

November 2017 - Issue Highlights

- MiFID II on the horizon
- The Criminal Finances Act 2017 (Tax Evasion)
- National Risk Assessment for Money Laundering
- Senior Managers and Certification Regime
- Considerations for Principals who have Appointed Representatives or Introducer Appointed Representatives
- Legal Entity Identifier (LEI codes)
- General Data Protection Regulation (GDPR)
- FCA warns of investing in Binary Options and cryptocurrency CFDs
- FCA launches asset management authorisation hub
- FCA feedback on UK Primary markets
- Change in Control guidelines



Important information for all firms: The Criminal Finances Act 2017 (Tax Evasion)

The Criminal Finances Act 2017 came into force on the 30th September 2017. It is now a corporate criminal offence if a firm fails to prevent their employees from criminally facilitating tax evasion, either UK taxes or foreign taxes.

The offence, 'Failure to Prevent the Criminal Facilitation of Tax Evasion' applies to an incorporated body (e.g. a company, an LLP) rather than the individual employed by the firm. An offence is committed if an associated person (an individual or an incorporated body) criminally facilitates a tax evasion offence through deliberate and dishonest action. Associated persons include employees, agents and sub-contractors.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642714/Tackling-tax-evasion-corporate-offences.pdf

Newgate's online Training Centre will include a course on this topic. It will be available from January 2018.

Important information for all firms: National Risk Assessment for Money Laundering and Terrorist Financing

On 26 October 2017, the Treasury published an update to the National Risk Assessment (NRA) of money laundering and terrorist financing. The NRA is the Government's assessment of the key money laundering and terrorist financing threats facing the UK including the susceptibility of the sectors to money laundering and terrorist financing.

Key findings from the report include:

- the criminal exploitation of banks, professional and financial services and cash remain the greatest areas of money laundering risk to the UK
- cash remains the preferred method for terrorists to move funds through and out of the country
- a wide-ranging set of reforms by government, like introducing the ability to investigate suspicious asset trails and to crack down on illicit finance over recent years are starting to take effect

A link to the assessment is here – Chapter 4 relates specifically to financial services https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf

Newgate's online Training Centre includes an Anti-Money Laundering course which we recommend to all clients.

Important information for all firms: Senior Managers and Certification Regime extension to all financial services firms

FCA has issued its proposals in CP17/25 to extend the Senior Managers and Certification Regime (SM&CR) to almost all regulated firms, essentially replacing the existing Approved Persons regime.

<https://www.fca.org.uk/publications/consultation-papers/cp17-25-individual-accountability-extending-smcr>

The SM&CR aims to encourage a culture of staff at all levels taking personal responsibility for their actions and to make sure firms and staff clearly understand and can demonstrate where responsibility lies. The FCA proposes three parts to the SM&CR:

Five Conduct Rules that will apply to all financial services staff at FCA authorised firms. This simple set of rules means that individuals must act with integrity, act with due care, skill and diligence, be open and cooperative with regulators, pay due regard to customer interests and treat them fairly, and observe proper standards of market conduct.

The responsibilities of Senior Managers will be clearly set out and, should something in their area of responsibility go wrong, they can be personally held to account.

Under the Certification Regime, firms will certify individuals for their fitness, skill and propriety at least once a year, if they are not covered by the Senior Managers Regime but their jobs significantly impact customers or firms. **The general industry consensus is that the extension will be implemented in Q4 2018.**

Important information for all firms with Appointed Reps: Considerations for Principals who have Appointed Representatives or Introducer Appointed Representatives

The FCA have issued an alert to Principal firms with appointed representatives and/or introducers (collectively 'ARs') as a reminder of their responsibilities for ensuring adequate oversight of the AR arrangements.

<https://www.fca.org.uk/news/news-stories/considerations-for-principals-who-have-appointed-representatives-or-introducer-appointed-representatives>

FCA expect Principal firms to review and consider certain areas which include;

- Introducers and AR's exerting significant undue influence in relation to client investment choice and involvement in the advice process;
- Whether all AR relationships remain necessary and appropriate for their type of business. (e.g. is the AR actually conducting business that requires regulatory coverage as an AR);
- Procedures for monitoring the type, volume and source of business submitted by their AR's;
- Due diligence undertaken as part of the AR take-on process;
- The process for identifying/monitoring the individuals at the AR who exert significant control or undertake senior management functions. Principals must ensure the senior managers are approved persons;
- Reviewing the actions of each AR to ensure they remain compatible with their obligations as an AR and allow the Principal to meet its regulatory obligations.

Firms with Introducer AR's are reminded of the alert issued in August 2016, highlighting risks from accepting business from introducers/ lead generators, some of whom may be unauthorised.

Important information for all MiFID firms: Legal Entity Identifier (LEI code)

If you are subject to MiFID II transaction reporting obligations, to be able to execute a trade on behalf of a client post 3rd January 2018, you and any client who is eligible for a Legal Entity Identifier (“LEI”) must have one. This will include any client that is a company, charity or trust eligible for an LEI.

If you have not applied for an LEI code you should do so now. The attached link to the FCA website explains how to apply.

<https://www.fca.org.uk/markets/mifid-ii/legal-entity-identifier-lei-update>

Important information for all MiFID firms: Inducements and Research from non-EU brokers

Inducement rules under MiFID II require investment firms paying to acquire investment research to either set up a research payment account and agree a research budget with the client or pay for the research itself.

The European Commission has, through a set of ‘FAQs’, clarified how firms subject to MiFID II can obtain research and brokerage services from brokers in non-EU jurisdictions in full compliance with their obligations under the Directive.

<https://ec.europa.eu/info/system/files/non-eu-brokers-dealers.pdf>

Important information for all firms: General Data Protection Regulation (GDPR)

The GDPR, which comes into effect on 25th May 2018, introduces an EU wide framework for handling personal data and will replace the UK Data Protection Act.

The GDPR will also apply to the transfer of data outside of the EU. The effect of the GDPR means its scope will apply to EU and non-EU data controllers and processors offering goods or services to individuals located in the EU. The Regulation will affect many industries, particularly financial services where firms tend to hold large volumes of personal data.

The GDPR will apply additional legal obligations on data controllers (entities that determine the purpose and means of the processing of personal data) and processors (entities who handle data on the controller’s behalf). Controllers will need to ensure that contracts with processors comply with the GDPR.

There will be requirements for explicit consent to be freely given by individuals for their data to be used for specific purposes, as well as the right for individuals to request details of information held and for data to be deleted. Firms must be able to demonstrate 'how' they are complying with the principles, such as documenting any decisions made when processing relevant GDPR data. The GDPR will require firms to record specific information and to maintain records in a way so that they can make them available to the FCA if requested.

Newgate's online Training Centre will include a course on this topic. It will be available from January 2018.

Important information for all firms offering CFDs: FCA warns of risks investing in binary options and cryptocurrency CFDs

The FCA has issued a warning to consumers of the risks in investing in these products.

As from 3rd January 2018, firm offering binary options must be regulated. FCA concerns are that data suggests that a majority of consumers lose money when trading binary options, they are similar to fixed odds bets and could be addictive, the complex method used to price binary options, means that it is difficult for consumers to value these products accurately, conflicts of interest and the potential for fraud (UK consumers are being increasingly targeted by binary options investment scams).

With regard to cryptocurrency CFDs, FCA warns these are extremely high-risk and speculative. FCA concerns are the value of cryptocurrencies, and therefore the value of CFDs linked to them, is extremely volatile, the use of leverage (some firms are offering leverage of up to 50:1, higher charges compared to other CFD products and a lack of pricing transparency.

<https://www.fca.org.uk/news/news-stories/consumer-warning-about-risks-investing-binary-options>

<https://www.fca.org.uk/news/news-stories/consumer-warning-about-risks-investing-cryptocurrency-cfds>

Important information for asset management firms: FCA launches asset management authorisation hub

The FCA have launched an [asset management authorisation hub](#) to help new investment management firms navigate their way through the authorisation process.

FCA has published guidance on its website to new applicant on the things to consider before applying, preparing and making an application to the FCA and what needs to be done post authorisation. Firms will be offered pre-application meetings and dedicated case officers prior to submitting their application.

Important information for all private equity firms: UK Primary Markets

The FCA has issued a Feedback Statement (FS17/3) and Policy Statement (PS17/22) setting out new rules, effective from 1st January 2018, that clarify the eligibility requirements for a premium listing, introduce an easier route to premium listing for property companies, updates how premium listed issuers may classify transactions and changes the approach to the suspension of listing for reverse takeovers.

A further Policy Statement (PS17/23) sets out new rules, effective from 1st July 2018, aimed at improving the range, quality and timeliness of information available to investors during the UK equity IPO process.

<https://www.fca.org.uk/news/press-releases/fca-reforms-enhance-effectiveness-uk-primary-markets>

Important information for all firms: Change in Control

On 1st October 2017, the Joint European Supervisory Authorities (ESA) issued a set of Guidelines for firms and individuals planning to acquire or increase 'qualifying holdings' in companies operating in the financial sector. A qualifying holding is a direct or indirect holding in a firm which represents 10% or more of its capital and/or its voting rights or which makes it possible to exercise a significant influence over the firm's management. The FCA and PRA notified the ESAs that they will comply with the Guidelines except for provisions relating to the identification of acquirers of indirect qualifying holdings.

FCA reminds firms or individuals seeking to acquire or increase their holding in an FCA regulated firm that, where the change crosses a controller band threshold, advance approval from the FCA is required.

<https://www.fca.org.uk/publication/publications/cic%20quick%20ref%20guide.pdf>