NEWGATE COMPLIANCE

NEWGATE NEWS

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April 2020 - Issue Highlights

- **FCA's expectations for wet-ink signatures due to coronavirus (Covid-19) restrictions**
- **Statement of Policy: listed companies and recapitalisation issuances during the coronavirus crisis**
- **Important information for all clients: The FCA sets out priorities for 2020/21**
- **Important information for all clients: FCA and PSR responds to the CMA's guidance on business corporation under competition law**
- **Further statement from the Working Group on Sterling Risk-Free Reference Rates ("RFRWG") on how the Covid-19 pandemic impacts firms' LIBOR transition plans**

Important information for all firms: FCA's expectations for wet-ink signatures due to coronavirus (Covid-19) restrictions

20/04/2020

The FCA has set out its expectations of firms when dealing with the need for 'wet-ink' signatures (signing a document by hand using a pen).

The FCA do not explicitly require a wet-ink signature in agreements, nor do they prevent firms from using electronic signatures in agreements. The validity of electronic signatures is a matter of law. The FCA encourages firms to consider the legal position themselves as they cannot give legal advice.

Firms should also consider any related requirements set out in the Principles for Businesses and general rules. For example:

- Firms should consider Principles 2 (skill, care and diligence), 3 (management and control) and 6 (customers' interests) in reviewing the risks and harms of using electronic signatures and take appropriate steps to minimise those; and

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- Firms should consider the client's best interests' rule (COBS 2.1.1R) and the fair, clear and not misleading rule (COBS 4.2.1R) to ensure that, when a client signs a document electronically, this does not make it more difficult for the client to understand what they are agreeing to.

The FCA have recently stated that it would accept electronic signatures for fund-related application forms and firms may use electronic signatures for all interactions with them.

Advice for firms: Consider the potential legal ramifications concerning the validity of electronic signatures in agreements and any associated risk this may pose clients. Speak to Newgate if help is needed on your firm's ability to continue to meet the Principles for Businesses/general rules.

https://www.fca.org.uk/news/statements/expectations-wet-ink-signatures-coronavirus-restrictions

Important information for corporate finance clients: Statement of Policy: listed companies and recapitalisation issuances during the coronavirus crisis

08/04/2020

The FCA announces a series of measures aimed at assisting companies to raise new share capital in response to the coronavirus crisis while retaining an appropriate degree of investor protection.

Smaller share issues

On the 1st April 2020, the Pre-Emption Group (PEG) recommends that investors consider on a temporary basis supporting issuances by companies of up to 20% of their issued share capital, rather than the 5% for general corporate purposes, with an additional 5% for specified acquisitions of investments, as set out in the Statement of Principles that would normally apply.

The FCA encourage issuers to contribute to delivering 'soft pre-emption rights' by exercising their rights to be consulted on, and to direct, bookrunners' allocation policies. Where the disclosure of inside information is made during the consultation process, market participants who comply with the Market Abuse Regulation (MAR) Market Sounding provisions will be protected from allegations of unlawful disclosure of the inside information.

Share issues with a prospectus

The FCA encouraged listed companies issuing new equity to recapitalise the company in response to the coronavirus crisis to use this simplified disclosure regime (which was introduced in July 2019), where possible.

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No change to requirements under MAR

MAR remains in force and companies are still required to fulfil their obligations concerning the identification, handling, and disclosure of inside information. In the context of recapitalisation this will include sharing inside information in accordance with MAR and maintaining appropriate insider lists.

Advice for firms: The FCA's policy interventions regarding working capital statements and general meeting requirements detailed above will apply until otherwise advised. Please contact Newgate if you require additional clarity or assistance in understanding your market conduct requirements when conducting Market Soundings.

https://www.fca.org.uk/news/statements/listed-companies-recapitalisation-issuances-coronavirus

Important information for all clients: The FCA sets out priorities for 2020/21

09/04/2020

The FCA has set out its business priorities for the year ahead. Specific focus has been placed on the challenges presented by the coronavirus (Covid-19) pandemic.

The Business Plan sets out some key priority areas the FCA intend to focus on throughout the pandemic and the aftermath, which centres around: protecting vulnerable consumers, treating them and small firms fairly, tackling scams, keeping markets working well and mitigating firm failures.

The FCA will also focus on transforming its operations. This includes looking at its entire system – from the data it collects, to how it analyses, manages and shares intelligence across the organisation, and how it decides which firms and individuals can operate.

The FCA will look at how firms are supervised, and how unacceptable firms and individuals are stopped and removed from the regulated sector as quickly as possible.

To deliver these outcomes, the FCA will build its capacity by investing in skills, systems, people and technology.

Advice for firms: Please speak to your Newgate consultants on how we can assist you in identifying areas within the FCA's Business Plan which is most pertinent to your business activities and areas of potential risk.

https://www.fca.org.uk/news/press-releases/fca-sets-out-priorities-2020-21

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Important information for all clients: FCA and PSR respond to the CMA's guidance on business corporation under competition law

27/03/2020

Both the FCA and PSR are supportive of the CMA's guidance on its approach to business cooperation under competition law, which was published on 25th March 2020. Both regulators will take a consistent approach to their competition law enforcement activity in the financial services sector (under the Competition Act 1998 and/or the Treaty on the Functioning of the European Union). It is important that competition law does not impede firms from working together to provide essential services to consumers in the current coronavirus situation. However, the CMA will not tolerate conduct which opportunistically seeks to exploit the crisis.

Advice for firms: The CMA understands that firms are assisting in national and local efforts to tackle the consequences of Covid-19. As a result of this effort, the CMA understands that this may involve coordination between competing businesses. As long as such coordination is undertaken solely to address concerns arising from the current crisis and does not go further or last longer than what is necessary – the CMA will not take actions against such firms.

https://www.fca.org.uk/news/statements/fca-and-psr-respond-cmas-guidance-business-cooperation-under-competition-law

Important information for all clients: Further statement from the Working Group on Sterling Risk-Free Reference Rates ("RFRWG") on the impact of Covid-19 on the timeline for firms' LIBOR transition plans

29/04/2020

Further to the joint statement made on 25th March it remains the central assumption that firms cannot rely on LIBOR being published after the end of 2021.

The Financial Conduct Authority (FCA) have seen continued progress on LIBOR transition through this period. This includes the first syndicated loan that will link SONIA and SOFR, the first bilateral loan referencing SONIA in the social housing sector, and another successful consent solicitation to convert a legacy LIBOR referencing bond.

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The RFRWG, FCA and the Bank of England recognise that it will not be feasible to complete transition away from LIBOR across all new sterling LIBOR linked loans by the original end-Q3 2020 target. There will likely be continued use of LIBOR-referencing loan products into Q4 2020, to maintain the smooth flow of credit to the real economy.

By the end of Q3 2020 lenders should be in a position to offer non-LIBOR linked products to their customers. After the end of Q3 2020 lenders, working with their borrowers, should include clear contractual arrangements in all new and re-financed LIBOR-referencing loan products to facilitate conversion ahead of end-2021, through pre-agreed conversion terms or an agreed process for renegotiation, to SONIA or other alternatives.

Advice for firms: All new issuance of sterling LIBOR-referencing loan products that expire after the end of 2021 should cease by the end of Q1 2021. Please review how your firm's business activities are impacted by the LIBOR transition to ensure necessary plans are implemented that are aligned to the Q3 2020 timelines described above. Feel free to reach out to your Newgate consultant for further guidance.

https://www.fca.org.uk/news/statements/further-statement-rfrwg-impact-coronavirus-timeline-firms-libor-transition-plans