

August 2019 - Issue Highlights

- Consultation paper on framework for assessing adequate financial resources
- New guidance from the ICO on subject access request timescales
- FCA provides clarity on current cryptoassets regulation
- Policy statement 19/20 on Optimising the Senior Managers and Certification Regime
- FCA announces extension to its use of the temporary transitional power
- Consultation guiding firms on the fair treatment of vulnerable customers
- FCA Statement on the MoU with the Bank of England
- Gabriel to be replaced with a new platform
- FCA statement on the Opinion of ESMA on the final rules for CFDs and CFD-like options



Important information for all firms: FCA releases consultation paper on their framework for assessing adequate financial resources

The Financial Conduct Authority (“FCA”) have recently published a Consultation Paper, CP19/20 “Our Framework: Assessing Adequate Financial Resources”. The Consultation Paper explains the purpose of, and their approach to the assessment of, adequate financial resources and provides further guidance on the meaning of ‘adequate financial resources’ in threshold conditions and principles for business.

The Consultation Paper covers six main sections:

1. **Financial resources** – firms must hold an appropriate level of capital and/or liquid resources to cover potential harm.
2. **Systems and controls, governance and culture** – these elements should drive a culture that allow firms to identify, assess, manage, monitor and mitigate the risk of harm.
3. **Identify and assess the impact of harm** – this helps a firm understand, by using ‘what if’ scenarios, what has the potential to go wrong so it can implement controls to minimise the risk and determine the amount and type of financial resources needed to put things right (should they go wrong).
4. **Risks that can lead to harm or impair the ability to compensate for harm done** – along with point three, this helps a firm to minimise the risk it will incur irreparable harm.
5. **Viability and sustainability of the business model and strategy** – the risk of harm a firm poses may be heightened if they are under significant pressure for financial performance or on the

verge of failure. Understanding a firm's financial vulnerabilities and proximity to failure is important to understand in order to adequately prepare to minimise the risk of harm.

6. **Wind-down planning** – this is highly encouraged by the FCA as such planning can help to reduce the impact of a firm's failure and thus minimise the risk of unforeseen harm occurring.

A full copy of CP12/20 Our Framework: Assessing Adequate Financial Resources can be found [here](#).
Next steps: Firms are encouraged to review the consultation paper and consider the impact on your existing practices in assessing financial adequacy. If you have any questions on the impact of this Consultation Paper to your firm, please do not hesitate to contact us.

<https://www.fca.org.uk/publications/consultation-papers/cp19-20-our-framework-assessing-adequate-financial-resources>

Important information for all firms: New guidance from the ICO on subject access request timescales

The ICO has updated its guidance on how long an organisation has to respond to a Subject Access Request (SAR). This follows a [Court of Justice of the European Union \(CJEU\) ruling](#).

The previous guidance stated that SARs must be responded to within one calendar month, with the day after receipt counting as 'day one'. This has now changed. 'Day one' is now the day of receipt. For example, a SAR received on 3rd September should now be responded to by 3rd October.

The [ICO guidance](#) has been updated to reflect this change.

Next steps: Firms should update its policy and procedures regarding responding to SARs to clarify the response time to such requests.

Important information for firms issuing, marketing, buying or selling cryptoassets: FCA provides clarity on current cryptoassets regulation

The FCA has issued a Policy Statement PS19/22 which sets out final guidance on the cryptoassets activities which fall under FCA regulation. The guidance help firms make clear the important distinction as to which cryptoassets fall inside the regulatory perimeter. The guidance also acts as a reminder to consumers that they must be cautious when investing in assets that bear no intrinsic value such as cryptoassets.

Christopher Woolard, Executive Director of Strategy and Competition at the FCA commented: 'This is a small, complex and evolving market covering a broad range of activities. Today's guidance will help clarify which cryptoassets activities fall inside our regulatory perimeter'.

The Policy Statement in full can be found [here](#).

Next steps: If your firm issues, markets, buys or sells cryptoassets, it would be prudent to review the impact of this Policy Statement on your firm's activities.

<https://www.fca.org.uk/news/press-releases/fca-provides-clarity-current-cryptoassets-regulation>

Important information for all firms: FCA publishes policy statement 19/20 on Optimising the Senior Managers and Certification Regime

On 26 July 2019, the FCA published its final rules on the Senior Managers and Certification Regime ("SM&CR"), including its feedback on responses to Consultation Paper 19/4.

All firms authorised and regulated by the FCA will be affected by the new rules under SM&CR. It is important to note that whether a firm is classified as Limited Scope, Core or Enhanced will affect the impact of these requirements.

The main changes to the existing rules as discussed in the Policy Statement include:

- Confirming that the Head of Legal function is not a Senior Management Function
- Amendments to the scope of the "Client Dealing Function" under the Certification Regime
- Clarifying the application of the Certification Regime to CF 28 Systems and Controls roles
- Applying Prescribed Responsibility "SC4" to non-approved Executive Directors at Limited Scope firms
- Amendments to regulatory forms and the Handbook

Furthermore, the PS 19/20 sets out final rules regarding the new Directory for Certified Staff. Firms should start submitting data on their Certified Staff to the Directory as of 9 December 2019.

Newgate has produced a detailed summary of the final SMCR rules. It can be accessed [here](#) and is aimed at Core and Limited Scope firms.

Next steps: Prepare for SMCR by updating your compliance/HR policies and procedures, identifying your impacted staff, rolling out training and appropriate framework documents (HR appraisals forms etc). The FCA has been emailing firms to confirm firm's appropriate SMCR firm classifications. If you have any questions about your classification type, please do not hesitate to contact us.

<https://www.fca.org.uk/news/news-stories/optimising-senior-managers-and-certification-regime-policy-statement-19-20-and-feedback-cp-19-4>

Important information for all firms: FCA announces extension to its use of the temporary transitional power

The FCA has confirmed its intention to extend the proposed duration of the directions issued under the temporary transitional power till the 31st December 2020. This extension reflects that of Article 50 and, other than this announcement, the FCA's approach to Brexit reportedly remains unchanged.

Under the power, firms will not generally need to prepare now to meet the changes to their UK regulatory obligations which are connected to Brexit.

However, the following firms or persons should continue their preparations to comply with the changes:

- Firms subject to the MiFID II transaction reporting regime, and connected persons (for example approved reporting mechanisms).
- Firms subject to reporting obligations under the European Market Infrastructure Regulation (EMIR).
- EEA Issuers that have securities traded or admitted to trading on UK markets.
- Investment firms subject to the Bank Recovery and Resolution Directive (BRRD) and that have liabilities governed by the law of an EEA State.
- EEA firms intending to use the market-making exemption under the Short Selling Regulation.
- Firms intending to use credit ratings issued or endorsed by FCA-registered credit ratings agencies after exit day.
- UK originators, sponsors, or securitisation special purpose entities (SSPEs) of securitisations they wish to be considered simple, transparent, and standardised (STS) under the Securitisation Regulation.

The FCA expect firms to use the additional time to prepare to meet their obligations and will require evidence as to why if a firm cannot meet them. Further information will be published by the FCA before exit day detailing how firms can comply with post-exit rules.

<https://www.fca.org.uk/news/press-releases/fca-announces-extension-its-use-temporary-transitional-power>

Important information for all firms: FCA launches consultation guiding firms on the fair treatment of vulnerable customers

On the 23rd July 2019, the FCA released Guidance Consultation Paper GC19/3: Guidance for firms on the fair treatment of vulnerable customers. The Consultation Paper sets out the FCA's view of what firms are expected to do to ensure that vulnerable consumers are consistently treated fairly in line with the FCA's Principles.

The FCA warns that firms will need to think about what this guidance means for their business and their customers as well as how they understand and address the needs of their most vulnerable customers. Ultimately, there is an expectation and drive towards ensuring that the fair treatment of vulnerable customers becomes embedded in a firms' culture.

The draft Guidance is set out in three main sections:

- Understanding the needs of vulnerable consumers.
- Ensuring staff have the skills and capabilities needed.
- Translating that understanding into taking practical action.

There will be a two-stage consultation on the guidance, with the first round of feedback closing on 4th October 2019.

<https://www.fca.org.uk/news/press-releases/fca-launches-consultation-guiding-firms-fair-treatment-vulnerable-customers>

Important information for all firms: FCA Statement on the MoU with the Bank of England

The FCA has published an updated Memorandum of Understanding with the Bank of England to reflect the PRA (Prudential Regulatory Authority) becoming fully integrated into the Bank of England, following its de-subsidisation in March 2017. The newly updated memorandum also reflects the expansion of the regulators' remit and organisational changes that have been undertaken.

The full copy of the memorandum can be found [here](#).

<https://www.fca.org.uk/news/statements/fca-statement-mou-bank-of-england>

Important information for all firms: Gabriel to be replaced with a new platform, improving the way the FCA collects data from firms

The FCA has announced they have begun work to replace the GABRIEL system. The intention is to implement a new easy-to-use system to allow firms to submit data efficiently. The FCA reassures that the preliminary focus will be on technological change so for the time being there will be no change to the way that firms are currently providing their data.

The FCA has released a survey for GABRIEL users to obtain feedback which can be accessed [here](#).

<https://www.fca.org.uk/news/news-stories/new-platform-replace-gabriel-improve-collect-data>

Important information for all firms: FCA statement on the Opinion of ESMA on our final rules for CFDs and CFD-like options

The FCA has released a statement on the Opinion of ESMA on the final FCA rules for CFDs and CFD-like options. The notice sets out the FCA's reasoning for acting contrary to ESMA's Opinion on national product intervention to restrict how CFDs and CFD-like options are sold to retail consumers.

On 1 July 2019, the FCA published [Policy Statement \(PS\)19/18](#) and finalised rules that restrict the sale, marketing and distribution of contract for differences (CFDs) and CFD-like options to retail clients in or from the UK. On 2 July 2019, [ESMA](#) published an opinion concluding that overall the proposed national measures are justified and proportionate, with the exception of the FCA's decision to:

- Not apply sales and distribution restrictions to CFD-like option providers authorised in other EEA Member States other than a UK branch or tied agent.
- Setting leverage limits for CFDs referencing certain government bonds to 30:1 (compared to 5:1 under ESMA's measures).

The FCA stated that by capturing CFD-like options, the rules would ensure UK firms do not seek to avoid CFD measures by offering closely substitutable products. Importantly, the FCA are not allowing EEA firms outside the UK to sell CFDs to retail clients in the UK. That is because they are more commonly sold on a cross-border basis and used by UK retail consumers to speculate on financial markets.

The full ESMA Opinion can be found [here](#).

<https://www.fca.org.uk/news/statements/fca-statement-opinion-esma-our-final-rules-cfds-and-cfd-options>