



# Newgate News

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



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## System change – ONA out and “Connect” in

From 1<sup>st</sup> October 2014, the FCA will replace ONA, the existing on-line application system with a new system called Connect.

The new system will be for **approved persons, appointed representatives, variations of permission, cancellations and changes to standing data**. “Helpfully”, applications for **passports** will still need to be made on ONA; Waivers and Change in Control Applications will still need to be submitted on paper. From 1<sup>st</sup> December 2014, you will not be able to submit applications on ONA (aside from Passports).



Your ONA account will be migrated to Connect by the FCA and you will be sent an email which will send a link to the system and you'll be asked to reset your password. Once you have reset your password you will be able to login and submit new applications.

## MiFID II

The European Securities and Markets Authority (“ESMA”) published on 22nd May 2014 its draft technical advice on MiFID II seeking consultation and responses.

The consultation period closed two months later on 1st August 2014. ESMA must provide its technical advice on MiFID II and MiFIR (the regulations behind the Directive) to the European Commission by January 2015. EU member states will have to transpose MiFID II by July 2016 and firms will have to be compliant from January 2017. There may be some transitional provisions, however these are yet to be finalised.

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## **Best Execution and Payment for Order Flow**

The FCA have visited 36 firms as part of a Thematic Review into best execution and have published its results in TR14/13 (<http://www.fca.org.uk/news/tr14-13-best-execution-and-payment-for-order-flow>).

Although the sample didn't include questioning or visiting buy side asset managers the review specifically states that it is relevant to portfolio manager and those who execute, receive and transmit, or place client orders.

The FCA gave some pretty clear and strong statements in the review together with examples of good and bad practice. The FCA state that it expects all investment firms to review their best execution processes and procedures and take any appropriate action but that it will also undertake additional visits and that the consequences for any firm not having taken any action will likely be serious. The sample firms included investment banks, CFD brokers, wealth managers, brokers and interdealer brokers and retail banks.

In summary, the findings were that most firms are not doing enough to deliver best execution and that they need to improve their understanding of their best execution obligations. A key issue is to remember that best execution is looking to get the customer the best result possible rather than just getting the best price available.

During our next compliance visit we will work with you to ensure your Best Execution policy and monitoring arrangements incorporate the key areas of focus raised by the FCA.

## **Fees and Levies**

The FCA has published its policy statement in respect of 2014/15 fees (PS14/11).

The annual funding requirement is £446.4m which is 3.3% up on the previous year. This funding requirement is split between all regulated firms dependent on what fee block that are in. Fee blocks depend on the activities a firm undertakes. Headlines are that fees for portfolio managers are up 11.7% on last year while fees for advisers, arrangers, dealers or brokers are down 18.7%. The reason for the increased costs for portfolio managers is the recovery of the FCA's set up costs for the AIFMD. Minimum fees are unchanged at £1,000.

## **FATCA update – a brief respite or not?**

It seems that the US's Internal Revenue Service ("IRS") has slightly softened its stance in relation to the Foreign Account Tax Compliance Act ("FATCA").

As a reminder, FATCA requires financial institutions outside the US to pass information about their US customers to the US tax authorities. This has been introduced with an aim of stopping US individuals from avoiding their tax liabilities. A US/UK agreement allows relevant UK financial institutions to report to HMRC rather than the IRS. Failure to comply will lead to a 30% withholding tax to be imposed on US source income received by the financial institution.

The lack of published instructions for some pretty complex forms such as the Form W-8BEN-E has been causing a number of firms a 'degree' of trouble. On 2<sup>nd</sup> May 2014, the IRS announced a general relaxation of some of the FATCA deadlines for foreign financial institutions, however efforts to comply with FATCA should still continue for firms. The IRS has stated that 2014 and 2015 will be regarded as transitional years for the purposes of IRS enforcement. They will look at the firm's good faith efforts to comply with FATCA and compliance still needs to be pursued with the new deadlines of the start of 2016.

## **Use of Dealing Commission**

In June 2014 the FCA strengthened its rules in COB 11.6 relating to the execution and research services that can be purchased through the use of dealing commission.

The FCA has subsequently issued a discussion paper DP14/3 (<http://www.fca.org.uk/static/documents/discussion-papers/dp14-03.pdf>) to the industry inviting responses by 10 October 2014 on future market reform in this area noting that the future implementation of MiFID II is likely to prevent investment managers from receiving third party inducements, with limited exception for 'minor non-monetary benefits'.

In the medium term all signs point towards a requirement for most research services being unbundled from dealing commission arrangements. For now, the FCA is encouraging firms to review their current dealing commission arrangements to ensure they comply with the regulatory regime. During our next compliance visit we will work with you to review your current policy and procedure to ensure they align with FCA's supervisory expectations.

## **AIFMD – Annex IV reporting**

If you are a Small Authorised UK AIFM ("Alternative Investment Fund Manager"), a Full Scope UK AIFM or a Non-EU Full Scope AIFM that markets in the UK then you will need to file an "Annex IV" report to the FCA.

The reports are not yet available on the Gabriel system are due by October 2014. Depending on the type and size of the AIFM, reports will need to be submitted from as frequently as quarterly dropping to annually for small AIFMs.

The information required in the Annex IV covers areas such as the types of main instruments that are traded, principal exposures, geographic location of investments to name but a few. For some full-scope AIFMs there will be a staggering 300 questions to answer. The template for the Annex IV report is in excel format but will need to be reported to the FCA in XML.

Be aware that for some AIFMs, there will be a very large amount of information needed to be entered onto the template and the time required to complete these reports will be significant. Firms have one month from the reporting period end date to submit the report to the FCA.

We recommend that firms engage with their fund services providers if they have not already done so to ascertain whether arrangements can be put in place to make the relevant reports.