DUFF & PHELPS

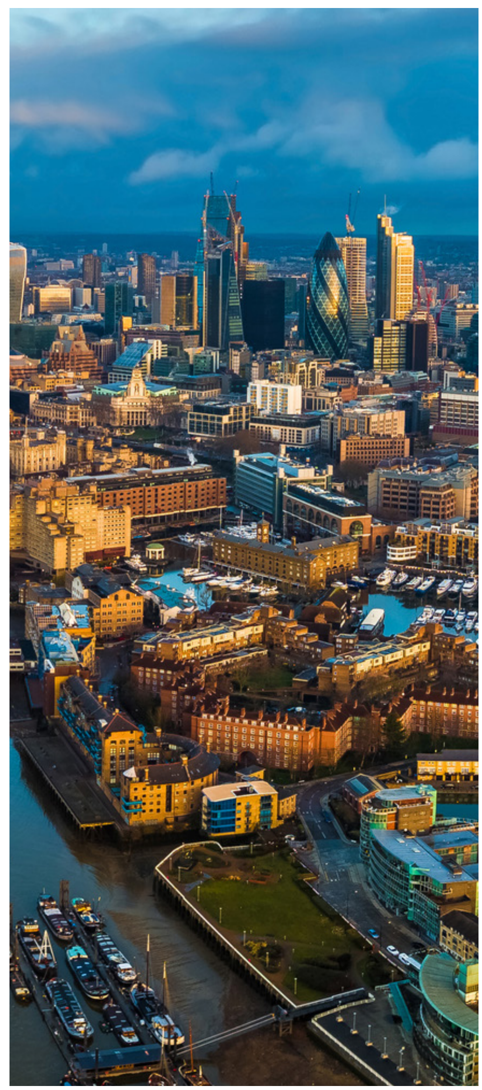
Protect, Restore and Maximize Value

Regulatory Focus

Issue 123

In this edition of Regulatory Focus, the experts in Duff & Phelps' UK Compliance and Regulatory Consulting team, provide a detailed synopsis of the latest news and publications issued by the Financial Conduct Authority during March 2019.

INSIDE



FCA fines a Bank £102.2 million for poor AML controls

On 5 February 2019 the Financial Conduct Authority ("FCA") fined a Bank £102,163,200 for Anti-Money Laundering (AML) breaches; the second largest financial penalty for AML control failings ever imposed by the FCA.

The Bank's failings occurred in its UK Correspondent Banking business between November 2010 and July 2013 and in its United Arab Emirates branches between November 2009 and December 2014.

Under the 2007 Money Laundering Regulations, the Bank was required to establish and maintain appropriate and policies and procedures to reduce the risk it may be used to launder the proceeds of crime, evade financial sanctions or finance terrorism. This Bank also had a duty to require its global (non-EEA) branches and subsidiaries to apply policies and procedures in relation to due diligence and ongoing monitoring that were equivalent to those of its UK bank.

The FCA found significant shortcomings in the Bank's own internal assessments of the adequacy of its AML controls, its approach towards identifying and mitigating material money laundering risks and its escalation of money laundering risks. These failings exposed the Bank to the risk of breaching sanctions and increased the risk of the Bank receiving and/or laundering the proceeds of crime.

Mark Steward, Director of Enforcement and Market Oversight at the FCA, said that: "The Bank's oversight of its financial crime controls was narrow, slow and reactive. These breaches are especially serious because they occurred against a backdrop of heightened awareness within the broader, global community, as well as within the bank, and after receiving specific attention from the FCA, US agencies and other global bodies about these risks."

The Decision notice can be found here.

AML risk assessments have been enhanced under the 2017 Money Laundering Regulations and we remind firms that SYSC 6.3.1R requires a firm to have in place systems and controls that enable it to identify, assess, monitor and manage money laundering risk. SYSC 6.3.3R further requires a firm to carry out a regular assessment of the adequacy of these systems and controls.

A thorough understanding of financial crime risks is key if a firm is to apply proportionate and effective systems and controls. Please reach out to your representative at Duff & Phelps Ltd if you require any assistance with your financial crime risk assessment.

Kroll's Services

Kroll | A Division of DUFF & PHELPS

In April 2018 Duff & Phelps acquired Kroll, a leading global provider of risk solutions. Kroll has been helping clients make confident risk management decisions about people, assets, operations and security for more than 40 years. Kroll Compliance presents a market-leading portfolio of Anti-Money Laundering (AML), Know Your Customer (KYC) and Anti-Bribery & Corruption (AB&C) compliance services.

Through a combination of in-depth subject matter expertise, global research capabilities, and flexible technology tools Kroll can help clients:

- Design, set-up, and implement compliance programs and policies, taking into consideration the complex and unique laws across the world
- Establish an overarching compliance strategy and culture, including firm-wide training programs
- Manage third party risks leveraging Kroll's third party Compliance Portal, a web-based due diligence, governance and compliance platform
- Take a risk-based approach to compliance through a broad range of screening and monitoring services and enhanced due diligence capabilities
- Respond to potential risks through Kroll's investigative, remediation, and look-back solutions

Anti-Money Laundering (AML)

Many of the world's top financial institutions call on Kroll to help them comply with key legislation like the USA Patriot Act and the Bank Secrecy Act (BSA). Adherence to these and other global regulations requires a risk-based approach to establishing and carrying out AML and Know Your Customer (KYC) programs, including customer identification programs and enhanced due diligence. Kroll provides tailored solutions commensurate with the level of risk involved, including: establishing policies, procedures and controls that are designed to detect and report instances of money laundering; client onboarding, screening and risk scoring; and enhanced due diligence on higher risk accounts.

Anti-Bribery and Corruption

As a result of the Foreign Corruption Practices Act (FCPA), the UK Bribery Act (UKBA) and newer country-specific legislation, the global regulatory environment has grown increasingly complicated. Exposure to corruption-related risks continues to be one of the top business issues for compliance and in-house legal professionals as well as C-level stakeholders. Kroll can equip clients with the tools necessary to mitigate and remediate these regulatory compliance concerns. Kroll's solutions include anti-bribery and corruption program design and implementation, the use of Kroll's proprietary 3rd Party Compliance Portal to assess and manage the risk of third parties and internal controls, ongoing screening, monitoring, and enhanced due diligence of third parties, and the ability to respond quickly to any bribery or corruption risk that may arise worldwide.

For more information on Kroll's Compliance Risk and Diligence services, click here.

Alison Barker delivered a speech on the role of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS)

12 March 2019

Ms. Barker's speech delivered at the Royal United Services Institute (RUSI) follows the release of OPBAS' comprehensive review on its anti-money laundering supervisory assessments of 2018.

OPBAS is the Office for Professional Body Anti-Money Laundering Supervision, which operates within the FCA. OPBAS doesn't supervise accountants and lawyers directly, but it supervises the 22 professional bodies that have that role.

In her speech, Ms. Barker gave an overview of why OPBAS was set up and its key findings since its inception. Two key findings that Ms. Barker highlighted from OPBAS' review were:

1. The accountancy sector and many smaller professional bodies focus more on representing their members than on robustly supervising standards; and
2. There is a lack of intelligence sharing between professional bodies.

Ms. Barker also discussed the negative impact of money laundering on the economy and society and why organisations such as OPBAS are important.

The full speech can be found here.

The Financial Conduct Authority (FCA) and the Securities and Exchange Commission (SEC) have signed two updated Memoranda of Understanding (MOUs).

29 March 2019

The MOUs, signed by Andrew Bailey, FCA CEO, and Jay Clayton, SEC Chairman, have been updated to ensure continued close cooperation and information sharing in the event of the UK's withdrawal from the European Union (EU).

The first MOU, originally signed in 2006, is a supervisory arrangement covering regulated entities operating across the national borders and has been updated to expand the scope of firms covered under the MOU reflecting:

i. post-financial crisis reforms related to derivatives; and

ii. the FCA's assumption of responsibility from the European Securities and Markets Authority for overseeing credit rating agencies and trade repositories in the event of the UK's withdrawal from the EU.

The second MOU provides a framework for supervisory cooperation and exchange of information relating to the supervision of entities in the alternative investment fund industry. It has been updated to enable entities regulated by the SEC and the FCA to operate on a cross-border basis, without interruption, irrespective of the outcome of Brexit.

Mr. Bailey has said that the updated MOUs will "...ensure continuity and stability for consumers and investors in the UK and US." Mr. Clayton said, "The amended MOUs…reaffirm the SEC and FCA's commitment and collaboration with respect to the oversight of… registrants for the benefit of…markets and investors."

The FCA's full press release on the updated MOUs can be found here.

FCA takes action for contempt of court

4 March 2019

On 1st March 2019, The High Court of Justice sentenced an individual to 6 months imprisonment for contempt of court. The individual had diverted funds and failed to disclose information about their assets, in breach of freezing injunctions obtained by the FCA.

Legal action was initially launched by the FCA in July 2013, in relation to four unauthorised collective investment schemes promoted mainly by a company. The individual was the main director and sole shareholder for one of the schemes, which was unlawfully promoted and operated without authorisation from the FCA, with misleading statements being made to investors by him and others, which he was aware of. The individual was also involved in the other schemes, which once again had been operated and promoted unlawfully.

Across the schemes, losses incurred exceeded £15m, leading to the individual being ordered to pay the losses to the FCA so that they could be paid back to the investors.

After initially taking action in 2013, the FCA obtained a freezing order against the individual, before making a further freezing order in 2018, requiring him to disclose all assets and preventing the disposal of them. He breached these freezing orders and did not disclose the arrangements that had been made. After the FCA brought an application to Court with the aim of discovering what had happened to the money, he admitted the breaches of the freezing orders and provided an account of where the money went. The FCA has stated that it will ensure as much money as possible is recovered for investors.

Having been sentenced to 6 months imprisonment for being in contempt of court, the Court indicated that the individual would have received a 12-month sentence but for his admissions and genuine attempt to remedy the failures to provide full and accurate information.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, stated that "the FCA will ensure that defendants who mislead investors are held to account to the fullest extent possible." The FCA is currently seeking to enforce its Judgment obtained against the individual and others, before distributing the proceeds to investors.

The full article can be found here.

FCA fines Bank £27.6 million for transaction reporting failures

19 March 2019

The FCA has fined a Bank £27.6m for failings relating to 135.8 million transaction reports between November 2007 and May 2017.

The Bank failed to provide complete and accurate information relating to approximately 86.67m reportable transactions and erroneously reported 49.1m unreportable transactions to the FCA.

The Bank was also found to have failed to take reasonable care to effectively organise its affairs in respect of its transaction reporting. These failings related to aspects of:

- the Bank's change management processes;
- its maintenance of the reference data used in its reporting; and
- its testing of whether all the transactions reported to the FCA were accurate and complete.

As the Bank agreed to resolve the case, it qualified for a 30% discount in the total penalty. The financial penalty imposed by the FCA would've been £39,427,795 without the discount.

In relation to this case, Mark Steward, FCA Executive Director of Enforcement and Market Oversight, stated the importance of Firms having "proper systems and controls to identify what transactions they have carried out, on what markets, at what price, in what quantity and with whom" in order to reduce the prospects of fundamental risks occurring, such as market abuse.

The full article can be found here.

European Securities and Markets Authority (ESMA) fines three credit rating agencies (CRAs) for breaches of conflict of interest requirements

28 March 2019

ESMA has fined three CRAs, within the same group, a total of €5,132,500 and has issued public notices against them. These actions relate to breaches of conflict of interest requirements for rating activities conducted between 2013 and 2015.

Between June 2013 and April 2018, an individual owned 20% of each of these CRAs and was also a board member of three entities rated by them. ESMA found these breaches to be due to a lack of adequate procedures and internal controls, related to conflicts of interest, prior to 2017.

In levying these fines, ESMA has taken into account voluntary measures undertaken by the three CRAs to ensure similar breaches do not occur in the future.

Further details, including background to the conflict of interest requirements, can be found here.

FCA fines investment bank £34.3 million for transaction reporting failures

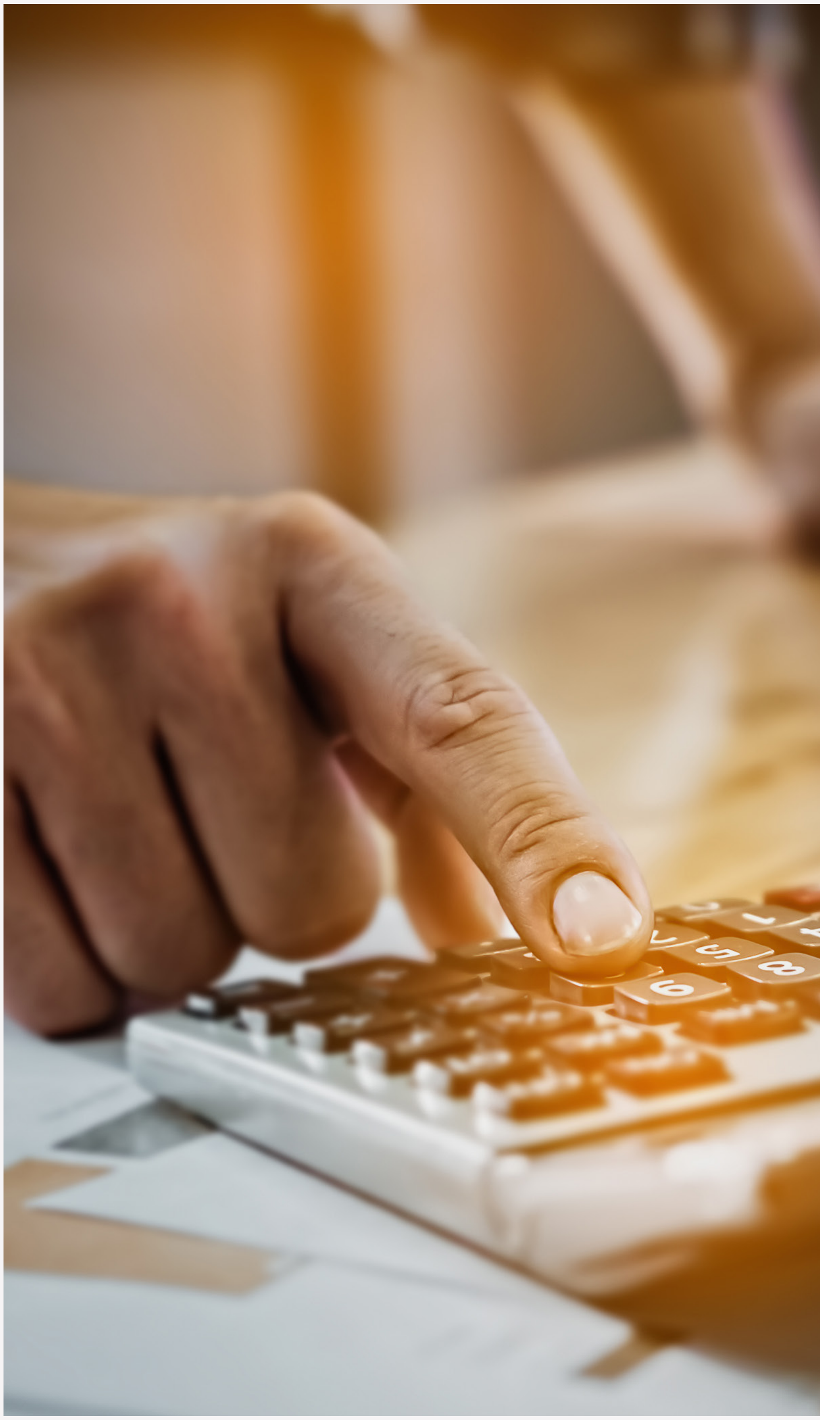
28 March 2019

The FCA has issued a fine of £34,344,700 to an investment bank in respect of transaction reporting failures between November 2007 and March 2017.

Transaction reporting assists the FCA to discover possible market abuse and to fight against financial crime. Mark Steward (FCA Executive Director of Enforcement and Market Oversight) commented on the investment bank's "serious and prolonged failures", advising other firms to learn from this case by ensuring that they are "regularly checking their systems so any problems are detected and remedied promptly".

During the 9 1/2-year period, the Firm made 220.2 million transaction reporting errors in breach of FCA rules. This included the reporting of 6.6 million transactions which were not reportable, and 231.6 million reportable transactions which were either incomplete, erroneous or untimely. The FCA also found that the Firm did not take "reasonable care" to arrange and control its activities, specifically in relation to managing counterparty reference data and testing the completeness of submitted reports.

To read the Final Notice published by the FCA, please click here.



Statements of Policy on the operation of the MiFID transparency regime

4 March 2019

The FCA published Statements of Policy outlining how the Markets in Financial Instruments Directive (MiFID) transparency regime will operate if the UK leaves the EU without an implementation period.

The MIFID transparency regime was calibrated using data from both the EU and UK. It currently is operated by ESMA, who are responsible for carrying out the various calculations and determining the various thresholds. If the UK ends up leaving the EU without an implementation period, then the UK will become solely responsible for ensuring the regime continues its operations within the UK.

The UK regime provides the FCA with new decision-making powers and obligations on how the transparency regime should be operated. The FCA also has flexibility during the 4-year period to build the system to operate the way ESMA currently operates its system.

Please find the full statement here

FCA statement on the reporting of derivatives under the UK EMIR regime in a no-deal scenario

11 March 2019

The FCA released a statement explaining what Trade Repositories (TRs) should do to ensure they are compliant with their European Market Infrastructure Reporting (EMIR) obligations, after the UK leaves the EU. The statement also covers what UK counterparties that use TRs, which includes UK firms and UK Central Counterparties (CCPs) who will be subject to the UK EMIR reporting regime, should do to ensure compliance.

To ensure a smooth transition post-Brexit day for UK counterparties fulfilling their derivative reporting obligations and TRs who wish to continue to offer services in the UK, amendments to the EMIR and transitional provisions are provided in 2 Statutory Instruments (SIs):

- The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (TR SI)
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (EMIR SI)

Additionally, following two consultations at the end of 2018, the FCA will be amending various Binding Technical Standards (BTS) for the reporting requirements under the UK EMIR regime.

The FCA's statement covers the following key areas:

- The changes for TRs on the reporting of derivatives post-Brexit day;
- The changes for UK counterparties on the reporting of derivatives post-Brexit day;
- Reporting of new and outstanding trades under the UK EMIR reporting regime by counterparties in scope;
- Historic EMIR data;
- Data access for authorities;
- Suspension for the reporting requirements;
- EMIR REFIT (which looks to amend certain EMIR reporting requirements).

The full statement can be found here.

Statement on various MiFID obligations and benchmarks regulation if the UK leaves the EU without an implementation period

13 March 2019

The FCA has set out its position in response to an ESMA statement (of 7 March 2019) clarifying how certain MiFID obligations and the Benchmarks Regulation will be approached should the UK leave the EU without an implementation period.

Post trade transparency and position limits

UK investment firms will not be required to make public, through a UK Approved Publication Arrangement (APA), transactions conducted on EU trading venues in instruments which are also traded on a UK trading venue.

Commodity derivative contracts traded on EU trading venues will not count towards the UK position limit regime, as they will not be considered economically equivalent Over the Counter (OTC) contracts.

Post-trade transparency for OTC transactions between UK investment firms and EU counterparties

UK investment firms that were not required to report transactions with EU27 investment firms before Brexit will not be required to report these to a UK APA for 15 months after Brexit.

Where the UK branch of an EU27 investment firm has entered the UK temporary permissions regime, they may fulfil their UK trade reporting by continuing to report transactions through an EU APA.

Trading obligation for derivatives

Investment firms will be required to conclude transactions in certain derivatives only on regulated markets, multilateral trading facilities or organized trading facilities, either in the UK or in a third-country considered equivalent by the UK.

Benchmarks

A public register of UK authorised benchmarks and administrators is being set up. The approach to bringing the EU Benchmarks Regulation into UK law is set out in this Statutory Instrument and summarized in the explanatory note.

Further information about the FCA's approach to using temporary transitional powers can be found here.

ESMA sets out its approach to several MiFID II/MiFIR and BMR provisions under A No-Deal Brexit

7 March 2019

The European Securities and Markets Authority (ESMA) has published a statement on the approach it will take on key MiFID II/ MiFIR and Benchmark (BMR) provisions should it be the case that the United Kingdom leaves the EU under a no deal Brexit.

Areas covered in the statement, that looks to inform stakeholders on the approach being taken, include:

The MiFID II "C (6) carve-out"

This sets out the impact a no-deal Brexit will have on the conditions an energy derivative contract must meet in order to be eligible for this exemption.

Trading obligation for derivatives

MiFIR requires transactions in some derivative contracts to be concluded on particular trading venues, most of which are currently based in the UK. A no-deal Brexit and the absence of an equivalence decision in respect of UK trading venues may lead to market participants being unable to meet their trading obligations. ESMA will monitor liquidity closely and whether EU27 market participants are able to execute derivative transactions subject to the trading obligation.

ESMA opinions on post-trade transparency and position limits

In case of a no-deal Brexit UK trading venues will no longer be considered EU trading venues and transactions concluded on these venues would be considered OTC-transactions with the associated post-trade transparency requirements.

ESMA is prepared to carry out third-country assessments of UK trading venues and upon publication of these assessments, EU27 investment firms will not be required to make public transactions executed on a UK trading venue.

Post-trade transparency for OTC transactions between EU investment firms and UK counterparties

In case of a no-deal Brexit UK investment firms will become third country counterparties and as such EU investment firms are required to make public transactions concluded with UK counterparties.

BMR: ESMA register of administrators and 3rd country benchmarks

In case of a no-deal Brexit UK administrators will be deleted from the 'ESMA register of administrators and third-country benchmarks. However, during the BMR transitional period this would not prevent EU27 supervised entities from using benchmarks provided by UK administrators.

To see the full public statement please click here

European Securities and Markets Authority (ESMA) to recognise the UK Central Securities Depository in the event of a no-deal Brexit

14 March 2019

ESMA has announced that Euroclear UK and Ireland Limited (Euroclear), the Central Securities Depository (CSD) established in the United Kingdom, will be recognised as a third country CSD should the UK leave the EU without a deal.

This will allow Euroclear to continue to provide its services in the EU and will avoid any negative impact on the Irish securities market.

The recognition will take effect from the date after the UK leaves the EU, under a no-deal scenario. ESMA considered that the conditions for recognition under Article 25 the Central Securities Depositories Regulation were met by the UK.

To see the full public statement please click here.

Richard Lloyd has been appointed as a Non-Executive Director at the FCA

4 March 2019

Mr. Lloyd's three-year term as a Non-Executive Director will begin on 1 April 2019. He has previously held senior roles at a number of consumer organisations, most notably Executive Director of Which?, the not-for-profit charitable organisation owned by the Consumers' Association. He is a founding member of the Money and Mental Health Policy Institute and is currently Chair of Resolver, a complaints resolution organisation.

In its announcement of the news, Charles Randell, FCA Chair, highlighted that Mr. Lloyd's "proven experience and deep experience of both consumer issues and financial services mean he is ideally placed to further reinforce the FCA Board's consideration of consumer needs."

The FCA also announced that it would be reappointing Baroness Sarah Hogg as a Non-Executive Director for a second three-year term and would be extending Amelia Fletcher OBE's second term as a Non-Executive Director by a further year.

To see the full public statement please click here.

FCA reveals findings from first cryptoassets consumer research

7 March 2019

The FCA has published two pieces of research looking at UK consumers' attitude to cryptoassets.

The research indicates that there is potential harm to consumers from cryptoassets, partly as they are not fully understood. Some consumers view buying cryptoassets as a "get rich quick" scheme.

However, results from the survey also show that the overall scale of harm that may be caused by cryptoassets may not be high as previously thought. The survey illustrated that 73% of UK consumers did not know what a "cryptocurrency" was and were unable to define it. It was also estimated that only 3% of the surveyed consumers had ever brought cryptoassets.

Christopher Woolard, the FCA's Executive Director of Strategy and Competition commented:

"This research gives us evidence we haven't had before about how consumers interact with cryptoassets. This will help us ensure we are acting on evidence as we seek to protect consumers and market integrity. The results suggest that although cryptoassets may not be well understood by many consumers, the vast majority don't buy or use them currently. Whilst the research suggests some harm to individual cryptoassets users, it does not suggest a large impact on wider society. Nevertheless, cryptoassets are complex, volatile products – consumers investing in them should be prepared to lose all of their money".

FCA confirms increase in Financial Ombudsman Service award limit

8 March 2019

The FCA has confirmed that from 1 April, the Financial Ombudsman Service will be able to require financial services firms to pay significantly more compensation to consumers and businesses. The current limit of £150,000 will increase to £350,000 for complaints about actions by firms. For complaints about actions before 1 April the limit will rise to £160,000. The FCA has also confirmed that both award limits will be automatically adjusted every year to keep pace with inflation.

At the same time as the new award limits coming into force, there will also be an extension of the service to larger small and medium-sized enterprises (SMEs). These are firms with:

- an annual turnover of under £6.5 million;
- an annual balance sheet total of under £5 million; or
- fewer than 50 employees.

As a result of the extension, an additional 210,000 SMEs will be able to complain to the Financial Ombudsman Service.

FCA introduces final rules on the Directory of financial services workers

8 March 2019

The FCA issued a Policy Statement outlining the final rules on the new Directory, which will act as a public register, allowing consumers and firms to search for information on key individuals working in the financial services sector.

Users will be able to search for information on the following:

- Directors and Senior Managers;
- Certified Staff; and
- Other important individuals who undertake business with clients and must be qualified to do so.

The FCA has stated that the design of the Directory will be user-friendly and easy to navigate.

Jonathan Davidson, Executive Director of Supervision - Retail and Authorisations at the FCA, has said that the Directory will “help consumers to protect themselves from unauthorised individuals” because they will be able to readily identify people that have been banned by the FCA. Consumers will also be able to feel confident that they are dealing with appropriately qualified persons, or with individuals who an authorised firm has assessed to be fit and proper to discharge their role and responsibilities.

In addition to helping consumers, the Directory will assist various professional and regulatory bodies to oversee the market and gather data, as well as help firms to check the employment history of potential new hires and verify references.

The final rules require firms to submit accurate information on “Directory individuals” in a timely manner. The FCA has extended the reporting deadlines, confirming that firms will have 7 business days to update information on the Directory in relation to joiners, leavers and changes in circumstances. Solo-regulated firms will be able to begin submitting data from 9 December 2019 when the Senior Managers & Certification Regime comes into force.

The projected launch date of the Directory is March 2020.

Further information on the data submission process and deadlines can be found in the Policy Statement which can be read here.

FCA responds to ESMA's statement on share trading obligations under MiFID II

19 March 2019

The European Securities and Markets Authority ("ESMA") published a statement outlining its expectations for the share trading obligation ("STO") in the EU in the event the UK leaves the EU without a deal and in the absence of an equivalence decision by the European Commission. The STO under the Markets in Financial Instruments Regulation ("MiFIR") currently requires investment firms to ensure that the trades they undertake in shares admitted to trading on a regulated market or traded on a trading venue take place on a regulated market, MTF, systematic internaliser or an equivalent third-country trading venue.

ESMA's statement confirms that the STO will be applicable to all securities of EU-incorporated firms trading on EU27 trading venues, as well as securities of companies incorporated in the UK whose securities are 'liquid' in the EU. EU banks, funds and asset managers will be unable to trade these securities in the UK, even if the UK is the home listing authority of a company. Along with its statement, ESMA published a list of ISINs that would be subject to the STO.

The FCA hopes for further dialogue with ESMA and other European authorities on this matter in order to minimise disruption to markets caused by the UK and the EU having separate STOs.

The FCA's full response and ESMA's statement can be found here.

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CTA intelligence Awards 2018

ADVISORY AND CONSULTANCY: TAX
Drawdown Private Equity Services Awards 2018

BEST ADVISORY FIRM – REGULATON AND COMPLIANCE
HFM Week 2018

BEST GLOBAL CYBERSECURITY SERVICES PROVIDER
Hedgeweek Global Awards 2018

BEST COMPLIANCE CONSULTING TEAM
Women in Compliance Awards 2017

BEST GLOBAL REGULATORY ADVISORY FIRM
Hedgeweek Global Awards 2017

EUROPEAN SERVICES - BEST CONSULTANCY FIRM
CTA Intelligence 2016

BEST EUROPEAN OVERALL ADVISORY FIRM
HFM Week 2016

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