs, OTFs).
- Inside information to amend or cancel an order shall be considered to be insider dealing. Recommending or inducing another person to transact on the basis of inside information amounts to unlawful disclosure of inside information.
- The offence of market manipulation has been extended to capture attempted manipulation
- Issuers must have a 'legitimate interest' in delaying disclosure of inside information. The firm must demonstrate that by issuing the inside information it would prejudice its interest in some way, for example, undermining its financial stability
- introduces a framework for persons to make legitimate disclosures of inside information in the course of market soundings to gauge interest in a potential transaction
- the threshold for those in managerial positions undertaking personal transactions in the issuer will be set at €5,000.
- The obligation to report suspicious transactions reports (including cancellations and modifications) reports will be extended to suspicious orders
- New provisions aimed at encouraging whistleblowers to come forward.

<http://www.fca.org.uk/news/ps16-13-implementation-of-the-market-abuse-regulations>

Important for all MiFID Investment Firms: MiFID II implementation

As referred to in the December 2015 Newgate News, the possible delay to MiFID II has now been confirmed and will now come into force on 3 January 2018.

Newgate Compliance
Limited

Contact us:

☐ [email](#); or

☐ 020 3696 8750

Important for all Firms: Inducements and conflicts of interests

The FCA have published its key findings from last year's thematic review about benefits provided and received by firms conducting MiFID business and those selling retail products.

The inducement rules (COBS 2.3) require that payments made or benefits received should enhance the quality of the service for the client. Key findings were;

- Hospitality given or received did not always appear to be designed to enhance the quality of the service to the client or that they were given with other benefits that did
- Inadequate recording of the reason for the hospitality and to whom it was provided
- Product providers making payments to advisory firms in excess of costs incurred
- MiFID firms not providing clients with an indication of the value of allowable benefits provided

Firms should consider these findings in ensuring their policies and procedures are compliant.

<http://www.fca.org.uk/news/inducements-conflicts-interest-thematic-review-key-findings>

Important for Investment Management and Corporate Finance Firms: Reforming the IPO process

The FCA has issued a discussion paper, DP16/3, concerning the Initial Public Offering (IPO) process and the availability of information to investors. Investors will often base their decision to invest on the information in the Prospectus.

In a typical IPO there is what is known as a 'blackout period' (usually 14 days) where no information is released between the publication of research, which is normally the date of the announcement of the intended floatation by the syndicate banks supporting the floatation, and the issue of the prospectus. This results in investors only having access to information late in the process. Furthermore, independent analysts generally do not have access to the management of the firm looking to float to be able to provide independent research.

The Discussion Paper puts forward two ideas to stimulate debate; a requirement to delay the release of any research by analysts at banks connected to the IPO until after the prospectus is published, and a requirement to invite analysts from unconnected banks and independent research providers to any meetings with management.

<http://www.fca.org.uk/news/dp16-03-availability-of-information-in-the-uk-equity-ipo-process>

Related to the IPO process, the FCA have published an Occasional Paper to consider whether the IPO allocation process works in the interests of issuer clients (i.e. the company floating) or whether banks favour their highest-revenue clients in deciding on final allocation of shares, presenting a clear conflict of interest.

<http://www.fca.org.uk/news/occasional-paper-no-15>

Important for Investment Management Firms: Meeting investors' expectations

The results of the FCA's thematic review to assess whether UK authorised investment funds and segregated mandates are operated in line with investors' expectations as set by marketing and disclosure material, and investment mandates has been published.

The FCA sampled funds and segregated accounts managed by 19 UK fund managers. The key messages are:

- Product descriptions must be clear and correct. Generally, the review found firms provided adequate information about the funds' strategies, characteristics and inherent risks;
- Effective governance and oversight is required throughout the whole fund life cycle, not just while the fund is actively marketed;
- Fund managers need to be alert to trends that may indicate inappropriate sales by monitoring their distribution channels; and
- Adequate controls need to be in place over distribution channels to ensure funds are only marketed to investors for whom they are intended and adequate information is provided to distributors by fund managers to market the funds on their behalf.

Fund management firms should consider the findings and make changes accordingly.

<http://www.fca.org.uk/news/tr16-03-meeting-investors-expectations>

Important for all firms: FCA fees and levies for 2015/16

The FCA has published Fee Consultation Paper CP16/9 setting out that they will require £519.3m for 2016/2017, an increase from last year of £37.7m which is solely down to the inclusion of Consumer Credit for the first time.

The 2016/7 fee calculator is on the FCA website. The "good" news is that asset managers should see a decrease of between 5% to 9% on last years fees!

<http://www.fca.org.uk/your-fca/documents/consultation-papers/cp16-9>

Important for Investment Management Firms: Liquidity Management good practice

As part of work carried out to assess risks posed by open-ended investment funds investing in the fixed income sector, the FCA considered how investment management firms manage liquidity risk in their funds.

The FCA has shared the 'good practice' it found by the firms who took part in the review, for example, good disclosure of liquidity risk to investors; a strong level of liquidity risk management and oversight; redemption arrangements appropriate for the fund's investment strategy, good practice on fund dealing; and the implementation of exceptional liquidity tools and measures.

<http://www.fca.org.uk/news/liquidity-management-for-investment-firms-good-practice>

The FCA have also published an Occasional Paper concerning liquidity in the UK corporate bond market covering the period 2008 to 2014. The FCA analysis concludes that although the inventory of dealers has declined in this period, there is no evidence that liquidity outcomes have worsened.

<http://www.fca.org.uk/news/occasional-paper-no-14>

Important for all MiFID Investment Firms: UCITS share classes

The UCITS Directive allows a UCITS scheme to offer different share classes within it to investors, though the Directive does not prescribe whether, and to what extent, share classes of a given UCITS scheme can differ from another. Share classes can be very simple (e.g. different fee levels) or more sophisticated (e.g. offering different investment strategies).

ESMA has issued a Discussion Paper proposing a framework for UCITS share classes throughout the EU. The paper seeks views on whether share classes of the same fund should have a common investment objective; UCITS management companies should implement procedures to minimise the risk that features specific to one share class having an adverse impact on other share classes of the same fund; all features of the share class should be pre-determined before it is set up; and differences between share classes of the same fund should be disclosed to investors when they have a choice between two or more classes. Deadline for comments is 6th June 2016.

www.esma.europa.eu/sites/default/files/library/2016-570_discussion_paper_on_ucits_share_classes_2016_0.pdf

Important for Investment Management Firms: Access to Regulated Benchmarks

Policy statement PS16/4 (Fair, reasonable and non-discriminatory access to regulated benchmarks) sets out amended Handbook text that applies to benchmark administrators who organise and govern industry benchmarks.

Once used it can be difficult for industry participants to easily switch to an alternative. To limit the ability of benchmark administrators being able to exploit their market power that adversely affects competition new rules have been introduced (MAR 8.3.19 to 8.3.23) requiring regulated benchmark administrators to grant access to and licences to use benchmarks on a fair, reasonable and non-discriminatory basis, including with regards to price.

<http://www.fca.org.uk/your-fca/documents/policy-statements/ps16-04>

Important for all Firms: Accountability and the Senior Managers and Certification Regime (“SMCR”)

The FCA has published Policy Statement PS16/3 setting out final rules for the new accountability framework consulted on in July 2015.

Although these rules are only applicable to individuals working in banks, building societies and credit unions, the FCA has made it clear it intends to extend the SMCR to all firms.

<http://www.fca.org.uk/news/ps16-03-strengthening-banking-accountability>

Important for all Firms: Complaints against the Regulators (FCA/PRA/BofE)

Under the Financial Services Act 2012 the regulator operates a Complaints Scheme ("the Scheme") to investigate complaints against it.

Changes now require the Complaints Commissioner, an independent person responsible for conducting investigations, to prepare and provide an annual report to the regulators and the Treasury. It must include information on general trends in complaints, recommend actions for the regulators to take, the effectiveness of the procedures for handling and resolving complaints and how accessible and fair the regulators procedures were. If the report makes recommendations or criticisms, each regulator must respond and publish the response. The Treasury must lay the annual report and any responses before Parliament.

<http://www.fca.org.uk/news/ps16-11-complaints-against-the-regulators>.

Important for Investment Management Firms: UCITS V – Implementation and Remuneration Guidelines

Policy statement PS16/2 sets out final handbook changes to implementing UCITS V which came into force on 18th March 2016. UCITS V consists of the Directive itself and a Regulation, the latter having yet to be ratified by the European Council and European Parliament. Once agreed the Regulation comes into effect 6 months thereafter. Nevertheless, FCA expect firms to make efforts to comply with the Directive now, even though the finer detail of the Regulations are not in place.

The main changes are; UCITS Management Companies are subject to a new remuneration code (see section 19E of SYSC Handbook) which is broadly similar to that in place for AIFMs in SYSC 19B; there must be a written contract appointing a single depositary for each fund giving the depositary a cash oversight function. The depositary must either be a national central bank or a credit institution; UCITS Management Companies are required to have appropriate whistleblowing procedures.

<http://www.fca.org.uk/news/ps16-02-implementation-of-the-ucits-v-directive>

With regard to remuneration, the European Securities and Markets Authority (ESMA) has issued its final report on remuneration guidelines under UCITS V. ESMA is of the view that on the grounds of proportionality, some of the remuneration requirements can be disapplied, as is the case under the AIFMD although the European Banking Authority's does not agree with the concept of proportionality for the remuneration policies within CRD IV (see article above). The remuneration guidelines apply from 1 January 2017, by which time the matter will be resolved.

www.esma.europa.eu/sites/default/files/library/2016-411_final_report_on_guidelines_on_sound_remuneration_policies_under_the_ucits_directive_and_aifmd.pdf

Important for Securities Firms: Are high-frequency traders anticipating order flow?

The FCA have issued an Occasional Paper to stimulate debate on the activities of high-frequency traders (HFTs), specifically whether HFTs by exploiting their speed advantage, can predict when orders are going to arrive at different trading venues and trade in advance of slower traders.

<http://www.fca.org.uk/news/occasional-paper-no-16>

Important for IFPRU Firms: European Banking Authority (“EBA”) guidelines on remuneration policies

As referred to in the January 2016 Newgate News, the EBA published its guidelines on sound remuneration policies which come into effect on 1 January 2017.

The guidelines suggested a limit on the amount of a person’s variable remuneration to no more than 100% of their fixed salary (or 200% with shareholder approval) – the “bonus cap”. The FCA and PRA have advised they will comply with all aspects of the guidelines except the bonus cap on the basis that they do not agree with the EBA’s interpretation that the concept of proportionality did not permit any exemptions or waivers from the remuneration principles within CRD IV.

<http://www.fca.org.uk/news/sound-remuneration-policies-statement>

Important for all Firms: Policy Development Updates

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
- an updated timetable for forthcoming publications

A link to the latest PDU’s are here:

<http://www.fca.org.uk/news/pdu-30>

<http://www.fca.org.uk/news/pdu-31>

<http://www.fca.org.uk/news/pdu-32>

<http://www.fca.org.uk/news/pdu-33>