

April 2018 - Issue Highlights

- General Data Protection Regulation (GDPR)
- Asset Management Market Study update
- FCA approach to Supervision and Enforcement
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- FCA Discussion Paper – Transforming culture in financial services
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Important information for all firms: General Data Protection Regulation (GDPR)

The implementation date of the GDPR is drawing near (25th May 2018).

Firms should undertake a Data Protection Impact Assessment (“DPIA”) to identify where, when, who and how they hold personal data. This will give firms a clear understanding of the risks that they face and enable them to put in place a programme of work to address these risks if necessary. The DPIA should address key areas such as identifying the lawful basis for processing the data, whether consent has been granted to hold the data, the process for dealing with subject access requests, sharing of data with third parties and updating data privacy contract terms.

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 includes a GDPR course.

If you would like assistance in carrying out a DPIA or with the policies and procedures, then please contact us.

Important information for Investment Managers: Asset Management Market Study update

The FCA has issued Policy Statement PS18/8 setting out new rules and guidance for the managers of authorised funds most of which will come into effect next year.

As from 30th September 2019, authorised fund managers (“AFMs”) will be required to assess on an ongoing basis whether value for money has been provided to fund investors as part of its duty to act in the best interests of investors. The assessment must cover certain prescribed areas such as fees, charges and quality of services whilst taking into account the whole value proposition. AFMs will be required to consider against each share class in their fund(s), factors such as the range and quality of service; the performance of the fund after the deduction of all payments; the cost of providing the service; comparable market rates for each service provided and differing charges between share classes.

Also, as of 30th September 2019, AFMs must ensure that at least 25% of the governing body are independent and, if the body comprises 8 members or fewer, the AFM must instead ensure that at least two of its members are independent.

As from 1st April 2019 managers of dual-priced authorised funds which make a risk-free profit when dealing as principal, known as a ‘box profit’ must repay these to the fund for the benefit of investors.

As part of the extension to the Senior Managers and Certification Regime, a senior manager at the AFM will be required to take responsibility for carrying out the assessment of overall value, the duty to recruit independent directors and the duty to act in the best interests of fund investors.

Effective as of now is the ability for AFMs to move investors from one fund share class to another cheaper share class more quickly and without investor consent.

In parallel to the issuance of the Policy Statement, the FCA have issued a further a Consultation Paper (“CP”), CP18/9, seeking to improve fund disclosures. The CP proposes rules and guidance how fund objectives can be expressed more clearly, making it clearer when funds are benchmark-constrained, or limited in how far their holdings can differ from the weightings of a benchmark index, consistent disclosure of the use of benchmarks and a requirement for performance fees to be calculated net of fees.

<https://www.fca.org.uk/news/press-releases/fca-sets-out-next-steps-improve-competition-uk-asset-management-industry>

Important information for all firms: FCA publishes its 'Approach to Supervision' and 'Approach to Enforcement'

The FCA has published two 'Mission' publications. The 'Our Approach to Supervision' publication sets out how the FCA aims to be more forward-looking and pre-emptive in its supervision of firms. Supervision's proactive engagement with firms will focus on business models and the drivers of behaviour in firms. Supervision will prioritise its activities according to the greatest risk of harm.

The 'Our Approach to Enforcement' publication sets out how the FCA will achieve fair and just outcomes in response to misconduct and to ensure FCA rules and requirements are obeyed. The FCA aims to carry out investigations in a consistent and open-minded way to get the right outcomes. A link to each Mission publication is here:

<https://www.fca.org.uk/publication/corporate/our-approach-supervision.pdf>

<https://www.fca.org.uk/publication/corporate/our-approach-enforcement.pdf>

Important information for all firms: Financial Ombudsman Service (FOS) – Access for small businesses

The FCA consultation paper CP18/3 requesting responses to proposals to widen the category of eligible complainants has now closed. The CP proposes providing small businesses, charities and trusts with fewer than 50 employees, annual turnover below £6.5 million and an annual balance sheet (i.e. gross assets) below £5 million access to the FOS.

A Policy Statement making final rules is expected later this year.

<https://www.fca.org.uk/publication/consultation/cp18-03.pdf>

Important information for all firms: Discussion Paper – Transforming culture in financial services

The FCA have issued “DP18/2: Transforming culture in financial services” an academic paper designed to stimulate debate on what constitutes a healthy culture and how firms should promote this internally and externally. The FCA are not asking for feedback but are suggesting firms may want to consider the issues in the paper which is hoped will result in better outcomes for consumers and markets.

<https://www.fca.org.uk/publications/discussion-papers/dp18-2-transforming-culture-financial-services>

Important information for Alternative Investment Fund Managers: Amended EuVECA and EuSEF Regulation

Changes to the EU regulations covering European venture capital funds (“EuVECA”) and European Social entrepreneurship funds (“EuSEF”) came into force on 1st March 2018 aimed at encouraging a greater uptake in these types of funds investing in small and start-up businesses and businesses with a social impact.

Fund managers that are authorised under AIFMD are now entitled to use the EuVECA and EuSEF designations where appropriate to the fund they are intending to market. This will allow them access to high net worth individuals investing over €100,000, as well as the professional investors they can target with under their AIFMD marketing passport.

From 1st March 2018, an EuVECA or EuSEF manager must have minimum initial capital of €50,000, plus own funds of at least 1/8th of the manager’s fixed overheads. Where the total AUM of all EuVECA or EuSEF funds managed by the manager exceeds €250 million, the manager must have an additional amount of own funds equal to 0.02% of the amount in excess of the €250 million figure.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1991&from=EN>

Important information for all firms offering CFDs: Ban on binary options to retail clients and CFD restrictions

The European Securities and Markets Authority (“ESMA”) has used its product intervention powers to temporarily prohibit the marketing, distribution and sale of binary options to retail clients and to impose certain restrictions with regards to CFDs to retail clients. The FCA issued a warning to consumers of the risks in investing in these products (and cryptocurrencies) last year.

The restrictions applied to CFDs include leverage limits on the opening of a position between 30:1 and 2:1, depending on the price volatility of the underlying asset, a 50% margin close out rule applied on a per account basis, negative balance protection, and standardised risk warnings, including firm-specific figures on the percentage of client accounts that have lost money trading CFDs.

These changes come into effect one month (binary options) and two months (CFDs) after official notice of these measures is published in the Official Journal of the EU. After 3 months the product intervention will be reviewed after which the measures may be renewed. The FCA plans to consult on making these measures permanent.

<https://www.fca.org.uk/news/statements/fca-statement-esma-temporary-product-intervention-retail-cfd-binary-options>

Important information for all firms: LEI codes

Firms should be aware that the FCA has updated its MiFID II – Legal Entity Identifier webpage.

The webpage refers to ESMA’s statement of 20th December 2017 that outlined temporary measures in respect of LEI codes. The FCA has now confirmed that the amendment to the LEI validation has been implemented and that as from 12 March 2018 firms are able to (re)submit any outstanding transaction reports where the trade date precedes the LEI registration date.

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

Important information for all firms: FCA proposal to introduce a public register

In July 2017 the FCA published its proposals to extend the Senior Managers and Certification Regime (“SM&CR”) to almost all regulated firms which will result in only the most senior individuals at a firm appearing on the FCA Register.

The FCA received substantial feedback that it should maintain a central public register of employees currently approved to hold controlled functions, such as non-executive directors, investment managers/advisers and traders executing deals, who currently appear on the FCA Register.

The FCA intend to respond to this feedback later this year. The SMCR will come into effect for all firms at the end of 2019.

<https://www.fca.org.uk/news/statements/fca-statement-proposals-introduce-public-register>

Important information for all MiFID firms: MiFID complaints reporting requirement

The FCA are in the process of contacting all MiFID firms that provide services to eligible counterparties and professional clients concerning new complaints reporting requirement. MiFID firms are now required to report information to on complaints received from eligible counterparties and professional clients if they are in relation to its MiFID activities.

The new complaints return will be added to firm's GABRIEL reporting schedule by the end of April.

Link to the complaints return and FAQs are below.

https://www.handbook.fca.org.uk/form/disp/DISP_01_ann_01_20171117.pdf

<https://www.fca.org.uk/firms/gabriel/complaints-data-items-faqs>