

Regulatory Update

UK Edition

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1.0 FCA UPDATES & DEVELOPMENTS

1.1 Brexit Impact Assessment by FCA

The Financial Conduct Authority (FCA) published its [‘EU Withdrawal Impact Assessment’](#) in line with its strategic objectives in ensuring that relevant markets function well, and the specific operational objectives, which are to protect consumers, enhance market integrity and promote competition.

It assesses the impact of the UK’s exit from the EU with or without a deal and outlines the framework for the future relationship between the EU and the UK.

In the [letter](#) that outlines conclusions of the assessment, Andrew Bailey, the FCA’s Chief Executive, draws three points: the first suggests that an implementation period is preferable to a no deal scenario as this would allow time to mitigate remaining significant risks to the FCA’s objectives. The second point suggests having an implementation period for forming a new relationship between the UK and the EU, so there is greater clarity over future regulatory arrangements. In his third point, he suggests that the duration of the implementation period should be kept to a minimum in order to provide assurance on market access and the inherited regulatory regime.

1.2 FCA Feedback Statement on its Improved Approach to Authorisation

The Financial Conduct Authority (FCA) released a [statement](#) that clarifies details of its revised approach to authorisation.

The statement explains the basis and purpose of authorisation and includes information on how the FCA evaluates whether firms meet the Threshold Conditions and whether individuals holding key roles in regulated firms are ‘fit and proper’. The statement outlines how the regulator assesses drivers of behaviour that is harmful to a company’s culture; examples of revoking registration and approval; the role of the Regulatory Decisions Committee; a range of support that the FCA provides to firms to promote competition; measurements of the FCA’s operational performance and effectiveness; and improved commitments the FCA makes to firms.

For support and advice on obtaining FCA authorisation, please [contact us](#).

1.3 FCA Handbook Update on Dispute Resolution: Complaints

The Financial Conduct Authority (FCA) published a [Direction](#) addressing a modification by consent of Dispute Resolution: Complaints 1.10.1 in the DISP section of the FCA’s Handbook.

The rule is available to firms that receive payment protection insurance complaints and who must submit a complete report on complaints received from eligible complainants. The rule modification applies to the firms in respect of complaints received and closed by firms by 31st December 2019.

1.4 FCA’s Regulatory Fees and Levies

After leaving the EU on 29th March 2019, regulating powers in the UK will be passed from the European Securities and Markets Authority (ESMA) to the Financial Conduct Authority (FCA). In consultation paper ([CP18/34](#)) the FCA sets proposed policy changes to the ways it will raise fees and levies from 2019/20 as part of the annual cycle of consultation on fees.

It sets out arrangements for recovering costs of regulating credit rating agencies and trade repositories; charge changes for mutual societies; payment rules to the illegal money-lending levy; insurers’ tariff data; and debt advice levy for devolved authorities.

The deadline for comments is 14th January 2019. The feedback and the rules in the Handbook Notice will be published in Q1 2019.

1.5 Whistleblowing Arrangements

The Financial Conduct Authority (FCA) published a [review](#) of how firms have implemented whistleblowing rules. The findings include areas of good practice and areas for improvement, and the regulator’s expectations of firms. Firms are encouraged to review these findings and consider the steps required for improving existing arrangements.

To discuss how CCL can help with improving your whistleblowing arrangements, please [contact us](#).

1.6 Temporary Permission Notification Direction

In its handbook, the Financial Conduct Authority (FCA) has published a [direction](#) that details the manner in which notifications are to be made by EEA firms should they wish to obtain a deemed permission or variation under the temporary permissions regime.

These notifications must:

- be made by submitting the temporary permission notification form using the Connect system (<https://connect.fca.org.uk>)
- be made following any further instruction published in relation to the firm temporary permission notification form
- contain the information required by that form
- be made during the period beginning at 9am on 7 January 2019 and ending with 28 March 2019.

For support and advice on obtaining the temporary permission, please [contact us](#).

2.0 PRA UPDATES & DEVELOPMENTS

2.1 Brexit Scenarios – BoE Response to Treasury

In the response to the House of Commons Treasury Committee, the Bank of England (BoE) [published](#) its analysis of the EU withdrawal scenarios and their varying impacts on the UK's monetary and financial stability. Using scenario analysis and basing on various assumptions, the Monetary Policy Committee (MPC) and Financial Policy Committee (FPC) examined the economic effects of the Withdrawal Agreement, no agreement and the Political Declaration regarding the future relationship between the EU and the UK.

2.2 Stress Testing Results

In the [annual stress testing](#) of the UK banking system, the Bank of England (BoE) used two types of scenarios: the annual cyclical scenario, which emulates certain hypothetical events such as 4.7 per cent drop in Gross Domestic Product and rise of unemployment rate to 9.5 per cent; and disorderly Brexit with no deal and no transition period leading to severe economic stress.

The results of the test show that the UK banking system is resilient to the recessions that are more severe than the global financial crisis in combination with large falls in asset prices and a separate stress of misconduct costs.

2.3 BoE – FPC Financial Stability Report

The Financial Policy Committee (FPC) [reported](#) on the most important risks to UK financial stability including the full results of the Bank of England's (BoE) annual stress test of major UK banks.

The analysis employed by the BoE, other UK authorities and financial companies is used in extensive contingency planning in order to avoid disruption to financial services by EU firms to UK households and businesses.

The FPC has reviewed adverse scenarios with a no Brexit deal and no transition period that could potentially lead to a severe economic shock. Based on this analysis along with the stress tests, it concludes that the UK financial system is resilient to the wide range of economic risks, including Brexit.

2.4 Securitisation Regulation – PRA Policy Statement

The Prudential Regulatory Authority (PRA) published a policy statement ([PS 29/18](#)) on the securitisation framework and significant risk transfer under the Securitisation Regulation. It contains the responses to feedback received from earlier consultation.

2.5 PRA Policy Statement on the UK Leverage Ratio Framework

This policy ([PS28/18](#)) deals with the model risk, arising from relying on the models and standardised approaches in setting capital requirements.

The PRA's proposals on applying the systemic risk buffer (SRB) framework from its earlier consultation have not changed and will require ring-fenced bodies (RFBs) to meet all elements of the UK leverage ratio framework on a sub-consolidated basis. The policy statement also implements the proposals to amend the additional leverage ratio buffer and require relevant firms hold capital on a consolidated basis in addition to a minimum leverage ratio requirements and any leverage ratio buffers applicable on a group consolidated basis.

The implementation of the SRB will take place from Tuesday 1st January 2019.

2.6 PRA Fees and Levies: Changes to Periodic and Transactional Fees

The Prudential Regulatory Authority (PRA) published a consultation paper ([CP28/18](#)) that invites comments on its proposal for changes to periodic and transaction fees. This paper is relevant to all the PRA-regulated firms but particularly insurers and designated investment firms (DIFs), as well as firms intending to apply in the future for Solvency II or Capital Requirements Regulation (CRR) models.

The deadline for comments is 7th January 2019 and the implementation date is set for 1st March 2019.

For advice on periodic fees for designated investment firms, internal model application and model maintenance fees for DIFs, please [contact us](#).

3.0 EU REGULATORY UPDATES

3.1 ESMA on Managing Risks on a No-Deal Brexit in the Area of Central Clearing

The European Securities and Markets Authority (ESMA) published a [statement](#) to address the risks of a no-deal Brexit scenario in the area of central clearing. ESMA's board of supervisors supports the continued access to UK central counterparties (CCPs) to limit the risk of disruption in central clearing and to avoid negative impacts on EU financial stability. ESMA has already begun its preparatory work for no-deal scenario aiming to ensure continued access to UK CCPs for EU clearing members and trading venues as of 30 March 2019.

3.2 ESMA Updated Q&A

The European Securities and Markets Authority (ESMA) has released Q&A document on the following:

1. The implementation of the [Market Abuse Regulation \(MAR\)](#). The feature of this update relates to trading during closed periods by persons discharging managerial responsibilities.
2. The implementation of the [Central Securities Depository Regulation \(CSDR\)](#). It is updated with the new Q&A on settlement discipline and with the calculation of cash penalties and the provision of services in another member state by a CSD.
3. The [temporary product intervention measures](#) on marketing, distribution or sale of contracts for difference (CFDs) and binary options to retail clients under the Markets in Financial Regulation (MiFIR). The key addition to the Q&As was an explanation on how firms should ensure prominence of the appropriate risk warning when selling or distributing CFDs to retail customers.

3.3 ESMA Renews Binary Options Prohibition for Another Three Months from 2nd January 2019

The European Securities and Markets Authority (ESMA) has [renewed](#) the prohibition of the marketing, distribution or sale of binary options to retail clients for a further three months period. It will be published in Official Journal of the EU and will start to apply from 2nd January 2019.

See the original ESMA Decision covered in our CCL Regulatory Update in the [June](#), [August](#) and [October](#) editions.

3.4 ESAs Consults on Amendments to RTS on KID for PRIIPs

The joint Committee of the European Supervisory Authorities (ESAs) published a [consultation paper](#) with amendments regarding key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs). The consultation paper considers presentation and content of the KID and methodologies for the calculation and presentation of risks, rewards and costs.

The deadline for comments is 6th December 2108.

3.5 ESMA Guidelines on Suitability Requirements in MiFID II

The European Securities and Markets Authority (ESMA) has updated its [supervisory briefing on MiFID II](#) suitability requirements. Its purpose is to promote common supervisory approach and is aimed at competent authorities as defined in MiFID II and gives market participants indications of complaint implementation of the MiFID II suitability provisions.

The supervisory briefing is designed to help competent authorities make judgements and is structured around elements of determining situations where suitability assessment is required. The briefing also considers information to clients about purpose of the suitability assessment, obtaining the right information from clients, arrangements necessary to understand investment products and to ensure suitability of an investment, suitability reports, qualifications of firm staff and record keeping.

If you would like to discuss suitability, please [contact us](#).

3.6 MiFIR – ESMA Renews Restriction on CFDs

The European Securities and Markets Authority (ESMA) has published a decision [notice](#) renewing the temporary restriction on marketing, distribution or sale of Contracts for Differences (CFDs) to retail clients for a further three-month period from 1st November 2018.

The current temporary intervention measure in relation to CFDs started to apply on 1st August 2018 and it was due to expire. (In accordance with the Markets in Financial Instruments Regulation (MiFIR), ESMA can only introduce temporary intervention measures for a three-month period, following which the measures must be renewed or they automatically expire).

ESMA considered the need to extend the intervention measure currently in effect and decided that a significant investor protection concern to the offer of CFDs to retail clients should continue to exist.

The renewal was agreed by ESMA's Board of Supervisors on 26th September 2018 and includes renewing the following:

- Leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which can vary for volatility of underlying instrument
- A margin close out rule on a per account basis. This standardises the percentage of margin at 50% of minimum required margin, at which providers are required to close out retail client's account
- Negative balance protection on a per account basis. This provides an overall guaranteed limit on retail client losses
- A restriction on the incentives offered to trade CFDs
- A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts

Considering the third-party marketing provider's character limitation, ESMA has agreed to introduce in the renewal an additional reduced character risk warning:

“[Percentage per provider] % of retail CFD accounts lose money”.

The FCA statement on ESMA's Action on CFD products was covered in our [July 2018 edition of the CCL Regulatory Update](#).

4.0 FINANCIAL CRIME

4.1 The FCA Newsletter on Market Conduct and Transaction Reporting Issues

In the [Market Watch 57](#), the FCA expresses its concerns about behaviour of employees that may constitute possible criminal offence, market abuse or unacceptable market conduct, which constitutes breach of the Principles for Businesses.

This includes behaviour that amounts to giving false or misleading impressions to the market, some of which are known as ‘flying prices’ and ‘printing trades’. ‘Flying’ is described by the way a firm communicates to its clients or other market participants via screen, instant message, voice or other method bids or offers that are not supported or derived from trader’s actual instruction. ‘Printing’ describes a trade of certain price and size that was executed by one of the above methods but in reality, has not taken place.

The FCA suggests that firms consider the processes they have in place for training and informing staff about the potentially abusive nature of these practices, ways of monitoring trading platforms and persistent chat systems to identify instances of ‘flying’ and ‘printing’.

4.2 The Sanctions and AML Act 2018 (SAML A) Regulations 2018

On the 22nd November 2018, certain elements of the SAML A Regulations 2018 were brought into force. This legislation allows the UK to impose economic sanctions and money laundering regulations after their departure from the EU. The remaining provisions will be brought into force at a later date.

The Act also empowers the U.K. Government to create, amend and update regulations for the detection, investigation and prevention of money laundering and terrorist financing and for the purposes of implementing standards published by the Financial Action Task Force relating to combating threats to the integrity of the international financial system.

Specifically, the following elements of the Act were commenced:

- sections 1 to 31
- sections 33 to 48
- sections 57 and 58
- section 59(4) so far as it relates to the provisions coming into force in accordance with paragraph (f) of this regulation
- Schedule 1
- paragraphs 1 to 7, and sub-paragraphs (1) to (3) of paragraph 8, of Schedule 3.

5.0 ENFORCEMENT ACTION

5.1 PRA Fines Former Board Members of Japanese Investment Bank for Failure to Disclose Information

The PRA coordinated its investigations with the FCA and [fined](#) two former board members (Mr Akira Kamiya, former Chair, and Mr Takami Onodera, former NED) of Mitsubishi UFL Securities International Plc, for failure to disclose to the PRA an action taken by the New York Department of Financial Services (DFS) against the Bank of Tokyo-Mitsubishi, where Mr Kamiya was a former employee. The action may have prevented Mr Kamiya from conducting banking business in the US.

The PRA was not aware about the DFS’ order and were unable to ‘consider, make or supervise’ contingency plans. The PRA concluded that Mr Kamiya and Mr Onodera were aware of the DFS action before the consent order and were consequently both in breach of the PRA’s statement of Principle 4. They were fined £22,700 and £14,945, respectively.

The PRA’s action was taken under the rules that pre-dated the Senior Managers Regime, which came into force on 7th March 2016.

5.2 UK Upper Tribunal Upholds Ban and Fine of Investment Management Executives

The Upper Tribunal upheld the FCA's decision to ban Mr Stewart Ford and Mr Mark Owen in the case of their appeal against the FCA and directed the FCA to [fine](#) them £76 million and £3.2 million respectively for breaches of Principle 1 (integrity) and 4 (relations with regulators) of the FCA's Statements of Principle.

The Upper Tribunal found that Mr Ford was able to extract fees from his companies, Keydata Investment Services Ltd and Lifemark SA for 'no services' and unrelated to products of these companies. Mr Owen also received undisclosed commission payments from Mr Ford. Both persons made false statements to the Authority and failed to instruct the Keydata's compliance officer not to mislead the Authority.

ABOUT CCL

Established in the UK in 1988, 2006 in the UAE and 2012 in India, CCL provides specialist compliance services to firms regulated by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA).

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- Risk Management
- Prudential Regulation
- Cybercrime
- CISI Qualifications
- Front Office
- Finance Induction Training

If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact one of the directors using the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by the FCA/PRA which are still current, proposed changes to the Rules and Guidance set out in the FCA and PRA Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to FCA/PRA-regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the particular FCA/PRA document referred to.