

Newgate News

FCA welcomes Financial Services Bill

The FCA welcomes the Financial Services Bill introduced in Parliament, which the FCA state will help to maintain high standards and provide greater clarity to firms.

The FCA have welcomed the Bill's provisions to amend the Benchmarks Regulation, which is intended to help manage and direct an orderly wind-down of critical benchmarks such as LIBOR. The Bill was introduced in Parliament on 21 October 2020. Following its introduction to Parliament, the Bill will be subject to legislative scrutiny in the House of Commons and the House of Lords. Once both Houses have agreed, the Bill will receive Royal Assent and become law.

Newgate's advice: *Clients should maintain their focus on the transition away from LIBOR by the end of 2021. The Bill also includes a number of areas of interest to firms, including:*

- *The prudential regulation of investment firms (measures relating to the Investment Firms Prudential Review);*
- *A new route for overseas funds to market to retail investors through the introduction of a new Overseas Funds Regime which will allow access for recognised collective investment schemes from countries/territories approved by HM Treasury;*
- *A new framework for our regulatory relationship with Gibraltar*

Please contact Newgate concerning any aspect of the Bill you require more information on.

<https://www.fca.org.uk/news/statements/fca-welcomes-financial-services-bill>

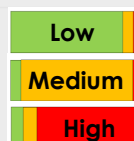
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October 2020

- FCA welcomes Financial Services Bill
- Statement on MiFID trade reporting and position limit obligations
- 'Market abuse in a time of coronavirus' speech by the FCA
- FCA bans the sale of crypto-derivatives to retail consumers

Impact assessment key:



Market abuse in a time of coronavirus

Julia Hoggett, Director of Market Oversight, delivered a speech concerning the importance of preventing market abuse during a pandemic, at the City Financial Global event on the 12th October 2020. Highlights include:

- The FCA's focus on markets remaining open is driven by the fundamental role they play in supporting the economy – in enabling risk to be priced and managed, but equally, enabling institutions to raise capital at times when they need it the most.
- Whilst the fundamentals of the market abuse offences are constant, the ways in which the risk may manifest are not. The manner of surveilling for them must, therefore, also change.
- The FCA's expectation is that going forward, office and working from home arrangements should be equivalent – this is not a market for information that the FCA wishes to see arbitrated.

Statement on MiFID trade reporting and position limit obligations

On 1 October, ESMA published a statement saying that it intends to assess UK trading venues in relation to its opinions on MiFIR trade reporting and commodity derivatives position limits.

If positively assessed, they will be added to the list of venues with a positive or partially positive assessment for the purposes of those opinions with effect from the end of the EU withdrawal transition period.

In respect of UK requirements from the end of the EU withdrawal transition period, The FCA confirm their position as set out in their public statements from 2019: The FCA do not require UK investment firms that transact on trading venues outside the UK, in the EU or elsewhere, to publish details of those transactions through a UK APA. The FCA also do not consider commodity derivative contracts traded on trading

- Market abuse is not an offence that only applies to individuals working in the financial services industry. Any individual in receipt of inside information who trades while in possession of that information, or induces someone else to, is guilty of market abuse.

Newgate's advice: *Firms are reminded of the need to ensure that appropriate oversight measures are put in place to mitigate the additional risk that such an increase in remote working brings from a market abuse perspective. We are currently updating our key Market Abuse Regulation (MAR) framework documents to reflect the fact that many of our clients and their respective workforce are now working from home/remotely. Please contact your Newgate Consultant for more information.*

<https://www.fca.org.uk/news/speeches/market-abuse-coronavirus>

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venues, whether in the EU or elsewhere, as economically equivalent OTC contracts and so they will not count towards the UK commodity derivatives position limits regime.

The FCA do not maintain a list of assessed overseas venues for these purposes.

Newgate's advice: *EU investment firms trading on these UK venues would not need to publish details of those transactions through an Approved Publication Arrangement (APA) in the EU. Commodity derivatives traded on UK venues would also not be regarded as economically equivalent OTC contracts counting towards the EU commodity derivatives position limits regime. Please contact for more information on how you can prepare for Brexit.*

<https://www.fca.org.uk/news/statements/statement-mifid-trade-reporting-and-position-limit-obligations>

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FCA bans the sale of crypto-derivatives to retail consumers

The FCA has published final rules banning the sale of derivatives and exchange traded notes (ETNs) that reference certain types of cryptoassets to retail consumers. The FCA considers these products to be ill-suited for retail consumers due to the harm they pose. These products cannot be reliably valued by retail consumers because of the:

- Inherent nature of the underlying assets, which means they have no reliable basis for valuation;
- Prevalence of market abuse and financial crime in the secondary market (e.g. cyber theft);
- Extreme volatility in cryptoasset price movements;
- Inadequate understanding of cryptoassets by retail consumers; and
- Lack of legitimate investment need for retail consumers to invest in these products

These features mean retail consumers might suffer harm from sudden and unexpected losses if they invest in these products.

Unregulated transferable cryptoassets are tokens that are not 'specified investments' or e-money, and can be traded, which includes the FCA-known tokens such as Bitcoin, Ether or Ripple. Specified investments are types of investment which are specified in legislation. Firms that carry out particular types of regulated activity in relation to those investments must be authorised by the FCA.

To address these harms, the FCA has made rules banning the sale, marketing and distribution to all retail consumers of any derivatives (i.e. contract for difference – CFDs, options and futures) and ETNs that reference unregulated transferable cryptoassets by firms acting in, or from, the UK. The FCA estimates that retail consumers will save around £53m from the ban on these products.

<https://www.fca.org.uk/news/press-releases/fca-bans-sale-crypto-derivatives-retail-consumers>



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Sheldon Mills, interim Executive Director of Strategy & Competition at the FCA, said: 'This ban reflects how seriously The FCA view the potential harm to retail consumers in these products. Consumer protection is paramount here. 'Significant price volatility, combined with the inherent difficulties of valuing cryptoassets reliably, places retail consumers at a high risk of suffering losses from trading crypto-derivatives. The FCA have evidence of this happening on a significant scale. The ban provides an appropriate level of protection.'

Newgate's advice: The ban will come into effect on 6 January 2021. UK firms with offerings of such products and retail consumers should continue to be alert for crypto-derivative investment scams. As the sale of derivatives and ETNs that reference certain types of cryptoassets to retail consumers is now banned, any firm offering these services to retail consumers is likely to be a scam. For more information on these types of scams or to inform the FCA of a potential investment scam, please refer to the FCA's ScamSmart pages.

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