



# Newgate News

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



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## **Important for Investment Management Firms: Suitability of Investment portfolios**

The FCA has published its findings of a thematic review carried out into the suitability of investment portfolios recommended by Wealth Management Firms and Private Banks. The review followed on from earlier thematic reviews of suitability in a sample of wealth management firms, carried out in 2010, followed by further work in 2012.

A link to the review is here <https://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-12>

The review, identifying good and bad practices, revealed some improvement in firms' abilities in assessing suitability although many still need to make improvements in gathering, recording and regularly updating customer information. Firms need to ensure a client's risk profile matches the portfolio especially for those who have a limited capacity for loss. Firms need to ensure their governance, monitoring and assessment arrangements are sufficient to meet their regulatory responsibilities.

The FCA expects all discretionary portfolio managers and firms who provide support to these firms to take heed of the report findings, and implement changes where necessary to meet their regulatory responsibilities.

## **Important for Investment Management Firms: EU Benchmarks Regulation**

New European legislation is being developed to regulate the provision of, contribution to and use of benchmarks. LIBOR, FTSE100 and ICE Brent Index are examples of the many benchmarks provided and used in the financial markets.

When an index is used as a reference to determine the amount payable under a financial instrument traded on a trading venue or under mortgage or consumer credit contracts it becomes a benchmark for the purposes of the EU Benchmarks Regulation. Indices used to measure the performance of investment funds, either to track the return of the fund or to define its asset allocation, are also seen as being benchmarks. The new regulations may affect firms that provide a benchmark within the EU, contribute input data to a benchmark in the EU or use a benchmark provided in the EU (or in a third country). Firms wishing to kept up to date on developments can register their interest via this link. <https://www.the-fca.org.uk/subscribe-eu-benchmark-regulation-updates>



## **Important for all Firms: MiFID II Regulations update**

In the December newsletter, we advised our clients that the implementation of MiFID II scheduled for 3rd January 2017 could be delayed by up to a year, with ES-MA, the European Commission and national regulators considering various options as outlined in the last newsletter.

On the 15th December 2015, the FCA published its first consultation paper (CP15/43) with the promise of a further paper (or papers) to follow covering expected changes to, for example, the COBS, SYSC, CASS and DEPP sourcebooks resulting from MiFID II.

Because of the delays and uncertainty emanating out of Europe, the FCA cannot consult on the full range of changes under MiFID II, so has decided to consult in stages on areas where there is sufficient certainty to do so.

CP15/43 seeks views on the issues related to the FCA's regulation of the secondary trading of financial instruments and will be of particular interest to investment banks, investment managers, interdealer brokers, algorithmic and high frequency traders, trading venues and data reporting service providers. The consultation closes on 8th March 2016. A link to the CP is here:

<http://www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i>

## **Important for all Firms: Inside Information – FCA Thematic Review**

The FCA has published the outcome of its thematic review into how a sample of investment banking firms handle and manage the flow of confidential and inside information.

A link to the review is here. <http://www.fca.org.uk/static/fca/documents/thematic-reviews/tr-15-13.pdf>

We believe the findings and examples of good and bad practice highlighted in the review are useful to all FCA regulated firms. The key findings have been summarised under three main headings;

***Circumstances Posing Heightened Risk*** – Firms should regularly assess the conduct risks that affect their activities and services.

***Conduct, Culture and Responsibility*** – All staff members have a role to play in the control of confidential and inside information, though ultimate responsibility rests with senior management.

***Firm Systems, Procedures and Infrastructure*** – Firms should have robust systems and procedures to effectively manage flows of confidential and inside information. This was not always evident; for example, employees with conflicting roles sitting near each other, non-user friendly policies and procedures, training not tailored to the needs of the employees and surveillance mechanisms not being fit for purpose.

The key messages of the review were;

- Employees at all levels should understand their role in controlling flows of confidential and inside information;
- Senior management were not doing enough to manage the risks that had been identified and considered as being the main risks that flows of confidential and inside information posed to clients, the firm and financial markets;
- Business heads acting in a supervisory capacity taking responsibility for controlling flows of information with appropriate challenge from the Compliance function; and
- Circumstances that could present heightened regulatory and conduct risks should be at the centre of a firm's ongoing risk assessment.

Newgate will be working with you to update your Market Conduct systems and controls.

## **Important for P2P platform operators: Changes to client money rules – Loan-based crowdfunding platforms**

FCA have issued Consultation Paper CP16/4, proposing to change the client money rules for firms that operate electronic lending platforms (P2P platforms) that hold client money in relation to regulated P2P agreements and money for clients in relation to unregulated lending, the latter not being subject to the CASS client money rules.

Money held by a firm in relation to P2P agreements must be segregated from the firm's own money.

FCA have received feedback from the P2P industry that separating client money relating to P2P agreements and money relating to B2B agreements presents firms operating the lending platforms with problems. Most do not have the systems to do this.

CP16/4 proposes to allow firms holding money in relation to both P2P and B2B agreements to hold money for both under the client money rules in CASS 7, should they wish to do so. This will mean firms could hold P2P and B2B monies together, segregated from the firm's own money, and not breach the CASS rules. A link to the CP which closes on 11th February 2016 is here:

<http://www.fca.org.uk/news/cp16-04-loan-based-crowdfunding-platforms-and-segregation-of-client-money>

## **Important for AIFM Firms: Update on Extending the AIFMD Passport to non-EU AIFMs and AIFs**

In our special news bulletin issued in August last year, you will recall that on the 30th July 2015, the European Securities and Markets Authority ("ESMA") announced it had completed a first wave of assessments on six jurisdictions; Jersey, Guernsey, Switzerland, Hong Kong, Singapore and the US.

ESMA recommended extending the passport to Jersey, Guernsey and Switzerland but determined that the local rules of Singapore, Hong Kong, and the US were not sufficiently aligned with those of the AIFMD and further assessment was required.

ESMA announced last year that the second wave of countries to be assessed will be the Cayman Islands, Isle of Man, Bermuda, Australia, Canada and Japan. This assessment will happen in the second half of 2016 and will include those outstanding assessments from the first wave.

The European Commission will take a decision whether or not to widen the AIFMD Passport to non-EU AIFMs and AIFs once an appropriate number of countries have been assessed. No indication is given as to what this number is. It will also produce another opinion on the functioning of the passport and National Private Placement Regimes once the AIFMD is fully

## **Important for all Firms: Updated FCA approach to advancing its objectives**

The FCA have provided a Feedback Statement on feedback received to their guidance "The FCA's approach to advancing its objectives" published in July 2013. The guidance sets out what firms and consumers can expect from FCA and how it intends to deliver its statutory objectives.

The FCA have updated the guidance (revised December 2015) taking into account the feedback received and other developments since it was first published. The revised guidance can be found here: <http://www.fca.org.uk/your-fca/documents/approach-to-advancing-its-objectives>

## **Important for IFPRU Firms: Final European Banking Authority guidelines on remuneration policies**

The European Banking Authority ("EBA") has published final Guidelines on sound remuneration policies and its Opinion on the application of proportionality, recommending exemptions from the remuneration principles in the Capital Requirements Directive ("CRD IV").

The EBA has proposed that there should be exemptions from much of the remuneration principles relating to deferral arrangements and payment in instruments but that proportionality should not be applied to the bonus cap. The EBA Guidelines will apply from the 1st January 2017. The FCA, in conjunction with the PRA and HMT, will review the changes proposed by the Guidelines and their application to the UK market, and will consult on any necessary changes in due course.

## **Important for Investment Management and Securities Firms: The Securities Financing Transactions Regulations ("SFTR")**

The SFTR aims to improve transparency in securities and commodities lending, repurchase transactions, margin loans and certain collateral arrangements.

A Securities Financing Transaction ("SFT") is any transaction that uses assets belonging to a counterparty to generate financing. Repurchase transactions, securities or commodities lending or borrowing, buy/sell back or sell/buy back transactions and margin lending are examples of an SFT.

The SFTR requires "counterparties" established in the EU and EU branches of non-EU counterparties that are parties to SFTs or a collateral arrangement to:

- report SFTs to recognised trade repositories, or to ESMA if trade repositories are not established (Reporting);
- keep a record of SFTs for five years after their conclusion, modification or termination (Record Keeping); and
- to be able to reuse financial instruments obtained as collateral under collateral arrangements, disclose the risks of such arrangements to, and obtain express consent from, the party that transferred the collateral (Reuse of Collateral).

Although the SFTR came into force on 12th January 2016, UCITS management companies and AIFMs will not be required to meet the disclosure and reporting requirements until July 2017.

Newgate will work with clients affected by this regulation to ensure reporting and record keeping procedures are in place.

## **Important for all Firms: Policy Development Update**

The FCA have issued their latest Policy Development Update ("PDU").

The PDU provides information on;

- publications issued since the last edition
- information about recent Handbook-related and other developments
- other publications – consumer publications, guidance consultations and finalised guidance
- an updated timetable for forthcoming publications

A link to the latest PDU is here: <http://www.fca.org.uk/your-fca/documents/handbook/policy-development-update-issue-29>