

## April 2019 - Issue Highlights

- **FCA Business Plan 2019/2020**
- **Brexit Update**
- **Memorandum of Understanding (MoU)**
- **MIFID Transparency Regime**
- **Share Trading Obligations**
- **ESMA update**
- **EU Blacklist**
- **Partly Contested Cases, Recent decisions and AML investigations**
- **Effective Stewardship**



## Important information for all firms: FCA sets out priorities for 2019/2020

The Financial Conduct Authority (FCA) have published its Business plan for 2019/2020 and outlines their key priorities for the coming year. The highest priority of the FCA will remain supporting an orderly transition as the UK finalises their preparations to leave the EU. They will also continue to guide the regulatory framework working with other national regulators and international bodies.

### Cross-sector priorities

The Business Plan outlines four ongoing cross-sector priorities:

- Work on firms' culture and governance, including extending the Senior Managers and Certification Regime to all firms.
- Ensuring the fair treatment of firms' existing customers by monitoring firms' practices, including the information they give prospective and current customers.
- Developing the work being done on operational resilience, which will play a vital role in protecting the UK's financial system.
- Combating financial crime and improving anti-money laundering practices, by enhancing the use of technology and data, as well as engaging with multiple agencies and government bodies.

The plan also sets out three additional cross-sector priorities, which have longer time horizons:

- the future of regulation
- ensuring innovation and the use of data work in consumers' interests
- examining the intergenerational challenge in financial services

## Sector-specific themes

The FCA has also set out sector specific priorities. For investment managers, the FCA are focused on:

- Implementing new requirements for asset managers
- Further focus on stewardship
- Consultation on a prudential regime for MiFiD investment firms
- Recommendation on revised rules and guidance on liquidity management
- Further assessment of Packaged Retail and Insurance -based Investment Products (PRIIPs)

Andrew Bailey, FCA Chief Executive, said:

‘Dealing with Brexit will be the most immediate challenge we face. But this plan also commits us to a stretching programme of work across the financial sector.

‘In order to ensure we are a regulator that continues to serve the public interest, we need to adapt to the ever-changing environment. This is why the future of regulation is a key priority in this year’s Business Plan. We will be leading a debate about this with stakeholders so that we can keep pace with the developments taking place in the markets that we regulate and in wider society.’

The FCA are also due to publish its annual fees Consultation Paper and a paper setting out the FCA’s Research agenda.

<https://www.fca.org.uk/news/press-releases/fca-sets-out-its-priorities-2019-20>

## How Newgate can help?

Firms are encouraged to address areas of the FCA Business Plan that is relevant to its sector and firm. To discuss how the Business Plan affects your business, please contact us.

## Important information for all firms: Update on Brexit

The last update we had received from the FCA was confirmation that the UK will not leave the EU on the 12 April 2019. Consequently, no preparations were implemented, and firms do not need to take action at this stage.

ESMA has stated that statements and measures on no-deal Brexit scenario referring to the 12 April 2019 should now be read as referring to 31 October 2019 – the new potential exit date (unless the European Council decides otherwise).

<https://www.fca.org.uk/news/statements/update-brexit-delay>

<https://www.esma.europa.eu/sections/brexit>

## Important information for all firms: PRA and FCA agrees Memorandum of Understanding (MoU) with EBA

The FCA, Prudential Regulation Authority (PRA) and the European Banking Authority (EBA) have agreed a template Memorandum of Understanding (MoU) that sets out the expectations for supervisory cooperation and information-sharing arrangements between the UK and EU/EEA national authorities.

In the event of a no-deal scenario, the UK authorities and EU/EEA national authorities will move swiftly to sign bilateral MoUs which will allow uninterrupted information-sharing and supervisory cooperation.

Sam Woods, Deputy Governor and Chief Executive of the Prudential Regulation Authority, said:

“I am pleased that we have agreed a template which will form the basis of bilateral MoUs with the national authorities in EU member states. These agreements will ensure our continued cooperation in carrying out our supervisory responsibilities. We have enjoyed a strong working relationship with our European partners for many years and I am confident that this will continue.”

Andrew Bailey, Chief Executive of the FCA, said:

“The bilateral MoUs will ensure that there will be no interruption in exchange of supervisory information in the event of a no-deal exit from the EU. It sends a clear signal of the determination of the UK and EU authorities to work together. The MoUs build on years of continued working and will ensure these can carry on if the UK leaves the EU without an agreement. We are encouraged by the approach of the EBA on this vitally important matter.”

The MoUs will only take effect in the event of a no-deal scenario.

<https://www.fca.org.uk/news/press-releases/pr-a-and-fca-agree-memorandum-understanding-mou-eba>

## Important information for MIFID firms: Statements of Policy on the operation of the MIFID transparency regime

The FCA have published statements of policy outlining how they will operate the MIFID transparency regime. If the UK leaves the EU without an implementation period agreed between the UK and the EU, the FCA will be responsible for operating the regime within the UK.

The onshored UK regime gives the FCA new decision-making powers and obligations to operate the transparency regime and includes a degree of flexibility during a 4-year transitional period. This

allows the FCA to build the systems and operate as ESMA currently operates or change the regime if needed given the possible move from an EU-wide trading data set to a UK-only data set.

The Statements of Policy outline how we may expect to use these new powers and gives further clarity to market their approach in advance of Brexit.

The FCA have also published a Supervisory Statement outlining how they will operate the pre- and post-trade transparency regime and gives further clarity about their approach in advance of Brexit.

<https://www.fca.org.uk/news/statements/statements-policy-operation-mifid-transparency-regime>

## Important information for MIFID firms: FCA statement on share trading obligations

In the event of a no-deal Brexit and in the absence of an equivalence decision in respect of the UK by the European Commission (EC), ESMA have published its expectations of share trading obligation (STOs) in the EU.

Both the EU MIFID II and the UK MIFID regimes have STOs that mandate investment firms to trade certain trades on regulated markets, multilateral trading facilities, systematic internalisers of third country trading venues assessed as equivalent by the EU and UK respectively.

The statement defines that the EU's STO applies to all shares traded on EU27 trading venues that are shares of firms incorporated in the EU (EU ISINs), and of companies incorporated in the UK (GB ISINs) where these companies' shares are 'liquid' in the EU. This basically means that EU banks, funds and asset managers will not be able to trade these GB or EU ISIN shares in the UK, even where the UK is the home listing of the British or EU company.

ESMA's goal is to provide as much clarity as possible and mitigate potential adverse effects of a trading obligation in these circumstances.

<https://www.fca.org.uk/news/statements/fca-statement-share-trading-obligations>

## Important information for all firms: ESMA Update

ESMA have updated the AIFM Q&A's by adding two new Q&As on calculation of leverage under AIFMD. The Q&As provides clarification on:

- the treatment of short-term interest rate futures for the purposes of AIFMD leverage exposure calculations according to the gross and commitment methods;

- the required frequency of the calculation of leverage by an AIFM managing an EU AIF which employs leverage - managers should at least be calculating leverage to the frequency of the NAV.

Also, ESMA issued a consultation paper in February on guidelines on liquidity stress testing in UCITS and AIFS.

<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-updated-aifmd-qa-4>

[https://www.esma.europa.eu/sites/default/files/library/esma34-39-784\\_esma\\_guidelines\\_on\\_liquidity\\_stress\\_testing\\_in\\_ucits\\_and\\_aifs.pdf](https://www.esma.europa.eu/sites/default/files/library/esma34-39-784_esma_guidelines_on_liquidity_stress_testing_in_ucits_and_aifs.pdf)

## Important information for all firms: EU Blacklist

The European commission have released a press release on its latest countries blacklist, which now includes the UAE.



NO COMMITMENT TO ADDRESS EU'S CONCERNS	DID NOT DELIVER ON THEIR COMMITMENT ON TIME	MAJOR TRANSPARENCY CONCERNS
American Samoa Guam Samoa US Virgin Islands	Aruba Barbados Belize Bermuda Dominica Fiji Marshall Islands Oman United Arab Emirates Vanuatu	Trinidad & Tobago

JURISDICTION STAYED IN ANNEX I (Blacklist)
  JURISDICTION MOVED FROM ANNEX II (Greylist) TO ANNEX I (Blacklist)

 European Commission

Essentially from an Anti-Money Laundering/Anti-Tax Evasion standpoint, firms should look to increase the risk rating and level of due diligence/monitoring undertaken on any clients or entities that are based in these jurisdictions.

[europa.eu/rapid/press-release MEMO-19-1629 en.htm](https://europa.eu/rapid/press-release_MEMO-19-1629_en.htm)

## Important information for all firms: Partly contested cases, the pipeline and AML investigations

Mark Steward, Director of Enforcement and Market Oversight gave a brief speech to partly contested cases, some recent decisions and AML investigations.

- Partly contested cases avoid a 'deal-making' approach to the imposition of penalties and sanctions giving subjects an opportunity to test and challenge the FCA's penalties before the RDC, an independent FCA Board committee, without losing any cooperation benefit.
- Firms will be held accountable for foreseeable harm.
- The FCA is investigating suspected breaches of the Money Laundering Regulations that might give rise to either criminal or civil proceedings, giving effect to the full intention of the Money Laundering Regulations which provides for criminal prosecutions.

<https://www.fca.org.uk/news/speeches/partly-contested-cases-pipeline-and-aml-investigations>

## Important information for all firms: Towards more effective stewardship

Edwin Schooling Latter, Director of Markets and Wholesale Policy from the FCA gave a speech regarding the importance of effective stewardship.

Mr Latter highlighted that the FCA have recently published a joint FCA-Financial Reporting Council (FRC) discussion paper on stewardship and a consultation paper on implementing the Revised Shareholder Rights Directive (SRD II). He also pointed out that there now seems to be an unprecedented interest in stewardship, which is driven by increasing interest in how companies and investment firms manage environmental, social and governance (ESG) risks.

### Highlights:

- Effective stewardship is important. Long-term thinking and shareholder engagement help markets function well.
- Whilst progress has been made towards more effective stewardship, the overall evidence on whether and how stewardship is happening is mixed.
- The FCA will consider how to build upon the baseline for stewardship established by implementation of the Revised Shareholder Rights Directive, in the context of the FRC's revision of its Stewardship Code.

<https://www.fca.org.uk/news/speeches/towards-more-effective-stewardship>