



Newgate News

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



December 2015

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Merry Christmas from all of us
at

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Important for MiFID Firms: MiFID II - Implementation delay a distinct possibility

Following on from our MiFID II newsletter issued last month, the implementation of MiFID II regulation could be delayed by a year over concerns that the 3rd January 2017 deadline is too close for firms to implement the necessary IT system changes to be able to comply with the directive.

ESMA have issued a note stating the Level 2 provisions won't be published in the Official Journal before March 2016, giving firms just 9 months to develop IT systems which is too short a timeframe in the case of the most complex systems.

The note discusses three options for consideration by national competent authorities (NCAs), ESMA, the Commission and the co-legislators. These are postponing the application date of some Directive articles by a few months, postponing the application date of certain Level 2 measures either by establishing a fixed date (e.g. 3 January 2018) or by establishing a relative date (e.g. a specified number of days after publication of an ESMA opinion) or a complete postponement. A postponement, although the most flexible approach, would require all NCA's to agree a new implementation date.

Newgate will monitor developments in the implementation timetable and ensure clients are provided with a readiness assessment to facilitate orderly planning for compliance with the additional requirements of MiFID II.

http://www.esma.europa.eu/system/files/esma-2015-1514_note_on_mifid-mifir_implementation_delays.pdf

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Important for all firms trading listed instruments and their derivatives: FCA issues Market Abuse consultation paper (CP15/35)

FCA published a consultation paper setting out proposals for the necessary changes to the FCA Handbook to implement the Market Abuse Regulation (MAR). MAR, which will apply from July 3, 2016, updates the civil market abuse framework originally detailed in the Market Abuse Directive (MAD).

The FCA has now published the terms of reference for the review which will, amongst other things, seek to understand; a) how asset managers compete to deliver value; b) whether asset managers are willing and able to control costs and quality along the value chain; and c) how investment consultants affect competition for institutional asset management.

Many of these questions and the findings of the review will be of interest and relevance to retail investors.

Market participants are encouraged to contact FCA with their views and experiences by email (assetmanagementmarketstudy@fca.org.uk) by 18 December 2015. FCA aim to issue an interim findings report in summer 2016 and a final report in early 2017.

<http://www.fca.org.uk/news/fca-publishes-terms-of-reference-for-asset-management-market-study>

Important for All Firms: Regulatory Sandbox

FCA have issued a paper to Her Majesty's Treasury on the feasibility and practicality of introducing a 'regulatory sandbox', as an extension to the Project Innovate initiative.

A regulatory sandbox is a 'safe space' in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question. A regulatory sandbox will be available to firms that do not yet have FCA authorisation, as well as those that are authorised.

This proposal would require changes in the UK legislation to introduce a new regulated activity of sandboxing for testing, and amending the waiver test to make it easier for the FCA to waive rules.

If approved by HMT, the regulatory sandbox should commence in Spring 2016.

<http://www.fca.org.uk/news/project-innovate-first-anniversary-regulatory-sandbox-plans>

<http://www.fca.org.uk/news/regulatory-sandbox>

Important for All Firms: FCA issues proposed guidance for firms outsourcing to the 'cloud' and other third party IT services

The purpose of this draft guidance is to clarify the requirements on firms when outsourcing to the 'cloud' and other third-party IT services.

This guidance is intended to help all firms to effectively oversee all aspects of the life cycle of their outsourcing arrangements: from making the decision to outsource, selecting an outsource provider, and monitoring outsourced activities on an ongoing basis, through to exit.

<http://www.fca.org.uk/news/guidance-consultations/gc15-06-proposed-guidance-firms-outsourcing-cloud>

Important for those investing in or advising listed issuers: Implementation of the Transparency Directive – November 2015

FCA has issued Policy Statement PS15/26 implementing the remaining changes to the Transparency Obligations Directive made by the Transparency Directive Amending Directive (TDAD).

These changes will be implemented through changes to FSMA and the FCA's Disclosure Rules and Transparency Rules (DTRs). The FCA has also made other changes to the DTRs which are not directly related to the TDAD implementation but were required to clarify or improve the current regime.

The changes apply to entities with securities admitted to trading on an EEA regulated market that have the UK as their "home state" for securities regulation.

The Policy Statement covers a number of topics. These include;

- relaxing the publication deadline for half-yearly reports from two months to three months after the end of the period to which it relates;
- extending the period for which an issuer must retain its annual and half-yearly reports on a website from five years to ten years;
- removal of some notification obligation exemptions when voting rights reach exceed or fall below certain levels;
- an extension of the regime to allow sanctions to be applied to "the members of administrative, management or supervisory bodies of the legal entity concerned". The existing provisions of FSMA only apply to directors - this change is necessary to allow for different forms of legal entity.

The new DTRs came into force on 26 November 2015

<http://www.fca.org.uk/static/fca/article-type/policy%20statement/ps15-26.pdf>

Important for UCITS Management Companies - UCITS V –

HM Treasury Consultation – October 2015

The FCA's consultation paper issued in September (CP15/27) on the implementation of UCITS V, set out proposed changes for UCITS firms.

The key matters consulted on included the requirement to have remuneration policies in line with AIFMs and transparency obligations towards investors. The FCA are also consulting on depositary requirements for UCITS and eligibility criteria. UCITS V will require a depositary to be either a national central bank or a credit institution or (in terms of FCA/PRA jurisdiction and under discretion afforded by UCITS V amended Article 23(2)(c)) a full-scope IFPRU firm or an investment management firm that can meet the revised own fund requirement in IPRU(INV) 5.

Under UCITS V there must be a single depositary appointed for each fund, under a written contract, and giving the depositary a cash oversight function reflecting the obligations of a depositary appointed under the AIFMD.

HM Treasury has now published a consultation on UCITS V. The consultation period closes on 17th December 2015.

Member States have to transpose the Directive into national law by **18 March 2016**.

<https://www.gov.uk/government/consultations/consultation-on-amendments-to-the-ucits-directive-ucits-v>

Important for all firms: Anti-Money Laundering updates –

October 2015

HM Treasury has published the first money laundering and terrorist financing national risk assessment (NRA).

The section of the report relating to the 'regulated sector' which is any firm subject to the Money Laundering Regulations 2007 assesses the money laundering and terrorist financing risks as high and medium respectively.

The government has committed to publishing an Anti-Money Laundering Action Plan, aimed at strengthening the UK regime.

<https://www.gov.uk/government/news/government-publishes-anti-money-laundering-assessment-and-commits-to-action-plan>

The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) launched a public consultation on two anti-money laundering and countering the financing of terrorism (AML/CFT) Guidelines; The Risk-Based Supervision Guidelines and The Risk-Factors Guidelines. **Closing date for comments is 22nd January 2016.**

These Guidelines promote a common understanding of the risk-based approach to AML/CFT and set out how it should be applied by credit and financial institutions and competent authorities across the EU. The documents are part of the Joint Committee's work to establish consistent and effective, risk-based supervisory practices across the EU.

http://www.esma.europa.eu/system/files/jc_2015_061_joint_draft_guidelines_on_aml_cft_rfwg_art_17_and_18.pdf

http://www.esma.europa.eu/system/files/jc_2015_060_joint_consultation_on_guidelines_on_aml_cft_rbs_art_4810.pdf

Important for all firms: FCA to remove 'ineffective disclosures'

– October 2015

FCA have issued a consultation paper, 'CP15/32: Smarter Consumer Communications: Removing certain ineffective requirements in our Handbook'.

Following on from a discussion paper on this subject in June, FCA have issued this paper to remove a number of disclosure requirements which it identified as not being effective in terms of informing consumers about a product or service and to reduce the regulatory burden on firms.

Amongst others, the CP proposes to delete the requirement on authorised fund managers of UCITS schemes and non-UCITS retail schemes and service providers such as platforms or third party administrators to produce a short report.

The paper proposes to delete the requirement on home finance and investment firms to complete Initial Disclosure Documents or Combined Initial Disclosure Documents. The Services and Costs Disclosure Document used by advisers/arrangers of packaged products will also go.

<http://www.fca.org.uk/news/cp15-32-smarter-consumer-communications>

Important for all firms: Extension of Senior Managers Certification Regime – October 2015

The Treasury has published a paper on extending the senior managers and certification regime (SM&CR) to all persons who are authorised under FSMA which is intended to replace the approved persons' regime.

The key features of the regime are: (i) an approval regime focused on senior management, with requirements on firms to submit robust documentation on the scope of these individuals' responsibilities; (ii) a statutory requirement for senior managers to take reasonable steps to prevent regulatory breaches in their areas of responsibility; (iii) a requirement on firms to certify as fit and proper any individual who performs a function that could cause significant harm to the firm or its customers, both on recruitment and annually thereafter; and (iv) a power for the regulators to apply enforceable rules of conduct to any individual who can impact their respective statutory objectives.

The government intends to implement the extended SM&CR during 2018. More information is available on HMT's website from the link below.

<http://www.fca.org.uk/news/hm-treasury-changes-to-the-senior-managers-regime>

Important for all firms: Whistleblowing – October 2015

FCA have recently published a policy statement PS 15/24 'Whistleblowing in deposit-takers, PRA-designated investment firms and insurers'.

Whilst not directly applicable to the vast majority of FCA regulated firms, such firms can look upon the policy statement as non-binding guidance.

The SYSC handbook encourages firms to have internal whistleblowing procedures for employees to raise concerns. The policy statement introduces the concept of a **whistleblowers' champion**; a person (non-exec if the firm has one or a director/senior manager) to ensure and oversee "the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing", together with the protection of whistleblowers from being victimised. The role also requires the need to prepare and make a report, at least annually, to the firm's governing body on the effectiveness of its whistleblowing systems and controls.

Firm's affected by the new regime are required to appoint a whistleblowers' champion by 7 March 2016 to coincide with the Senior Managers Regime with the remainder of the requirements to be in place by 7th September 2016.

Once the new rules have bedded in, FCA will consider widening the scope to other firms.

<http://www.fca.org.uk/static/fca/article-type/policy%20statement/ps-15-24.pdf>

Important for all firms: FCA Regulatory fees and levies for 2016/17 – October 2015

It's that time of year again..... FCA have issued the 2016/17 Fees and levies consultation paper.

FCA are proposing to create a free-standing FCA fees handbook (separate from the PRA), recover the data reporting costs associated with market monitoring under MiFID II and the Markets in Financial Instrument Regulation (MiFIR), simplify and clarify transaction charges and annual fees for UK Listings Authority (UKLA) costs recovery, and to target cost recovery more effectively towards the demands made on UKLA's resources; and bring forward from 30 April to 1 April the 'on-account' date when larger firms pay the first instalment of their annual fees with effect from 1 April 2016.

The consultation period ends 8th January 2016.

<http://www.fca.org.uk/news/cp15-34-regulatory-fees-and-levies-proposals-for-2016-17>