

# Regulatory Update

ISSUED 10<sup>th</sup> March 2020

## UK Edition

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## 1.0 FCA UPDATES & DEVELOPMENTS

### 1.1 FCA Webpage on Considerations for UK Firms After the Transition Period

The FCA has [published a webpage](#) setting out areas for UK firms to consider after the transition period as part of the Withdrawal Agreement it has in place with the European Union.

The impact for firms will depend on a number of factors, including the agreements between the UK and the EU in its future relationship.

UK firms which only do business in the UK may be affected less directly than others. Firms which carry out business in the European Economic Area (EEA) and UK are likely to be affected and the FCA has set out some considerations which may be relevant for planning.

The FCA suggests the following non-exhaustive list of considerations to help firms determine whether there will be any effect on the business:

- Does the firm currently provide any regulated product or services to customers resident in the EEA?
- Does the firm have any customers or counterparties based in the EEA?
- Does the firm market financial products in the EEA?
- Does the firm have any agents in the EEA or any intermediary service providers in the EEA?
- Does the firm transfer personal data between the UK and EEA?
- Does the firm have membership of any market infrastructure based in the EEA?
- Is the firm part of a wider corporate group based in the EEA?
- Does the firm outsource or delegate to an EEA firm or vice versa?
- Is the firm party to any legal contracts which refer to EU law?

If any of the questions above apply, firms will need to understand the legal basis in which the business occurs. This will allow them to assess, during the course of the year, whether the business can continue on that basis or whether they will require additional permissions.

For advice and support with the transition period, please [contact us](#).

### 1.2 FCA Webpage on Using Connect to Submit EMIR Notifications and Applications

The FCA has [updated its webpage](#) regarding the use of Connect to submit EMIR notifications and applications. The legacy EMIR web portal is to be decommissioned on 31 March 2020, thereby requiring all relevant counterparties to register on the FCA Connect system to submit the relevant notifications.

Firms will be required to submit the following notifications and applications via Connect:

- Financial counterparty clearing threshold notification
- Non-financial counterparty clearing threshold notification
- Intragroup exemptions from the reporting requirements
- Dispute notifications
- Intragroup exemptions from the clearing obligations

Intragroup exemptions from the margin requirements must be submitted to [MarginIGT@fca.org.uk](mailto:MarginIGT@fca.org.uk) using the application templates from the webpage.

### 1.3 FCA Joint Statement with the ICO on Responsibility when Dealing with Personal Data

The FCA has [published a joint statement](#) with the Information Commissioner's Office (ICO) and the Financial Services Compensation Scheme (FSCS) warning FCA authorised firms to be responsible when dealing with personal data.

The FCA is aware that some FCA authorised firms have attempted to sell clients' personal data to Claims Management Companies (CMC). This may not be lawful as the terms, conditions and clauses within a standard

contract are highly unlikely to constitute sufficient legal consent for personal data to be shared with CMCs to market their services.

By passing on personal data, firms will be failing to meet their obligations under the Data Protection Act 2018 and the General Data Protection Regulation.

## **2.0 PRA UPDATES & DEVELOPMENTS**

### **2.1 PRA's Methodologies for Setting Pillar 2 Capital**

The PRA has published a [Statement of Policy](#) (SoP) which took effect from 24 February 2020 and which updates previous publication [PS 3/20](#). The statement sets out the methodologies used to inform the setting of Pillar 2 capital for firms to which the Capital Requirements Directive IV (CRD IV) applies.

The document is split into two sections:

- Section I sets out the methodologies to inform the capital requirement for credit risk, market risk, operational risk, counterparty credit risk, credit concentration risk, interest rate risk, pension obligation risk and RFB group risk.
- Section II provides information on the purpose of the PRA buffer and how it is determined.

## **3.0 EU REGULATORY UPDATES**

### **3.1 ESMA Clarifies Governance and Reporting Obligations for UK Entities Following Brexit**

The European Securities and Markets Authority (ESMA) has [published a statement clarifying issues relating to governance and reporting obligations](#) of UK entities in light of the UK's withdrawal from the European Union.

From 1<sup>st</sup> February 2020, the FCA is no longer a member of ESMA's Board of Supervisors and will not participate in any of ESMA's governance bodies. EU law will continue to apply to the UK, as if it were a Member State, during the transition period from 1 February 2020 to 31 December 2020.

ESMA will continue monitoring the application of EU law into the UK in the coming months and prepare for the oncoming end of the transition period.

## **4.0 FINANCIAL CRIME**

### **4.1 HM Treasury Updates - Financial Sanctions Guidance**

HM Treasury has [published updated guidance](#) for the UK's financial sanctions regimes under the Sanctions and Anti-Money Laundering Act 2018. The guidance discusses a range of topics including:

- The scope of financial sanctions
- Financial sanction restrictions
- Concept of ownership and control
- Reporting obligations to Office of Financial Sanctions Implementation (OFSI)
- Compliance and enforcement

For support and advice with your AML requirements, please [contact us](#).

### **4.2 JMLSG Proposed Amendments to its Guidance**

The Joint Money Laundering Steering Group (JMLSG) has [published a proposed amendment to its guidance](#) which has been considered by the Editorial Panel and the Board. The proposed amendments take into account the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

A new sector will be introduced in Part II of the guidance to provide sector clarification for cryptoasset exchanges and custodian wallet providers.

The JMLSG intended to publish this for consultation by the end of February 2020.

For support and advice with your AML requirements, including changes to the JMLSG, please [contact us](#).

#### **4.3 Formal Notice to Eight Member States to Transpose the 5<sup>th</sup> AML Directive**

The European Commission has sent [letters of formal notice](#) to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for not having notified any implementation measures for the fifth anti-money laundering directive.

The notice states the Directive is instrumental in the fight against money laundering and terrorism financing. The Member States must transpose the Directive in a timely manner and encourages them all to do so urgently. Without a satisfactory response from the Member States in two months, the Commission may decide to send them reasoned opinions.

#### **4.4 HM Treasury Advisory Notice on High Risk Jurisdictions**

HM Treasury has [published an advisory notice](#) on money laundering and terrorist financing controls in higher risk jurisdictions. The notice refers to the latest Financial Action Task Force (FATF) statements and advises firms to consider:

- The following countries as high risk and apply counter measures and enhanced due diligence measures:
  - DPRK
  - Iran
- The following countries to take appropriate actions to minimise the associated risks which may include enhanced due diligence measures in high risk situations:
  - Albania
  - The Bahamas
  - Barbados
  - Botswana
  - Cambodia
  - Ghana
  - Iceland
  - Jamaica
  - Mauritius
  - Mongolia
  - Myanmar
  - Nicaragua
  - Pakistan
  - Panama
  - Syria
  - Uganda
  - Yemen
  - Zimbabwe

## 5.0 ENFORCEMENT ACTION

### 5.1 FCA Fines Moneybarn for Unfair Treatment of Customers in Arrears

The FCA has [issued a fine on car finance provider](#), Moneybarn Ltd, for not treating customers fairly when the customers fell behind with loan repayments while in financial difficulties.

The firm was found to not have communicated the likely financial consequences of failing to keep up with payments in a way which was clear, fair and not misleading. Customers were not provided with the chance to clear their arrears over a realistic and sustainable period. It also did not communicate clearly to those customers in financial difficulty, the options available for exiting their loans and the associated financial implications, resulting in many incurring higher termination costs. These were considered to be serious breaches.

Moneybarn has voluntarily provided redress of more than £30 million to all 5,933 customers.

The firm did not dispute, and agreed to accept, the FCA's findings, therefore qualifying for the 30% discount of the financial penalty at £2.77 million, which would otherwise have been £3,963,500.

## 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).

### Consultancy Services & Support

- Regulatory Technology – CCL C.O.R.E
- Compliance Advisory
  - Assurance Reviews
  - Compliance Remediation
  - Compliance Support Services
  - Documentation
  - Financial Crime Prevention
  - Corporate Governance
  - Risk Management
- FCA Authorisation
- Prudential Rules & Regulatory Reporting
- Hot Topics
  - Senior Managers & Certification Regime (SM&CR)
  - Fifth Anti-money Laundering Directive (5MLD)

### Training (through CCL Academy)

- Compliance Skills
- AML & Financial Crime Prevention
- FCA Regulations
- Senior Managers & Certification Regime (SM&CR)
- Risk Management
- CISI Qualifications

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.