NEWGATE COMPLIANCE

Newgate News

March 2021

FCA report outlines practices for operational resilience

The Financial Conduct Authority's ("FCA") report highlights that one of the main causes for operational disruption within firms are failed technology changes, accounting for a quarter of all high security incidents that cause harm to consumers and the market. Furthermore, the report discovered that changes made by firms with strong governance and risk management strategies are more successful, that robust testing is an important part of the change process, and while testing automation has benefits it also presents challenges. Additionally, the report highlights that pairing subject matter expertise with a clear understanding of a firm's strategy is vital.

Key recommendations:

- Firms should regularly update their IT systems
- Firms should understand how technology change activity can affect the services they provide
- Firms should invest in their resilience to protect themselves, consumers and the markets.

Full report can be found here.

Newgate's advice: ***We have recently updated many of our compliance framework documents, policies and risk assessments to reflect the enhanced risks posed by remote working. Please contact your Newgate Consultant for further information.***

Impact: High

Impact assessment key:

Low

Medium

High

FCA launches guidance for firms on the fair treatment of vulnerable customers

The FCA has published final guidance clarifying its expectations of firms on the fair treatment of vulnerable customers.

The guidance aims to drive improvements in the way firms treat vulnerable consumers so that they are consistently able to achieve outcomes that are fair.

The FCA will continue to hold firms to account for their treatment of vulnerable customers. Firms can expect to be asked to demonstrate how their business model, the actions they have taken, and their culture ensure the fair treatment of all customers, including vulnerable customers. The FCA has also published a Memorandum of Understanding (MoU) with the Equality and Human Rights Commission (EHRC). This MoU sets out how the FCA will co-operate and work with the EHRC on equalities issues, to help protect people in financial services markets. Sharing information and expertise will help the EHRC and the FCA to act on equalities issues that arise.

Newgate's advice: ***Firms are reminded that in treating customers fairly, they should also be aware of their obligations under the Equality Act 2010. It is likely that a breach of the Equality Act, for example failure to provide reasonable adjustments for disabled people, will also be a breach of the FCA's rules. Please contact your Newgate consultant for more information on how you can ensure that you firm treats vulnerable customers fairly.***

https://www.fca.org.uk/news/press-releases/fca-launches-guidance-firms-fair-treatment-vulnerable-customers

Impact:

FCA and FRC joint statement reminding companies that extended financial information timelines continue to apply

Firms are reminded of the measures that remain valid today and which provide some flexibility:

- This includes allowing listed companies an additional two months to publish their audited annual financial reports.
- The FCA and FRC encourage all stakeholders including boards of listed companies to (1) re-familiarise themselves with the measures and (2) use them considering any resourcing constraints in finance and/or audit teams to ensure the quality of reporting is not compromised during this period.
- The FCA alerts investors and other users of financial information, including lenders assessing covenant breaches arising solely because of changes in reporting timetables, that reporting timetables for companies might be extended for these reasons.
- The Market Abuse Regulation (MAR) remains in force and companies are still required to fulfil their obligations concerning inside information as soon as possible unless they have a valid reason to delay disclosure under the regulation.
- Audit committees may consider it appropriate to set out in their annual report the work they have undertaken, and the measures they have agreed to ensure high-quality reporting and audit for the period affected. This might include how they have ensured they have allowed enough flexibility in the year-end timetable to complete all the necessary work to an appropriate standard that will meet investor and stakeholder expectations.

Impact:

FCA warning over 'clone firm' investment scams

The FCA has issued a warning to the public as reports of 'clone firm' investment scams increased by 29% in April 2020 compared to March, when the UK went into its first lockdown. Action Fraud data reveals consumers reported losses of more than £78 million between January-December 2020. Throughout 2020, consumers reported average losses of £45,242 each on average when investing with fraudsters imitating genuine investment ('clone firms').

Clone firms are fake firms set up by scammers using the name, address and 'Firm Reference Number' (FRN) of real companies authorised by the FCA. Once set up, these fraudsters will then send sales materials linking to websites of legitimate firms to dupe potential investors into thinking they are the real firm when they are not.

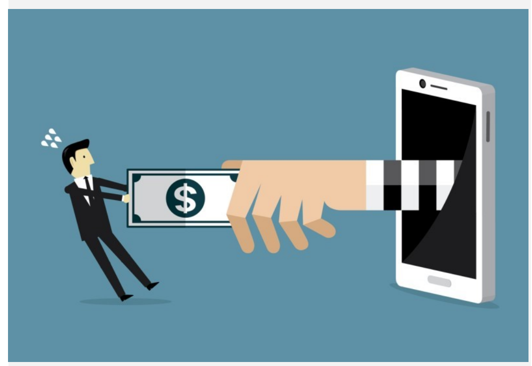
Mark Steward, Executive Director of Enforcement and Market Oversight, FCA, said: 'Clone investment scams can look real and sophisticated, but anyone can spot them by following our advice. Fraudsters use literature and websites that mirror those of legitimate firms, as well as encouraging investors to check the Firm Reference Number (FRN) on the FCA Register to sound as convincing as possible…if you are considering an investment, visit the FCA Register to make sure the firm you are dealing with is authorised. Check our Warning List of firms you should avoid, use the contact details on our FCA Register, not the details the firm gives you, and check for subtle differences to avoid 'clone firm' scams. And if you are still unsure, call our consumer helpline for further information. When it comes to clones, I cannot emphasise enough how important it is to double check every detail.'

Impact:

Newgate's advice: ***We reiterate the FCA's advice for anyone considering an investment opportunity to check the Warning List of firms, which is updated daily. The specific details of a firm, such as the telephone number and website address can be verified on the FCA Register. The FCA also warns consumers to use the phone number on the FCA Register to contact an FCA authorised firm to be sure they are dealing with the real firm.***

In the event your firm has been imitated in relation to an investment scam, you are required to notify the FCA.

For further advice concerning scams or assistance updating the FCA Register, please contact your Newgate Consultant.



Firms reminded to regularly review regulatory permissions

New powers in the Financial Services Bill, which is currently making its way through Parliament, mean that the FCA will be able to act more quickly where they consider firms are no longer carrying out regulated activities.

With the new powers, where the FCA believe that a firm is not carrying on a regulated activity, they will be able to serve notice on the firm, asking for a written response within 14 days. If the firm does not respond the FCA will be able to publish a second, public notice, explaining it appears that the firm is not carrying on a regulated activity. The FCA can then vary or cancel the firm's permissions after 1 month.

Firms should notify the FCA of any material changes and apply to make any necessary changes in a timely way. The FCA also reminds firms that they have the power to cancel a firm's Part 4A permission if it has not carried on a regulated activity or at least 12 months.

Newgate's advice: ***Reviewing your permissions, and maintaining only those you need, helps to assure you that you will continue to meet the threshold conditions, are demonstrating effective oversight of your business, meet your obligations under the Senior Managers Regime and are providing accurate information to customers. This also means you do not pay unnecessary fees for unused or out of date permissions.***

If your firm has not carried on any regulated activities for 12 months or more and have no current plans to do so, consider applying for cancellation using Connect. If your firm has not used and no longer need some of the permissions, consider applying to remove the permissions you no longer need by completing and submitting a Variation of Permission application using Connect.

https://www.fca.org.uk/news/statements/fca-reminds-firms-regularly-review-regulatory-permissions

Impact: 

MoUs with EU authorities in securities, investment services and asset management, insurance and pensions, and banking

On 1 January 2021, several Memoranda of Understanding (MoUs) came into effect between the FCA and European authorities, covering cooperation and exchange of information.

The MoUs are:

A multilateral MoU with EU and EEA National Competent Authorities (NCAs) covering supervisory cooperation, enforcement and information sharing relating to, among others, market surveillance, investment services and asset management activities.
An MoU with the European Securities and Markets Authority (ESMA) covering supervision of credit rating agencies and trade repositories.
A multilateral MoU with EU and EEA NCAs covering supervisory cooperation, enforcement and information exchange between UK and EU/EEA national supervisors in the field of insurance regulation and supervision.
An MoU with the European Insurance and Occupational Pensions Authority (EIOPA) covering information exchange and mutual assistance between the UK authorities and EIOPA in the field of insurance regulation and supervision.

A MoU with the European Banking Authority (EBA) covering information exchange and mutual assistance between the UK authorities and the EBA in the field of banking.

Individual MoUs with EU and EEA NCAs covering supervisory cooperation and information-sharing arrangements in the field of banking. These can be found on the Prudential Regulation Authority (PRA) website.

https://www.fca.org.uk/news/statements/mous-european-authorities-securities-insurance-pensions-banking

FCA sets out approach to international firms

The FCA has published its approach to the authorisation and supervision of international firms. The publication explains how the FCA will assess international firms when they apply for authorisation to operate in the UK market. The FCA has considered responses to a consultation paper published last year (CP20/20) and they have also published a feedback statement alongside the approach document. The FCA expects firms seeking authorisation to have an active place of business in the UK to enable us to effectively supervise its UK activities.

International firms serving UK customers can sometimes create different risks of harm compared to UK firms because of the way their businesses are structured and operate. In the approach document the FCA sets out how these risks may be mitigated, and the factors that will be considered when deciding whether it may be more appropriate for an international firm to seek authorisation as a UK incorporated firm for all or part of its business.

Full document here.

Newgate's advice: ***Please contact your Newgate Consultant if you have any Brexit/international or authorisation queries.***

https://www.fca.org.uk/news/press-releases/fca-sets-out-its-approach-international-firms

Impact:

LIBOR – are you ready for life without LIBOR from end-2021?

In a speech delivered by Edwin Schooling Latter, Director of Markets and Wholesale Policy, he has discussed the impact of a post-LIBOR financial environment.

Highlights:

- 85% of uncleared UK derivatives market ready for the end of LIBOR as 12,500 firms sign the ISDA protocol
- IBA consultation on proposed end-dates for LIBOR has now closed, opening the way to determining and announcing the future path for all 5 LIBOR currencies simultaneously

Users of LIBOR should press ahead with transition plans – in their new business and their legacy LIBOR books

https://www.fca.org.uk/news/speeches/libor-are-you-ready-life-without-libor-end-2021

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