

Regulatory Focus

Issue 125

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 May 2019.

INSIDE

2 VOICE

Global Regulatory Outlook 2019
Senior Managers and Certification
Regime Toolkit

3 SUPERVISORY

Financial conduct regulation in a
restless world

4 ENFORCEMENT

Delegated Regulation on measures to
mitigate money laundering and terrorist
financing risk in third countries under
the Fourth Money Laundering Directive
(4MLD)
Court finds in favour of the FCA in case
against Firm involved in running an
unauthorised investment scheme
FCA Bans Broker
FCA and PRA jointly fine retail bank
£1.89m for outsourcing failings

8 BREXIT

Bank of England Speech: Post-Brexit
Regulatory Landscape
FCA confirms extension of the Temporary
Permission Regime deadline
FCA update on share trading obligations

10 OTHER PUBLICATIONS

The European Securities and Markets
Authority (ESMA) submits technical advice
on Sustainable Finance to the European
Commission
ESMA says market risk remains high but stable
Karina McTeague, Director of General
Insurance and Conduct Specialists Supervision,
delivered a speech on the Insurance
Distribution Directive (IDD) and the Senior
Managers & Certification Regime (SM&CR) at
British Insurance Brokers' Association (BIBA)
May 2019 Conference.
Over £27 million reported lost to crypto and
forex investment scams
FCA statement on the launch of the finalised
CTI templates



Congratulations to Marie Barber, Andy Murray and the [Regulatory Tax Advisory](#) team for being named "Best Financial Services Tax Practice" at the Tolley's Taxation Awards on the 16th May 2019

Global Regulatory Outlook 2019



Our most recent 'Global Regulatory Outlook' has just launched, providing insight into how firms are grappling with the constant of regulatory compliance, against a backdrop of continual change. To read the report click [here](#).

Senior Managers and Certification Regime Toolkit

Duff & Phelps are working with a number of firms on their SM&CR projects. Our services include the provision of an [SM&CR toolkit](#) that will enable your firm to:

- Manage your project planning for **SM&CR implementation**
- Undertake a mapping exercise from the current Approved Persons Regime to the new SM&CR Regime
- Prepare **Statements of Responsibilities**
- Implement new procedures for SM&CR, including **New Joiner and Leaver Procedures** for Senior Managers and Certified Individuals
- Conduct **Fit and Proper Assessments**
- Implement the **Certification process**
- Provide guidance on relevant areas, such as the Duty of Responsibility for Senior Managers

Our Toolkit covers all the requirements of SM&CR as well as practical guidance on how to apply SM&CR to your business.

For further information please email jane.stoakes@duffandphelps.com.



Financial conduct regulation in a restless world

8 May

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered a speech at the Deloitte conduct risk roadshow.

Mr. Woolard highlighted four main themes which included:

- Innovation, data and data ethics
- Future of regulation
- Intergenerational changes
- The changing international landscape

Innovation

Mr. Woolard noted that whilst the FCA always has constant pressure on its supervisory priorities, the way it manages these priorities is evolving as technology, data and analytics develop. For example, the FCA has begun employing machine learning techniques which enable it to identify firms or individuals who pose a risk to the FCA's objectives. He emphasised that the thinking behind the FCA's work on technology is to make regulation more efficient. For example, the current FCA rulebook leaves understanding of the rules open to ambiguity, leaving firms and individuals having to manually interpret the regulations. In 2017, the FCA developed a proof of concept which makes handbook regulatory requirements machine readable.

Future of Regulation

Mr. Woolard raised the question of whether the FCA's principles should be supplemented with a duty of care or duty of responsibility. He mentioned that the cost of regulation is still an important aspect that needs to be considered. The FCA's business plan announced that it will be looking further into the costs incurred by small authorised firms.

Intergenerational changes

Mr. Woolard pointed out that if the financial sector was to be fit for the future, it would have to consider the needs of each generation. As a result, it is vital that the FCA adapts to ensure regulations meet the changing needs of the people, which it is required to protect. He illustrated that such a process can be implemented by engaging with stakeholders on various solutions ranging from social policy, industry action through to regulation. He described the task as an "intergenerational challenge" for public policymakers.

The changing international landscape

Mr. Woolard emphasized Brexit in relation to the "changing international landscape". Despite the changes caused by Brexit, the FCA's focus will continue to be delivering its objectives; market integrity, protection of consumers and making competition work well. Regardless of Brexit, the FCA will remain a global regulator, advocating open markets, which plays a pivotal role in ensuring international standards are implemented. As a result, with the ever-changing landscape, the international engagement aspect of the FCA's work will continue to be vital. He mentioned how post-Brexit the FCA will look to strengthen pre-existing affiliations to build stronger bilateral relationships.

To see the full speech, click [here](#).



Delegated Regulation on measures to mitigate money laundering and terrorist financing risk in third countries under the Fourth Money Laundering Directive (4MLD)

14 May

This Delegated Regulation outlines regulatory technical standards for the minimum actions and additional measures credit and financial institutions must take where they have established branches or majority-owned subsidiaries in a third country, whose law does not permit, or restricts, the implementation of group-wide policies and procedures to mitigate money laundering and terrorist financing risk.

The regulation details additional measures for undertaking risk assessments, sharing and processing of customer data, suspicious transaction disclosures and record-keeping. These additional measures include:

- Ensuring that these branches and subsidiaries deal with financial products and services which present a low money laundering and terrorist financing risk and a low impact to the overall group risk exposure,
- Completing enhanced reviews of these branches and subsidiaries, including onsite checks and independent audits,
- Requiring these branches and subsidiaries to obtain senior management approval for higher risk business relationships and to conduct their own enhanced monitoring,
- Ensuring these branches and subsidiaries have effective systems and controls to identify and report suspicious transactions.

The [regulation](#) enters into force on 3 June 2019 and will apply from 3 September 2019.



Court finds in favour of the FCA in case against Firm involved in running an unauthorised investment scheme

22 May

The scheme involved consumers giving money to the Firm, in return for an annual return of 6%. Investors were led to believe that the Firm would be investing on forex and equity markets. However, only a small amount of the investors' money was used in this way, with most of the proceeds being used to fund an office in Mayfair, brokers' salaries and the lifestyle of an individual broker involved in the scheme.

The Order of the High Court, made on 14 May 2019, declares that the Firm ran a deposit taking scheme, without being authorised to do so by the FCA. It requires the Firm, and the main individual involved in the Firm, to pay the FCA the full value of all outstanding sums owed to investors (£917,231). The FCA will distribute any funds it is able to recover to investors.

In its press release regarding the High Court order, Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, noted the importance for consumers to be “especially wary when contacted out of the blue about investment opportunities” and highlighted the importance of confirming FCA authorisation when investing.

The FCA's press release on the case can be found [here](#).



FCA Bans Broker

29 May

The FCA has banned a broker from carrying out any regulated function in the financial services industry. The FCA considered that, by acting dishonestly and lacking integrity, he was not a fit and proper individual.

The FCA uncovered that the broker arranged nine wash trades between September 2008 and August 2009 to secure £258,151 in unwarranted brokerage payments. Wash trading is a form of market manipulation and involves entering into transactions in which the same financial instrument is purchased and sold simultaneously, giving the impression of increased activity in the marketplace.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said that the broker's actions were "motivated by greed" and that the FCA's decision to ban him "reflects our commitment to making sure that people working in financial services act with integrity".

The FCA found that the broker had falsely convinced a trader at an investment bank that he would influence the Japanese Yen LIBOR submissions of other banks. In exchange, the trader entered into wash trades with him. The broker was aware that the payments would increase the bonus pool available to him and arranged the wash trades with the knowledge they were improper, purposefully attempting to hide them.

To read the FCA's Final Notice in full, please click [here](#).



FCA and PRA jointly fine retail bank £1.89m for outsourcing failings

30 May

The joint investigation found that, between April 2014 and December 2016, the retail bank did not have satisfactory procedures to assess the business continuity and disaster recovery arrangements of its outsourced service providers, who were responsible for critical prepaid and charge card functions. This failure posed a risk to the retail banks operational resilience and exposed its customers to a serious risk of harm.

These risks crystallised on 24 December 2015 when an outsourced card processor encountered a complete outage of its authorisation and processing services for over eight hours. This led to 5,356 card transactions (in stores, at ATMs and online) not being authorised and 3,367 customers being unable to use their cards.

Mark Steward, FCA Executive Director of Enforcement and Market Oversight, said:

“The systems and controls supporting the oversight and governance of the retail banks outsourcing arrangements were

inadequate and exposed customers to unnecessary and avoidable harm and inconvenience. There is no lower standard for outsourced systems and controls and firms are accountable for failures by outsourcing providers.”

Sam Woods, Chief Executive Officer of the PRA, and Deputy Governor for Prudential Regulation, said:

“Firms’ ability to manage outsourcing of any critical activities is a vital part of maintaining their safety and soundness. Such outsourcing is an important part of a firm’s operational resilience... In addition, this was a repeat failing which demonstrates a lack of adequate and timely remediation. This is a significant aggravating factor in this case, leading to an uplift in the penalty”.

The retail bank implemented newly designed outsourcing policies and procedures at the end of 2016 and agreed to resolve this matter leading to a reduction in the fine imposed.

Full article can be found [here](#).



Bank of England Speech: Post-Brexit Regulatory Landscape

16 May

Sam Woods', CEO of the Prudential Regulation Authority, speech explored the style of financial regulation might exist in a post-Brexit world.

Whilst the speech focusses on the banking and insurance industry, he outlines six principles which he believes Government and Parliament should consider as the basis for any new regulatory regime:

1. **Robust prudential standards** – ensuring continuity in the supply of vital financial services to the real economy throughout the cycle, including after severe shocks.
2. **Responsible openness based on international collaboration and standards** - particularly relevant to maintaining the UK as a leading international financial centre, including:
 - a. Engaging strongly in international standard-setting processes.
 - b. Adopting practices and structures which promote strong collaboration with colleagues in other jurisdictions.
 - c. Hosting cross-border business in the UK.
3. **Proportionality and sensitivity to business models and promoting competition** - financial companies are privately or mutually owned and regulated in the public interest, which can lead to tensions between regulator and regulated.
4. **Dynamism and responsiveness** - the financial system is constantly changing, often for good reasons (adopting new technologies to improve service) and regulation should not create unnecessary barriers to entry or impede healthy competition.
5. **Consistency** - Ensure confidence that the regulatory framework is stable, that prudential rules are based on clear evidence and that supervisory judgements are impartial and consistent.
6. **Accountability** - Particularly important in a system where considerable discretion is provided to regulators, both to make rules and to supervise and enforce firms' adherence to them.

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

Andrew Bailey delivered a [speech](#) on the future of conduct regulation on 23 April 2019, which explored similar themes of principles and outcome focused regulation. [Regulatory Focus Issue 124](#) includes an overview of this speech.



FCA confirms extension of the Temporary Permission Regime deadline

24 May

The FCA [confirmed](#) the extension of the deadline for EEA firms passporting into the UK to notify the FCA that they wish to participate to the Transitional Permissions Regime (“TPR”) to 30 October 2019. The extension will also apply to EEA investment funds marketing in the UK and the application deadline for Trade Repository and Credit Rating Agencies has also been extended to the same date. The TPR is instead closed for e-money firms but it is expected that this will reopen again under the relevant HM Treasury legislation on 31 July and close on 30 October 2019.

Nausicaa Delfas, Executive Director of International at the FCA, reminded firms of the importance of continuing planning for all scenarios, including the possibility of a no-deal Brexit at the end of October 2019.

The FCA will use its powers to issue transitional directions where possible. In areas where the FCA will not be providing transitional relief (such as MIFID II transaction reporting) the FCA reminded firms of its expectations that these should take reasonable steps to comply with the changes of legislation on exit day. The FCA also reminded firms that it does not intend to take a strict liability approach in case of failure to comply with the new requirements. However, firms should now use the additional time until end of October to prepare and, should they not meet the new obligations on exit day, be ready to provide evidence of why this happened.

The FCA also invited firms to continue monitoring its [Brexit webpages](#) where it will continue publishing relevant updates.

FCA update on share trading obligations

29 May

The FCA have released a [statement](#) regarding the EU's share trading obligation (STO) under a no deal scenario. It is encouraged by the steps taken by ESMA to reduce the potential disruption that their previous announcement, on 19 March 2019, may have caused.

The revised approach will allow EU banks and investment firms to trade UK shares admitted to a UK trading venue in the UK. However, this approach may still cause disruption to investors, since some EU27 shares (which would still be subject to the STO) have a listing, and often their main or only centre of market liquidity, on UK markets. This would lead to companies being restricted in which investors they can access and limit their freedom of choice when seeking a listing on a public stock market.

The FCA believes this revised approach does not mitigate the risk of disruption from conflicting EU27 and UK STOs. It believes in open markets and competition between trading venues, and that reciprocal equivalence is the best way to deal with overlapping share trading obligations.

The UK has onshored the EU STO regime, which the FCA believe makes it one of the most equivalent countries in the world. In the absence of reciprocal equivalence, maintaining the status quo for a limited time after Brexit, between the EU and UK STOs would mitigate disruption until a longer term solution is agreed.

The FCA is ready to engage constructively with ESMA and other European authorities and will continue to consider its approach to implementing any STO requirements in the event of a hard Brexit.

ESMA statement regarding the revised STO can be found [here](#).

The European Securities and Markets Authority (ESMA) submits technical advice on Sustainable Finance to the European Commission

3 May

ESMA published its technical advice to the European Commission (EC) on sustainable finance initiatives. This advice has been produced to support the EC's Sustainability Action Plan, in the areas of investment services and investment funds.

The two final reports contain technical advice to the EC on the integration of sustainability risks and factors into the Markets in Financial Instruments Directive II (MiFID II), the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings in Collective Investment in Transferable Securities (UCITS) Directive. The sustainability risks and factors relate to environmental, social and good governance considerations.

The final report on integrating sustainability risks and factors in MiFID II can be found [here](#).

The final report on integrating sustainability risks and factors in the UCITS Directive and AIFMD can be found [here](#).



ESMA says market risk remains high but stable

15 May

The European Securities and Markets Authority (ESMA) has published its latest risk dashboard for the European Union's securities markets. The risk dashboard, which covers Q1 2019, has found that the risk landscape remains largely unchanged compared to Q4 2018.

In Q1 2019, EU securities markets were characterised by the following:

- stock market recovery;
- higher liquidity in bond markets; and
- low volatility levels.

The key risk area remains market overvaluation, as the significant market correction that occurred at the end of 2018 has been reversed since the start of 2019, meaning that market risk remains high.

Recent announcements by key central banks have suggested that investors' long-standing expectations of interest rate rises have been adjusted. In addition, uncertainty about the terms of the UK's exit from the EU continue to linger, despite recent conclusions from the EU Council which mitigate key no-deal Brexit risks in the short term.

It is expected that the following will continue to be the most important drivers of risk in the upcoming months:

- the subdued growth prospects for the EU and the global economy;
- global trade tensions;
- uncertainty surrounding the outcome of Brexit; and
- the fading expectations of monetary policy normalisation.

The ESMA's risk dashboard can be found [here](#).



Karina McTeague, Director of General Insurance and Conduct Specialists Supervision, delivered a speech on the Insurance Distribution Directive (IDD) and the Senior Managers & Certification Regime (SM&CR) at British Insurance Brokers' Association (BIBA) May 2019 Conference.

16 May

Ms. McTeague's speech at the conference, which featured several speakers from industry as well as a number of public figures, covered the following:

- The potential threats of rapid technological and societal change to firms in the insurance industry and the need for firms to consider consumer trust in their strategies tackling these threats.
- An overview of the Insurance Distribution Directives (IDD), including the following examples where firms are falling short of certain IDD requirements:
 - Failing to ask appropriate questions to identify the needs of its customers.
 - Customers being overloaded with product information rather than focusing on disclosing the key, appropriate and relevant product information.
- The importance of the insurance industry improving its approach to conduct and culture and how the Senior Managers & Certification Regime will assist with this.
- An outline of the FCA's expectations of insurance firms when planning for various Brexit scenarios.

Ms. McTeague also brought to the audience's attention the recent 'Dear CEO' letter concerning the General Insurance Distribution Chain and the harms identified including:

- Customers being offered products with limited value.
- Customers paying potentially excessive prices due to the remuneration taken by various parties in the distribution chain.
- Customers receiving poor service where lack of clarity on roles and responsibilities means no-one in the distribution chain takes ownership for dealing with a customer issue.

Ms. McTeague's full speech can be found [here](#).



Over £27 million reported lost to crypto and forex investment scams

21 May

The FCA and Action Fraud issued a joint warning to alert the public to be skeptical of 'get rich quick' trading scams promoted online. This warning comes from a significant increase in crypto assets and forex investment scams reports received by Action Fraud in 2018/19, with victims losing over £27 million.

The FCA and Action Fraud have called on consumers who are considering online investment opportunities to review the FCA's ScamSmart website for tips on how to avoid investment fraud.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said "Scammers can be very convincing so always do your own research into any firm you are considering investing with, to make sure that they are the real deal. Before investing online find out how to protect yourself from scams by visiting the ScamSmart website, and if in any doubt – don't invest".

For more information, click [here](#).

FCA statement on the launch of the finalised CTI templates

22 May

The Cost Transparency Initiative (CTI) have officially launched finalised templates for the disclosure of costs and charges to institutional investors. These templates allow institutional investors access to critical costs information, in a standardised format, which should allow comparison of charges between providers.

The CTI launched on 7 November 2018, as an independent group, to progress the work of the Institutional Disclosure Working Group and improve cost transparency for institutional investors, which was a key remedy of the FCA's asset management market study.

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, commented on the CTI's intention to extend the standards into asset classes and service types not yet tackled.

The FCA will look at asset manager and service provider uptake, which should lead to better investor outcomes, and will reconsider disclosure to institutional investors should there be any reasons for concern.

The templates have been designed to provide helpful information to institutional investors, rather than to deliver compliance with MiFID and other requirements. However, where firms complete the templates in a comprehensive and accurate way, they should assist the firm in meeting the required regulatory requirements.

The CTI templates can be found [here](#).

OUR RECENT AWARDS

BEST FINANCIAL SERVICES TAX PRACTICE

Tolley's Tax Awards 2019

BEST COMPLIANCE CONSULTANCY

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

About Duff & Phelps

Duff & Phelps is the global advisor that protects, restores and maximizes value for clients in the areas of valuation, corporate finance, investigations, disputes, cyber security, compliance and regulatory matters, and other governance-related issues. We work with clients across diverse sectors, mitigating risk to assets, operations and people. With Kroll, a division of Duff & Phelps since 2018, our firm has nearly 3,500 professionals in 28 countries around the world. For more information, visit www.duffandphelps.com.

M&A advisory, capital raising and secondary market advisory services in the United States are provided by Duff & Phelps Securities, LLC. Member FINRA/ SIPC. Pagemill Partners is a Division of Duff & Phelps Securities, LLC. M&A advisory, capital raising and secondary market advisory services in the United Kingdom are provided by Duff & Phelps Securities Ltd. (DPSL), which is authorized and regulated by the Financial Conduct Authority. M&A advisory and capital raising services in Germany are provided by Duff & Phelps GmbH, which is a Tied Agent of DPSL. Valuation Advisory Services in India are provided by Duff & Phelps India Private Limited under a category 1 merchant banker license issued by the Securities and Exchange Board of India.