NEWGATE COMPLIANCE

# Newgate News

## May 2021

- Statement on the review of the FCA approach to the UK's derivatives trading obligation.
- Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, delivered at the AML & ABC Forum 2021.
- "Regulating the UK as a global financial centre" speech by the Executive Director of International.
- Supervisory flexibility on RTS 27 reports and 10% depreciation notifications.
- Second consultation on new prudential regime for UK investment firms.
- Discussion Paper 21/1: "Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions."
- FCA publishes Decision Notice against Jon Frensham for non-financial misconduct
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**Statement on the review of the FCA approach to the UK's derivatives trading obligation**

On 31 December 2020, the FCA published a statement on the FCA's use of the Temporary Transitional Power (TTP) to modify the application of the derivatives trading obligation (DTO). In that statement, the FCA said that they would keep the use of the TTP under review and consider by 31 March 2021 whether market or regulatory developments warrant a review of their approach.

The FCA have since announced that they have not observed market or regulatory developments in the first quarter of 2021 that justify a change in their approach. Therefore, the FCA will continue to use the TTP to modify the application of the DTO as previously set out.

The FCA will continue to monitor market and regulatory developments and review their approach if necessary. If the FCA do see a case for a change, they have promised to provide sufficient notice to market participants so that any changes can be implemented smoothly.

**Newgate's advice:** Newgate will ensure that clients are aware of any changes that might affect their trading abilities with EU member states. Please contact your Newgate Consultant for any queries. Full article here.

**Impact:** Low

**Impact assessment key:**

Low

Medium

High

**Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, delivered at the AML & ABC Forum 2021.**

Key highlights:

- Two of the FCA's biggest sanctions in the last 12 months related to failures to address financial crime and anti-money laundering (AML) risks.
- The FCA currently have 42 investigations ongoing into firms and individuals involving, for example, systems and controls over politically exposed persons, customers with significant cash intensive operations, correspondent banking and trade finance, and transaction monitoring.
- In the last 12 months, the FCA have increased surveillance of online investment promotions targeting offers from unauthorised firms, potential investment scams and other 'too good to be true' promotions, including lead generation sites.

**Newgate's advice:** ***Newgate has updated its policies and procedures including its Market Abuse Risk Assessment for remote working conditions. Please contact your Newgate consultant for more information.***

Read the full article here.

**"Regulating the UK as a global financial centre" speech by Executive Director of International**

Speech delivered by Nausicaa Delfas, Executive Director of International and Interim Chief Operating Officer at City & Financial Global's Future of UK Financial Services Regulation Virtual Summit. Highlights include:

- The FCA are fully committed to maintaining open and fair UK markets – and will continue to regulate in the interests of consumers, competition and market integrity.
- Whilst UK markets are open, firms serving UK customers and businesses will need to meet consistently high standards, and there will need to be strong supervisory co-operation between our respective jurisdictions.

The FCA will continue to work with our international colleagues to shape global standards, to work towards regulatory convergence, and co-operation on cross border issues.

**Newgate's advice:** ***For any Brexit-related queries, please contact your Newgate consultant.***

Read the full article here.

**Impact:**

## Supervisory flexibility on RTS 27 reports and 10% depreciation notifications

The FCA are putting in place temporary measures with respect to RTS 27 reports and 10% depreciation notifications while they consult on changes to these requirements later this Spring. These temporary measures will be in place until the end of 2021.

**RTS 27 reports**

The FCA is currently preparing a consultation looking at the RTS 27 reporting obligation, with a view to abolishing it, given concerns that have been expressed around the value these reports bring to the market and to consumers, and the burdens involved in producing them.

Considering the upcoming consultation, **the FCA will not act against firms who do not produce RTS 27 reports for the rest of 2021**. The FCA expect that by end of 2021, the FCA will have concluded FCA policy consideration of the future of these reports.

During this period, the FCA won't act for breach of COBS 16A.4.3 UK for services offered to retail investors provided that the firm has:

- Issued at least one notification in the current reporting period, indicating to retail clients that their portfolio or position has decreased in value by at least 10%
- Informed these clients that they may not receive similar notifications should their portfolio or position values further decrease by 10% in the current reporting period
- Referred these clients to non-personalised communications, perhaps made available on public channels, that outline general updates on market conditions (these could contextualise potential drops in portfolio or position value to help consumers meet their objectives, rather than making impulse decisions about their investments) and
- Reminded clients how to check their portfolio value, and how to get in touch with the firm
- Firms must still pay due regards to the interests of their customers and treat them fairly (Principle 6) and pay due regard to the information needs of their clients and communicate information to them in a way which is clear, fair and not misleading (Principle 7).

Impact:

If the FCA have concerns that potential serious misconduct may cause (or has caused) significant harm to consumers, then FCA will consider the appropriate response, which may include opening an investigation.

**For services offered to professional investors, the FCA will not act for breach of COBS 16A.4.3 UK if firms have allocated professional clients to opt-in to receiving notifications.**

**10% depreciation notifications**

For the last twelve months, the FCA have adopted temporary coronavirus (Covid-19) measures on the requirement for firms to issue 10% depreciation notifications to investors (COBS 16A.4.3 UK).

These measures have been put in place to help firms support consumers during periods of actual/potential market volatility linked to the spread of Covid-19 and the Brexit transitional period. The FCA promised to show supervisory flexibility on firms' ongoing compliance with the requirement so long as certain criteria are met. The FCA intend to consult on changes to the requirement later this Spring. The FCA are therefore extending the temporary measures for firms until the end of 2021 while FCA undertake policy work on the future of the requirement.

**Newgate's advice:** ***Please contact your Newgate consultant for assistance regarding RTS 27 reporting and/or depreciation notifications.***

## Second consultation on new prudential regime for UK investment firms

The IFPR introduces a new prudential regime for MiFID investment firms regulated by the FCA. It will create a single regime that reflects firms' size and business. The regime focuses prudential requirements on the potential harm to consumers, clients, and the market. It includes changes to the amount of liquid assets and capital levels a firm should hold to enable it to wind down in an orderly way if required.

The intention of the IFPR is to provide more competition between firms and simplify requirements for new market entrants.

The first consultation introduced the UK IFPR and focused on the categorisation of investment firms, prudential consolidation, own funds and own funds requirements, and new reporting requirements.

In their second of 3 consultations the FCA are asking for views on:

- Remaining aspects on own funds requirements (such as the Fixed Overheads Requirement)
- The basic liquid assets requirement
- Remuneration requirements
- Risk management – the Internal Capital and Risk Assessment (ICARA) process

See more on the FCA's proposed new rules in CP21/7. The FCA would like feedback on this consultation by **28 May 2021**.

**Newgate's advice:** Please contact your Newgate consultant for more information regarding changes to the UK's prudential regime. Newgate have developed a Readiness Assessment setting out the practical impact the new prudential regime will affect your firm, including replacing ICAAPs with ICARAs for appliable firms, and drafting appropriate wind-down plans. Contact us to book in a Readiness Assessment.

Read the full article here.

## Discussion Paper 21/1: "Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions"

Discussion Paper ("DP") published by the FCA to retrieve views on changes the FCA can make to strengthen their financial promotion rules for high-risk investments, and for authorised firms which approve financial promotions. The DP comes from recent FCA interventions to address harm from high-risk investments, including banning the mass-marketing of speculative illiquid securities and the FCA's new Investment Harms campaign.

The DP seeks views on 3 areas where changes could be made to protect consumers from harm: 1) classification of high-risk investments; 2) segmentation of the high-risk investment market; and 3) the responsibilities of firms which approve financial promotions.

The DP will help shape changes being consulted on at the end of 2021.

**DP applies to:** consumers and consumer organisations; authorised firms which approve financial promotions for unauthorised persons; issuers of non-mainstream pooled investments, speculative illiquid securities and non-readily realisable securities; investment-based crowdfunding (IBCF) platforms and other intermediaries distributing investments to consumers; peer-to-peer (P2P) platforms; trade bodies for the IBCF and P2P sectors; issuers of listed or change-traded securities, and trade bodies for these issuers; investment companies, and trade bodies for this sector; issuers of other types of investments; firms operating in the cryptoassets market; and financial advisers.

Responses being collated by the FCA up until 1st July 2021.

Impact:

## FCA publishes Decision Notice against Jon Frensham for non-financial misconduct

The FCA has published a Decision Notice in respect of Jon Frensham (formerly known as Jonathan James Hunt), an independent financial adviser and the sole director at Frensham Wealth Limited.

The FCA has decided to withdraw his approval to perform his current senior management functions and to make an order prohibiting him from performing any functions in relation to regulated activity. This decision is based on an assessment by the Regulator that he is not fit and proper to perform such a role in the financial services industry. This is because he lacks the necessary integrity and reputation.

In March 2017, Mr Frensham was convicted of attempting to meet a child following sexual grooming. He committed this offence whilst he was an approved person. Mr Frensham was sentenced to 22 months' imprisonment and was suspended for 18 months.

The FCA considers that, because of this, Mr Frensham poses a risk to consumers and to confidence in the financial system. Therefore, the FCA considers it is appropriate, to advance its statutory objectives (which include protecting consumers and the integrity of the UK financial system), to withdraw his approval to perform senior management functions and to impose a prohibition order on him.

**Newgate's advice:** The FCA's criteria for those holding a Senior Manager or Certification function includes honesty, integrity and reputation; competence and capability; and financial soundness. Indeed, non-financial misconduct can be grounds for dismissal from a function under SM&CR, as the case of Mr Frensham highlights. Please contact your Newgate consultant for assistance when onboarding individuals holding these roles to ensure compliance. We can also assist you with any ongoing compliance including annual SM&CR reviews, background checks and training. Read the full article here.

## PRA and FCA consult on bilateral margin requirements for uncleared derivatives

The Prudential Regulation Authority and FCA have launched a joint consultation on amending certain onshored Technical Standards. These relate to margin requirements for non-centrally cleared derivatives.

The FCA propose introducing or extending exemptions for some products subject to bilateral margining requirements. The FCA also want to align implementation phases and thresholds of the initial margin requirements to international standards.

Proposals aim to maintain current market practice and give firms legal clarity on these margin requirements. The consultation is open for feedback until the 19th May 2021 via the following link.

## CP21/9: Changes to UK MIFID's conduct and organisation requirements

The FCA and the Treasury are considering reforms to capital markets, focusing on the UK's regulatory regime to ensure this is adapted to the structures of UK markets within high standards of regulation. This Consultation Paper ("CP") focuses specifically on two areas of MiFID: research and best execution reporting.

Applies to: investment firms and market operators in the UK; banks and Collective Investment Scheme operators providing investment services; firms providing investment advice and reception and transmission of orders who did not opt into MiFID; and firms providing research not authorised by FCA.

Proposals include with regard to SMR and FICC research inducement rules and best execution reports:

- An exemption from the inducement rules for research on listed or unlisted SMEs companies who have a market capitalisation below £200m provided it is offered on a rebundled basis or for free.
- An exemption from the inducement rules for third party research received in connection with investment strategies that relate primarily to fixed income currencies and commodities (FICC) instruments.
- An exemption from the inducement rules for research received by independent research providers where this does not involve execution.
- An exemption from the inducement rules for openly available written material.

### Best execution reports

**The rule changes proposed involves deleting the UK versions of RTS 27 and RTS 28 and removing references to these obligations in the Handbook. The latter involves deletions in COBS 11.2A, 11.2B and 11.2C. Where reference is made to firms having to take account of data produced under RTS 27, this is replaced by a reference to them having to take account of relevant data or by other internal analyses. References to RTS 27 obligations for Multilateral Trading Facilities, Organised Trading Facilities and Systematic Internalisers in MAR 5, 5A and 6 are also being deleted.**

**Impact:**

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