Newgate Compliance Limited
7 Princes Street
London. EC2R 8AQ
Phone: +44 (0)20 3696 8750
Email: info@newgatecompliance.com
www.newgatecompliance.com
www.gatewayncl.com

NEWGATE NEWS

February 2020 - Issue Highlights

- FCA "Dear CEO" letter advises asset management firms to prepare immediately for the end of LIBOR
- MiFID II Review
- FCA, ICO and FSCS publish joint statement to insolvency practitioners and authorised firms
- "Market integrity and strategic approach", speech delivered by Mark Steward, Executive Director at the FCA
- Firms must update or confirm Firm Details annually
- Forum on artificial intelligence and machine learning in financial services
- Information for firms during the Brexit implementation period
- Mark Steward of Enforcement and Market Oversight on the Regulator's General Principles
- FCA highlights its areas of concern in financial services markets

Important information for Asset Managers: FCA advises firms to prepare for the end of LIBOR immediately

27/02/2020

The FCA has issued a "Dear CEO" letter to asset management firms to encourage action to prepare for the end of LIBOR. This will impact asset managers who use LIBOR as the interest rate benchmark to price or value financial products, or as a reference in contracts entered by firms as part of its operations and activities. LIBOR is expected to cease after 2021, when the voluntary agreement of panel banks to continue to submit to LIBOR ends. Asset managers may need to find suitable alternatives to LIBOR.

https://fca.org.uk/publication/correspondence/dear-ceo-asset-management-libor.pdf

Advice to clients: We recommend that the Senior Managers of firms who have received the letter attest that they have read and understood its content and begin to take steps to prepare for the end of LIBOR, to the extent it impacts the firm's business model. We will get in touch individually with our asset manager clients to discuss potential actions and how we can help.

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Important information for all firms: MiFID II Review

17/02/2020

MiFID II was implemented in January 2018, introducing a range of requirements with the aim to promote a more efficient, transparent and resilient financial system. The European Commission is seeking input from stakeholders on the effectiveness of the MiFID II and MiFIR reforms. The European Commission seeks to assess the overall functioning of the regime after two years of application and will present the Parliament and Council with a report on the operation of the new framework, together with a legislative proposal for reform. This consultation seeks to gather evidence on areas that should be targeted for reform and would welcome indications on how issues should be prioritised in a potential reform of the MiFID/MiFIR rulebook.

You can contribute to this consultation by filling in the online questionnaire in the link below. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12167-Review-of-the-regulatory-frameworkfor-investment-firms-and-market-operators-MiFID-2-1-/public-consultation

Advice to clients: Newgate will monitor any findings from this consultation and subsequent communications from the FCA in due course, with a view to advising on material changes to operating policies and procedures.

Important information for all firms: FCA, ICO and FSCS publish joint statement

07/02/2020

The Financial Conduct Authority (FCA), the Information Commissioner's Office (ICO) and the Financial Services Compensation Scheme (FSCS) have published a joint statement warning Insolvency Practitioners (IPs) and FCA-authorised firms to be responsible when dealing with personal data. This is a result of the FCA's increasing awareness that some IPs and FCA authorised firms have attempted to sell clients' personal data to Claims Management Companies (CMCs) unlawfully. This can happen before or after a firm has gone into administration and where it is likely claims for compensation will be made to the FSCS. By passing on personal data, companies may be failing to meet their obligations under the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Any subsequent direct marketing calls, texts or emails carried out by CMCs may breach the Privacy and Electronic Communications Regulation 2003 (PECR).

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The FCA and ICO have jointly promised that where they identify breaches of the relevant data protection legislation or any other relevant parts of the FCA's Handbook, action will be taken.

https://www.fca.org.uk/news/statements/fca-ico-and-fscs-publish-joint-statement-insolvency-practitioners-and-authorised-firms

Advice to clients: Clients are reminded to ensure that they are processing personal data on a lawful basis under GDPR. Please get in touch if you require a review of your GDPR framework.

Important information for all firms: "Market integrity and strategic approach", speech delivered by Mark Steward at the FCA

07/02/2020

Mark Steward, the Financial Conduct Authority's (FCA) Executive Director of Enforcement and Market Oversight, delivered a speech at the 19th Annual Institute on Securities Regulation in Europe. The conference emphasised EU, UK and US's joint focus on marketing conduct surveillance and ongoing collaboration in creating strong and reliable markets.

Mr Steward noted of the 9.8 billion MiFID II transaction reports received by the FCA in 2019, 10% of these were received from the European Economic Area National Competent Authorities (EEA NCAs) via the EU's Transaction Reporting Exchange Mechanism (TREM). Similarly, the FCA shares around 70% of the reports received from UK firms with at least one other EEA NCA.

Mr Steward discussed the way that international collaboration has extended the possibilities for market surveillance, in particular because of the richer data now being ingested in the Markets Data Processor, including MiFID II data. The FCA have also developed a new additional metric called the Abnormal Trading Volume ratio (ATV). The ATV is calculated by observing movements in trading volumes of relevant securities that are the subject of an unexpected price sensitive announcement where there have not been other potentially price sensitive announcements. New insights into market cleanliness have resulted in the improved Market Cleanliness metric and the lowering ATV metric.

Mr Steward also noted the changing attitudes towards market manipulation. The FCA decided to ingest the equity order book into its Markets Data Processor because it is difficult to detect trading manipulation with transaction data alone. Mr Steward commented that increasingly manipulative trading is now easier to spot, and the proportion of investigation work is now split 60:40 between insider dealing and manipulation. Indeed, cases of market manipulation are increasingly complex in that they are not transactional or involving opportunistic trading, but instead it was noted that perpetrators now work in groups, in an organised way, using long-term sophisticated techniques. Mr Steward highlighted that the FCA is keen to take on such cases, despite their elaborate cover-up

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strategies and millions of digital pages, so to ensure the FCA's approach is not unduly narrow or limited.

https://www.fca.org.uk/news/speeches/market-integrity-and-strategic-approach

Advice to clients: Clients should note the FCA's continuing focus on market surveillance and that they are expected themselves to have systems and controls in place to internal identify and report suspicious orders and transactions carried out for its clients.

Important information for all firms: Firm Details must be updated annually

23/01/2020

From the 31st January 2020, firms must check, amend or confirm the accuracy of their Firm Details annually, using the FCA's Connect portal. Firms will need to do this within 60 business days of their Accounting Reference Date (ARD).

Even if your firm details have not changed from the previous year, you will still need to log on to Connect and confirm that the details are accurate and up to date.

These rules are a requirement and failure to do so will be considered by the FCA as a breach of Principle 11 which states that firms must deal with its regulator in an *open and cooperative way and provide them with relevant information*.

https://www.fca.org.uk/news/news-stories/firms-update-confirm-details-annually

Advice to clients: Clients are encouraged to update their compliance timetables to factor in this action.

Important information for all firms: Forum on artificial intelligence and machine learning in financial services

23/01/2020

The Financial Conduct Authority (FCA) and the Bank of England have committed to undertake work to better understand how developments in artificial intelligence (AI) and machine learning (ML) are driving change in financial markets. This includes business models, products, services and consumer engagement. Building upon the report published in October 2019 on the application of AI/ML in UK financial services, the FCA and the Bank of England now wish to establish a forum to further construct

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dialogue with the public and private sectors. This is to better understand the use and impact of AI/ML, including the potential benefits and constraints to deployment, as well as the risks associated with the application of AI/ML.

The Financial Services AI Public Private Forum (AIPPF) will explore means to support safe adoption of these technologies within financial services, and whether principles, guidance, regulation and/or industry good practice could support safe adoption of AI/ML.

The overall aim of the Forum is to:

- Share information and understand the practical challenges of using AI and ML within financial services;
- Gather views on potential areas where principles, guidance or good practice examples could be useful in supporting sage adoption of these technologies; and
- Consider whether ongoing industry input could be useful and what form this could take.

https://www.fca.org.uk/news/news-stories/financial-services-ai-public-private-forum

Advice to clients: Firms deploying such strategies should keep abreast of this work stream.

Important information for all firms: Information for firms during the Brexit implementation period

30/01/2020

As of the 31st January 2020, the UK entered an implementation period whilst the UK government and the European Union (EU) decide on an appropriate Brexit agreement. Until the 1st January 2021, EU law will continue to apply. Firms and funds will continue to benefit from passporting between the UK and EEA; consumer rights and protections derived from EU law will also remain in place.

Consequently, there is no change to the reporting obligations for firms which will continue in line with existing EU regulatory requirements. A window for EEA firms to notify the FCA that they want to use the Temporary Permissions Regime (TPR), or for fund managers to notify the FCA that they want to continue to market in the UK under the Temporary Marketing Permissions Regime (TMPR), closed on the 30th January 2020. Firms awaiting a response do not need to take any further action. More information for the reopening of the notification window will emerge later in 2020 to allow additional notifications to be made by firms and fund managers before the end of the implementation period.

https://www.fca.org.uk/news/press-releases/information-firms-during-brexit-implementation-period

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Advice to clients: Clients need to continue to consider how Brexit will impact their business and what action they need to take to be ready for the 1st January 2021 to minimise risks to customers. Updates can be found on the FCA's dedicated Brexit webpages: https://www.fca.org.uk/brexit. Newgate will endeavour to keep clients notified of developments.

Important information for all firms: Executive Director of Enforcement and Market Oversight on the Regulator's General Principles

13/02/2020

Mark Steward, Executive Director of Enforcement and Market Oversight at the Financial Conduct Authority (FCA), has delivered a speech outlining the importance of the general Principles for Business for financial services firms in avoiding sanctions and penalties. In 2019, the FCA imposed financial penalties of over £310 million on firms that also paid or are paying over £231 million restitution.

Most of the cases involving financial penalties involved serious breaches of the general Principles for Business including:

1. Lack of skill, care and diligence including when the risk of harm to customers is obvious or clearly foreseeable;
2. Poor systems and controls whether they have not existed or have not been at all fit for purpose, exposing customers to harm or the risk of harm;
3. Poor judgment, especially in relation to the reporting of misconduct to the FCA and law enforcement authorities;
4. Unfair treatment of customers, usually where customers' interests are overridden or side-lined negligently or recklessly by poor sales or distribution practices.

Underlining these issues is the fact that neither firms nor senior management engaged directly or explicitly with the Principles for Businesses in deciding, carrying out or managing the conduct that led to the findings of breach. As such, compliance with these general Principles for Business remains key.

https://www.fca.org.uk/news/speeches/penalties-remediation-and-our-general-principles

Advice to clients: Clients are reminded that the FCA operate a Principles based, as well as rules based, approach to regulation. Clients are reminded that the firms need to adhere to the 11 Principles for Business. Please contact Newgate if you require training on these Principles for Business.

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Important information for all firms: FCA highlights its areas of concern in financial services markets

18/02/2020

The Financial Conduct Authority has published its annual Sector Views, an assessment of the risks and potential harm to consumers across financial services markets. The Sector Views observe the impact of the macroeconomic developments and common drivers of change emerging across financial markets. They outline where there may be a negative impact on consumers or the integrity of the financial system in that sector. The report sets out what factors are driving them, as well as considering how the harm may develop over time. The report also reiterated areas of supervisory focus for the FCA as expressed in their recent targeted "Dear CEO" letters which included, but were not limited to:

- Action taken to prevent high-risk retail investment products exposing consumers to more risk than they absorb;
- Concern over the pricing and quality of investment products, investing in poor value products, where they are either overpaying or holding investments that diverge from their stated objectives;
- Poor operational resilience with the potential to lead to widespread market disruption, which prevents or hinders firms from investing or limits investors' access to their capital; and
- Measures to deter, detect and pursue market abuse to enhance market integrity and protect consumers.

https://www.fca.org.uk/news/press-releases/fca-highlights-its-areas-concern-financial-services-markets

Advice to clients: Clients who received a "Dear CEO" letter should ensure the Board has read and understood the content. Please contact Newgate to discuss the FCA Sector focus or "Dear CEO" letter in more detail.