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COMPLIANCE

# NEWGATE NEWS

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UP TO DATE COMPLIANCE NEWS FOR  
FIRMS IN THE FINANCIAL SERVICES SECTOR

## Special Edition: FCA Regulatory Business Plan 2017/18

The FCA has released its annual Business Plan setting out its priorities for the financial year. Like last year, several cross sector priorities have been identified which will be the primary focus for its discretionary work over the next 12 months. These are:

- Firms' culture and governance
- Financial crime and anti-money laundering (AML)
- Promoting competition and innovation
- Technological change and resilience
- Treatment of existing customers
- Consumer vulnerability and access to financial services

The following summarises the key areas of interest for our clients and provides some recommendations that firms may wish to consider to demonstrate that they are meeting FCA expectations.



### 1) Firms' culture and governance

The FCA expect firms to have effective governance arrangements in place to identify the risks they run – with a strategy to manage and mitigate those risks to deliver appropriate outcomes to consumers and markets. Senior managers have a crucial role in demonstrating that they are accountable and responsible for their part in delivering effective governance.

The FCA will continue to consult on the extension of the Senior Managers & Certification Regime (SM&CR) to all FSMA authorised firms. The SM&CR aims to strengthen individual accountability at the most senior levels of relevant firms and improve their standards of conduct at all levels. The FCA plan to tailor the new regime to reflect the different risks, impact and complexity of firms.

**Firms should have clear arrangements to demonstrate that they are delivering effective governance. This might include a clear board structure, remuneration policy and an appraisal process that considers non-financial measures.**

**Newgate will update clients as more becomes known about the exact impact the SM&CR will have on their business but is likely to include the need to produce a 'responsibilities map' describing the firm's management and governance arrangements and how responsibilities have been allocated, corporate governance diagram and annual fitness and propriety assessments. HM Treasury has stated their intention is that the regime should start from 2018.**

## 2) Financial crime and anti-money laundering (AML)

The FCA will collaborate with law enforcement partners and other agencies in its work on anti-money laundering (AML), scams and other types of financial crime. The Financial Crime Annual Data Return was introduced in 2016 and the FCA will analyse the early responses to make sure they are focusing supervision on the right firms. The FCA will also continue to work closely with the Treasury on AML policy issues as they transpose the 4th Money Laundering Directive (4MLD) into UK law by June 2017. Some of the key changes include:

- **Customer Due Diligence (CDD)** - In short, 4MLD's revisions mean that CDD will have to be performed for more clients.
- **Enhanced beneficial ownership information** - EU countries must now require entities in their jurisdiction to keep up-to-date ownership information in a central registry that is accessible to authorities, obliged entities, and public persons with a legitimate interest, such as journalists or non-governmental organisations.
- **Expansion of categories of Politically Exposed Persons**

Money Laundering Reporting Officers should consider the revisions made in 4MLD when completing their annual report and risk assessment, with which Newgate will be happy to assist. We will be releasing a Newsletter in respect of 4MLD in the coming weeks.

## 3) Promoting competition and innovation

New types of financial technology (known as 'FinTech') continue to drive change and encourage innovation in the financial sector. The FCA seeks to ensure that firms manage the risks of innovation, ensuring it does not jeopardise consumer protection or the integrity of the financial system.

The FCA will continue to engage with firms and provide one-to-one assistance to innovative businesses in regard to the regulatory implications of their expected innovations as quickly and frankly as possible. In particular, priority is being given to regulatory reporting, real-time monitoring and surveillance (including the role technology could play in helping firms meet their KYC and AML obligations) and extending consumer access to financial services.

Please contact Newgate if you are considering using FinTech to assist your business.

## 4) Technological change and resilience

There is an increasing demand for technology to meet firms' business needs and support their strategies which comes with an increased level of cyber risks. The FCA plan to work with firms so that existing technology and systems become more resilient to both cyber-attacks and outages in order to protect consumers and markets and build confidence in the effectiveness of financial technology. They wish to see, amongst others:

- Firms increasingly considering the importance of resilience and risk of cyber-attacks when building and developing their IT systems and processes.
- Firms performing robust testing and evaluation
- Firms build and enhance their capability to defend against, and respond quickly and effectively to, cyber-attacks.

We recommend reviewing and testing your IT systems against the threat of cybercrime on a regular basis (at least annually). Firms should also consider completing our cyber-security arrangements assessment on the GATEway.

Newgate have designed a cyber-security training course which firms can use in order to keep employees informed about the different types of online threat and the steps both the individual and firm can take to reduce the chances of falling victim to cyber-crime.

## 5) Treatment of existing customers

The FCA continue to see firms' treatment of existing customers as a priority for the coming year, who should enjoy the same benefits of increased competition and innovation that new customers receive. Particularly:

- Firms should give more information to customers on renewal in the relevant sectors, making pricing more transparent
- Barriers to switching or exiting should be removed
- Firms should pay due regard to the interests of their existing customers and actively engage with them to give them a good service and improved outcomes

Firms should ensure they are carrying out regular suitability assessments of their customers.

## 6) Consumer vulnerability and access to financial services

Recent FCA research showed that consumers with vulnerable characteristics or in vulnerable circumstances may be significantly less able to represent their own interests and are more likely to suffer harm than the average consumer. Some firms do not appropriately recognise when consumers become vulnerable or do not consider how vulnerable customers should be treated.

The FCA's 'Our future Mission' statement put a particular focus on vulnerable consumers and in response to this the FCA will soon issue a 'Consumer Approach' document, which will set out how they plan to meet their consumer protection objective over the next 3-5 years.

Whilst this is mostly relevant to retail customers, all firms should take note of the Consumer Approach document when published.

## Sector Specific Priorities: Investment Management

The FCA will focus on the conduct of firms to ensure that markets remain clean and resilient and that investment management firms deliver good consumer outcomes with products that offer value for money. In particular, the FCA seek to ensure that investors understand the objectives of the funds they are investing in, that funds report their performance against appropriate benchmarks and that fund managers implement available liquidity management tools when necessary.

Some of the issues identified for the sector include:

- Weak price competition - meaning investors pay too much for investment management services;
- Weak governance - which may lead to poor product design and weak oversight of portfolios;
- Unidentified or poorly managed conflicts of interests causing harm to portfolio operators and end-investors;
- Poor advice from investment consultants - which may result in institutional investors making investment decisions that do not meet their needs; and
- Poor liquidity management in investment funds creating risks of consumer detriment or wider disruptions to the financial system in stressed market conditions.

To address these issues, the FCA outlined their key planned activities for the coming year. This includes issuing its final report of the Asset Management Market Study and consulting on proposed changes, take forward the feedback of a discussion paper on liquidity management in funds to ensure the fair treatment of all customers and further work on a Custody banks strategy.

Cross sector priorities aside, the business plan also acknowledges that the UK's withdrawal from the European Union will have important implications for the FCA over the coming years and will be a key area of focus. The FCA will provide the Government with technical support during the withdrawal process and identified five principles that will guide their advice:

- **Cross-border market access** – open markets are an important enabler of healthy competition, supporting FCA objectives.
- **Consistent global standards** – across regions and jurisdictions in order to minimise the risks of regulatory arbitrage.
- **Cooperation between regulatory authorities** – a robust framework that provides for continued cooperation will be fundamental regardless of the outcomes of the negotiations.
- **Influence over standards** – the UK authorities should have influence over the standards that apply in the UK.
- **Opportunity to recruit and maintain a skilled workforce** – a diverse workforce with varied experience and the requisite expertise supports UK markets and firms that are well run and remain competitive.

Firms should be aware that existing financial regulation, much of which derives from EU legislation, remains in place until the Government and Parliament make any changes. The FCA will also continue to implement any EU legislation that will come into force before the UK leaves the EU. Newgate will be in contact should this change.