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Regulatory Focus

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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 February 2019.

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FCA urges unauthorised land banking scheme victims to get in touch to return funds

Andrew Bailey delivered a speech focussing on the impact MiFID II has had on the use of research at the European Independent Research Providers Association

Senior Managers and Certification Regime (SM&CR)

The FCA issued a Policy Statement confirming the final rules on establishing the Directory. These rules have been set out following feedback received from respondents to the initial consultation on SM&CR, who objected to plans to disclose only senior managers and not certified staff on its FS Register. This lack of transparency was a concern for respondents.

The Directory will provide information on a wider range of individuals, including Certified staff, directors who are not performing Senior Management Functions (both executive and non-executive) and other individuals who are sole traders or Appointed Representatives.

Firms will have to report these individuals to the FCA using the Connect system. The good news is that the FCA has relaxed the reporting timescales, since now firms will have to report joiners, leavers and other changes in circumstances within seven business days. Firms can start reporting from 9th December 2019 but have 12 months to certify staff and the deadlines reflect the SM&CR transitional arrangements. The Directory has to be up to date by 9th December 2020, which is when available information on solo regulated firms will be published.

There are now only 9 months until SM&CR is implemented for all FCA solo regulated firms. We at Duff & Phelps are ready to assist you with implementation of your SM&CR project, training or advice on SM&CR. We have developed an SM&CR toolkit which includes:

- A project plan
- An SM&CR Handbook
- Templates that can be used for implementation and ongoing compliance with the regime
- Compliance manual inserts

To find out more about how Duff & Phelps can assist you and your firm with SM&CR, please click here.

The FCA's approach to Anti Money Laundering (AML) supervision

We are often asked by our clients; "what is the FCA's approach to AML supervision?".

The FCA has a risk-based approach to AML supervision. The FCA uses information from the UK National Risk Assessment of money laundering and terrorist financing ("NRA") and information from the Gabriel financial crime data returns to ensure that its resources are targeted effectively.

There are currently four key programmes of proactive AML supervision

Systematic AML programme (SAMLP)
A programme of regular scrutiny of 14 major retail and investment banks operating in the UK. The FCA completed its first round of reviews in 2017 and is now busy with its second round of reviews that focus on the implementation of recommendations from the first round.

Regular AML inspections of other high-risk firms
The FCA has a programme of regular AML inspections of other firms that present a higher risk of money laundering. The population is dynamic and driven by the information sourced from the NRA and financial crime returns. This programme aims to visit 150 firms over a four-year cycle. In its 2017/18 Anti-money laundering annual report, the FCA highlighted numerous weaknesses within this population, in particular that some compliance and financial crime staff at smaller firms failed to test the effectiveness of the firm's AML controls, allowing weaknesses to go unidentified.

Financial Crime Risk Assurance Programme
Under this programme the FCA either visited or conducted desk-based reviews of 100 firms from sectors previously considered a lower risk for money laundering. This programme has given the FCA a better picture of the risks posed by different sectors and is now a permanent part of the FCA's proactive supervision.

Outbound call campaign
Since 2017 the FCA contact centre has been asking smaller firms a series of questions to test their understanding of their anti-money laundering and counter terrorist financing responsibilities, about 550 firms have been contacted and the FCA has been using these conversations to ensure that good AML standards are maintained.

Firms are reminded that under SYSC 6.3.1R they must have systems and controls that enable them to identify, assess, monitor and manage their money laundering risks. Ensuring that firms have appropriate systems and controls in place that are operationally effective and meet the FCA expectations is difficult. Leading firms are successful because they set-up a robust AML and sanctions framework, run and control their business in smart and cost-effective ways, instill a good compliance culture throughout its business and stay up to date with the FCA requirements. Please get in touch with your Duff and Phelps contact if you would like advice on the FCA regulatory expectations and industry best practice. Furthermore, our Regulatory Consulting team has extensive AML advisory and Remediation experience. Contact Maria Evstropova for more details: Maria.Evstropova@DuffandPhelps.com

European Securities and Markets Authority (ESMA) Consults on Liquidity Stress Test Guidance for Investment Funds

5 February 2019

The ESMA is consulting on its draft guidance for liquidity stress tests of investment funds, applicable to both alternative investment and UCITS funds.

The purpose of these draft guidelines is to promote consistency in the way national competent authorities supervise funds liquidity stress testing across the European Union (EU).

Managers of EU investment funds must regularly test their resilience to the various market risks they are exposed to, including liquidity risk.

The consultation sets out 14 principle-based criteria for managers to follow when liquidity stress testing their funds, which require the tests to:

- be tailored towards the individual fund.
- reflect the most applicable risk to a fund.
- be sufficiently extreme or unfavourable (but plausible).
- sufficiently model how a manager is likely to act in times of stressed market conditions.
- be embedded into the funds overall risk management framework.

The full public consultation paper, which can be found here, looks into greater detail surrounding the mechanics of the proposal drafted by ESMA.

ESMA identifies 2019 priorities for supervisory convergence

6 February 2019

The ESMA has published its 2019 supervisory convergence work program, which sets out its workstreams and focus areas for the upcoming year.

For 2019, the following priorities for supervisory convergence were identified:

- ensuring supervisory convergence in the context of the UK's decision to withdraw from the EU;
- making data and its use more robust and consistent by developing and further clarifying reporting methodologies and providing guidance to ensure complete and high-quality data;
- driving forward consistency in the application of the Markets in Financial Instruments Directive II and the Markets in Financial Instruments Regulation (MiFID II/ MiFIR) and reaching a common understanding on arising supervisory challenges;
- safeguarding the free movement of services in the EU through adequate investor protection in the context of cross-border provision of services; and
- fostering supervisory convergence in the field of financial innovation.

The overall objective of these priorities is to achieve "comparable regulatory and supervisory outcomes to ensure a level playing field of high-quality regulation and supervision without regulatory arbitrage or a race to the bottom between Member States".

The specified priorities will influence ESMA's convergence agenda in 2019 and help with further coordination amongst National Competent Authorities (NCAs), building on the authority's 2018 priorities. The 2019 priorities, which may be adjusted depending on changes in the EU environment, take into account factors such as market environment, legislative and regulatory developments, and the NCAs' supervisory priorities.

For more information, click here.

The Financial Conduct Authority (FCA) has fined a former fund manager for his conduct in relation to an Initial Public Offering (IPO) and a placing.

5 February 2019

A former fund manager has been fined £32,200 as a result of submitting orders as part of a book build for shares that were to be quoted on public exchanges. He went out of his way, ahead of the new shares closing, to contact competitor fund managers in an attempt to influence them to cap their orders at the same price limit as his own orders. Not only did he risk undermining the integrity of the market, he also failed to observe proper standards of market conduct.

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

'This matter underscores the importance of fund managers taking care to avoid undermining the proper price formation process in both IPOs and placings. These markets play a vital role in helping companies raise capital in the UK's financial markets and when they are put at risk the FCA will take action.'

A company Director is sentenced to 2 years for illegally operating an investment scheme and fraud

5 February 2019

A company Director has been sentenced to 2 years in prison, suspended for 2 years plus 300 hours unpaid community work. Between October 2015 and November 2017, he promoted a deposit taking scheme without authorisation from the FCA. He was entering into agreements, taking investors' money and often promising returns of 100% based on his claimed success as a currency trader. In reality, the majority of the money was being used to fund his expensive lifestyle.

The Director has endured a financial restraint on his remaining assets by the FCA who will look to pursue confiscation proceedings in relation to the remaining assets which will hopefully make a difference in helping to compensate the victims in this case.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, commented:

'The FCA's prompt action has nipped the fraud in the bud and stopped it becoming inevitably bigger, causing greater loss to a wider group of victims. The FCA reminds investors to beware of anyone who is not authorised to carry out the activities they are offering.'

Brexit – what the FCA expects firms and other regulated persons to do now

1 February 2019

The Treasury has published draft legislation that will give the FCA temporary powers to make transitional provisions in relation to financial regulation if the UK leaves the EU without a withdrawal agreement in place.

The FCA has stated that it "…intend[s] to use this power broadly to ensure that firms and other regulated entities can generally continue to comply with their regulatory obligations as they did before exit day for a temporary period". This means that firms will not be expected to prepare now to meet changes in their regulatory obligations arising from Brexit.

However, there are certain areas in which making transitional provisions would be contradictory to the FCA's statutory objectives, and the FCA expects firms to begin preparing to comply with changes to their UK regulatory obligations in these areas now:

1. MiFID II transaction reporting
2. EMIR reporting obligations
3. EEA Issuer rules
4. Contractual recognition of bail-in
5. Short selling notifications
6. Use of credit ratings for regulatory purposes
7. Securitisation

The FCA has made clear that although it expects firms to work towards complying with relevant changes by exit day, it is "…conscious of the scale, complexity, and magnitude…" of these changes. Therefore, where firms can demonstrate that reasonable steps were taken to achieve compliance, the FCA will not take a strict liability approach if not all requirements have been met immediately.

Firms should refer to the Annex to the announcement for more detailed information on the areas outlined above.

The European Securities and Markets Authority (ESMA) has agreed a Memoranda of Understanding (MoU) with the Bank of England (BoE) for the recognition of central counterparties (CCPs) and the UK central securities depository (CSD)

1 February 2019

Further to ESMA's previous public statements towards the end of 2018 that its Board of Supervisors supports continued access to UK CCPs and the UK CSD, MoUs have now been reached should there be a no-deal Brexit.

In its announcement, ESMA said that it supported this continued access to limit the risk of disruption in central clearing as well as to avoid any negative impact on the financial stability of the EU. It has also said it will continue to allow the UK CSD to serve Irish securities to limit disruption to this market.

ESMA has said that the MoUs set out in detail the relationship between itself and the BoE in terms of information-sharing arrangements and scope of cooperation. It plans to complete the next steps for the recognition of the UK CCPs and the UK CSD well ahead of Brexit date, with the recognition decisions taking effect on the day after Brexit, in the event of a no-deal scenario.

The full press release can be found here.

Steven Maijoor, the Chair of the European Securities and Markets Authority (ESMA) delivered a speech on the regulatory challenges of Brexit at the European Financial Forum.

13 February 2019

Steven Maijoor's speech addressed what he described as a "*myriad of challenges*" faced by ESMA because of the United Kingdom's intent to leave the European Union. The following areas were discussed:

- ESMA's preparations for a *no-deal* Brexit;
- An update on ESMA's work to ensure continuity of clearing and settlement arrangements;
- The cooperation agreements that will be needed including an update on Memoranda of Understanding (MOUs) that have recently been agreed between EU and UK regulators;
- A look at what happens after Brexit including improvements needed to "*ensure regulation and supervision continue to be effective*"; and
- The importance of an appropriate framework for third-country regulation and supervision given the prospect of the UK financial market being moved outside of the EU.

Maijoor's full speech can be found here.

Joint statement by UK and US authorities on continuity

25 February 2019

UK and US authorities have been taking measures to ensure the UK's withdrawal from the EU will not lead to regulatory uncertainty, in respect of derivatives market activity between the two countries. The aim of these measures is to promote financial stability and to ensure smooth functioning of the financial markets.

Governor of the Bank of England Mark Carney stated:

"Derivatives can seem far removed from the everyday concerns of households and businesses, but they are essential for everyone to save and invest with confidence.

"As host of the world's largest and most sophisticated derivative markets, the US and UK have special responsibilities to keep their markets resilient, efficient and open. The measures we are announcing today will do that. Market participants can be confident that the clearing and trading of derivatives between the UK and US will maintain the high standards of today when the UK leaves the EU."

The FCA, the Bank of England ("BoE") and the Commodity Futures Trading Commission ("CFTC") all have arrangements in place to ensure continued supervisory co-operation. Such arrangements are designed to allow cross-border oversight in the derivatives market, and to promote market orderliness, confidence and financial stability within the operating markets.

As part of the arrangements:

- The BoE and CFTC are in the process of updating, in connection with the UK's forthcoming recognition of CFTC-registered central counterparties (CCPs), their Memorandum of Understanding (MoU) covering clearing activity which was originally signed in 2009.
- The FCA and CFTC are in the process of updating their MoUs covering certain firms in the derivatives and the alternative investment fund industry. These MoUs were originally signed in 2013 and 2016.

The full article can be found here.

FCA releases updated guidance on EU departure

27 February 2019

The FCA releases updated guidance on EU departure preparations in order to provide support to Firms in finalising their Brexit preparations. It is advising that Firms consider all possible scenarios, including a 'hard' Brexit if the UK leaves the EU without an appropriate withdrawal agreement in place.

Firms should be assessing the impact of Brexit on their business and ensure that they make relevant changes to protect consumers from being negatively affected by the transition. Nausicaa Delfas, Executive Director of International at the FCA, has reminded Firms that "as a guiding principle, we expect firms to adhere to our regulatory standards throughout." Firms need to think about what information needs to be circulated to their clients and how to do this in a way which is clear, fair and not misleading.

The information published by the FCA sheds light on its approach to changes in UK law, the effect on data sharing across jurisdictions and the repercussions of losing passporting. Specific information has been issued to Firms operating in the following five sectors:

1. Banking and payments;
2. Life insurance, pensions and retirement income;
3. General insurance;
4. Retail investment; and
5. Wholesale banks, markets and asset managers.

Post-Script: the FCA published its Brexit Policy Statement PS19/5 on 28 February. This covers, in an efficient and easy to read way, the provisions the FCA are intending to put in place at 11pm, 29 March 2019 (or whatever later date that may be) in the event of no agreement between the UK and the EU regarding the UK's withdrawal for the EU.

To read the full article click here.

FCA confirms proposals in the event of a no deal Brexit

28 February 2019

A press release confirmed that the FCA has now published *near-final rules and guidance that will apply in the event the UK leaves the EU without an implementation agreement*. In preparing the Policy Statement the FCA has explained it took into consideration the feedback it has received from several consultation papers it has previously released.

The published document contains further details about how Gibraltar-based Firms will be treated as well as how the FCA intends to make use of the temporary transitional power (TTP) delegated to it by the Government.

As part of its press statement, Nausicaa Delfas, Executive Director of International at the FCA explained that the documents published today were a significant milestone in the FCA's preparations for the UK leaving the EU without an implementation period.

In its press release the FCA also noted it had recently published information on how regulated firms in different sectors may wish to plan for Brexit and what action they may need to take.

The full press release can be found here and the full Brexit Policy Statement can be found here.

UK Corporate Criminal Offence

As you may be aware the corporate criminal offence for businesses that fail to prevent the facilitation of tax evasion came in to effect on 30 September 2017 (CFA 2017). The legislation introduced a new corporate criminal offence where associated individuals to an organisation commit a tax evasion offence whilst acting on behalf of the entity. In such case the entity could be liable for the failure to prevent the facilitation of the evasion of UK tax and/ or foreign tax. However, there is a defence if the business can demonstrate that the facilitation offence took place despite the entity having in place reasonable prevention procedures. Therefore, all relevant businesses caught by the legislation should have completed a risk assessment, put in place policies and procedures and provided the relevant individuals with training.

On 21 February 2019 HMRC published updated guidance and a facility using the government gateway setting out how to self-report a failure to prevent the facilitation of tax evasion by an organisation. In order to submit the report an individual must have authority to complete this on the organisation's behalf. It is important to recognise that self-reporting is voluntary, and an organisation is not obliged to complete this reporting. They may however want to complete this self-reporting as it may be used to:

- demonstrate that the entity had 'reasonable procedures' in place should the organisation be charged with the offence,
- be taken into account in the case of a prosecution and
- be reflected in the level of penalties imposed by HMRC

It is important to note that where a report is submitted to HMRC they may share the information with other agencies should it be within the scope of the legislation.

It has recently been brought to our attention that HMRC has started investigating some businesses on their compliance with the requirements of the CFA 2017. As part of these investigations they have been interviewing associated individuals to the business in relation to the policies and procedures that they have put into place to determine if these were 'reasonable' according to the provisions set out in the legislation. They have also reiterated the importance of delivering training to the associated individuals suggesting that it is not enough to have only completed the risk assessment matrix and put relevant policies and procedures in place. It was also made clear that completing these activities was not a one-off process and it is important to reassess in the case of a change in circumstances to ensure that the organisation has a defence in place should there be a case of facilitation of tax evasion. However, prior to completing any self-reporting it is important that the organisation seeks professional advice to ensure only the relevant information is disclosed.

It is clear that it is becoming increasingly important to ensure compliance with the CFA 2017. Experts at Duff & Phelps have developed a risk matrix to aid businesses in the financial services sector to undertake a risk assessment of their business. This includes identifying their associated persons and evaluating their risk factors. Our team can also support you to design robust policies and implement proportionate preventative procedures and help provide the relevant individuals with tailored training on the provisions. We can also assist to put together and review the relevant information should the organisation want to self-report to HMRC.

The FCA has agreed a Memoranda of Understanding (MoU) with the European Securities and Markets Authority (ESMA) and EU regulators for a no-deal Brexit scenario

1 February 2019

The FCA has said that the MoUs cover cooperation and exchange of information in the event the UK leaves the EU without a withdrawal agreement and implementation period.

It clarified that the MoUs are

1. a multilateral MoU with EU and EEA National Competent Authorities (NCAs) covering supervisory corporation, enforcement and information exchange.
2. an MoU with ESMA covering credit rating agencies and Trade Repositories.

Andrew Bailey explained that the MoUs should minimise the potential for disruption, highlighting the importance of this for those in the investment management sector, Credit Rating Agencies and Trade Repositories.

In its press release the FCA made it clear it was preparing for a range of Brexit scenarios including where the UK leaves the EU without a withdrawal agreement in place.

FCA publishes its second set of rules following its Asset Management Market Study

4 February 2019

The FCA published new rules and guidance to improve the quality of information available to consumers regarding the funds they invest in.

The FCA has already introduced new rules in April 2018 to ensure fund managers act as good agents of investors in their funds following the findings of the asset management market study. The second set of rules published on 4 February complements the first set, by aiding consumers in understanding to a greater level how their money is managed, so that they can make improved investment decisions.

The new rules and guidance:

- set out how fund managers should describe fund objectives and investment policies to make them more useful to investors;
- require fund managers to explain why or how their funds use particular benchmarks or, if they do not use a benchmark, how investors should assess the performance of a fund;
- require fund managers who use benchmarks to reference them consistently across the fund's documents;
- require fund managers who present a fund's past performance to do so against each benchmark used as a constraint on portfolio construction or as a performance target, and
- clarify that where a performance fee is specified in the prospectus, it must be calculated based on the scheme's performance after the deduction of all other fees.

Christopher Woolard, the Executive Director of Strategy and Competition at the FCA, believes that the latest set of rules build on those already introduced, making it "easier for investors to choose the best fund for them and help them achieve their investment objectives."

Other than the rules and guidance published by the FCA since the Asset Management Market Study, other ongoing work has included:

- the Cost Transparency Initiative launched in November 2018, as an independent group, which works to improve cost and charges transparency for institutional investors;
- the work undertaken by the Institutional Disclosure Working Group;
- the collaboration between the FCA and the Competition Markets Authority (CMA) on CMA's findings from their investigation into investment consultancy.

The newly published FCA rules and guidance can be found here.

The Importance of diversity

5 February 2019

Andrew Bailey, the Chief Executive of the FCA, delivered a speech on 5 February 2019 at PIMFA Wealth of Diversity Conference 2019, on the importance of diversity to the FCA.

The key points raised by Mr Bailey in the speech included:

- Diversity and inclusion is central to how the FCA act as a regulator and as an employer;
- How fostering a culture of diversity and inclusiveness can contribute to improving the behaviour of firms;
- The importance of culture and governance of firms to the FCA.

In terms of the culture and governance of firms, Mr. Bailey expressed that the FCA is aware that each firm's culture should be different, and it is important that the FCA doesn't prescribe what a firm's culture should be. However, the FCA does "pay a lot of attention to the outputs". In other words, the results of the culture of a firm on the work produced, ensures that any harm is avoided.

The full speech can be found here.

FCA warns public of investment scams as over £197 million reported lost to scammers in 2018

6 February 2019

The FCA has warned investors to be vigilant of investment scams. The warning comes as it was revealed that over £197 million was lost to scammers in 2018; an average of over £29,000 per investor.

The regulator also noted that the profile of investment scams appears to be changing, with more people being targeted online. This contrasts with the traditional method of investment scam: cold calling. Indeed, individuals are increasingly being contacted by scammers via emails, professional looking websites and social media channels, e.g. Facebook and Instagram.

The FCA outlined six warning signs when making investment decisions:

1. Unexpected contact – Historically scammers cold-call, but contact can also come from online sources, post, word of mouth or even in person, for example, at a seminar or exhibition.
2. Time pressure – Scammers might offer you a bonus or discount if investors commit before a set deadline.
3. Social proof – Fraudsters may share fake reviews and/or claim other clients have invested or want in on the deal.
4. Unrealistic returns – Fraudsters often cite exceptional returns that sound too good to be true.
5. False authority – They may use professional-looking literature and websites, claim to be regulated and speak with authority on investment products.
6. Flattery – Fraudsters may seek to build a friendship with you to encourage investment.

Alvin Hall, personal finance expert, who is supporting the campaign, said: 'Spotting an investment scam is increasingly challenging. To prove that point, my experience was put to the test when I was pitched three investment opportunities. Watch the video to see how I got on.'

To reduce the chance of falling victim to scams, the FCA advises consumers to, as a minimum:

1. Reject unsolicited investment offer, however they are made.
2. Before investing, check the FCA Register to see if the firm or individual you are dealing with is authorised and check the FCA Warning List of firms to avoid.
3. Get impartial advice before investing.

The FCA's ScamSmart campaign encourages those considering investing to check its dedicated website (www.fca.org.uk/scamsmart) for tips on how to avoid investment fraud.

Banking leaders share their insight on adopting the Senior Managers and Certification Regime (SM&CR)

7 February 2019

In a new video released by the FCA, senior leaders from four financial services firms talked about their experiences of adopting the Senior Managers and Certification Regimes.

The purpose of SM&CR is to ensure individual accountability is clearly established within financial services firms and, successfully implementing the regime, will ensure a big step in improving culture and governance within the financial services sector.

As of December 2019, SM&CR will be extended to approximately 47,000 solo-regulated firms. The aim of extending SM&CR to these remaining firms is to ensure that all staff within all firms have greater clarity on who is responsible for what at their respective firm. The aim of this is to increase transparency in the governance arrangements of firms.

The former Chief Executive of a UK firm described SM&CR as "effectively structuring the way in which boards and senior managers should have been behaving all along". She added: "'I think it's really important to understand the essence of the Senior Managers Regime, which isn't trying to trip us up, it isn't trying to end up with everyone in prison - it's actually to make sure that everybody does understand what's asked of them, does understand the job that they're supposed to do and can deliver on it to the best of their ability"

The Deputy Group Chairman of a global bank also described SM&CR as having a clear framework that can be easily defined to illustrate how an organisation converges together.

A Chief Executive Officer of a financial services firm added that SM&CR has helped drive transparency and clarity through the clear understanding of the accountabilities that lie with the senior individuals of the firm.

Furthermore, the CEO of a large institutional bank also mentioned that, "The one key piece [of advice] which I would absolutely leave with somebody else who is adopting it is - this has got to be owned and led by the business, so you cannot delegate it to HR or compliance or any other kind of function."

Market abuse requires a dynamic response to a changing risk profile

13 February 2019

Julia Hoggett, FCA Director of Market Oversight, delivered a speech in London at an Association for Financial Markets in Europe (AFME) event, exploring:

- Situational judgements required to ensure compliance with the Market Abuse Regime (MAR),
- Importance of detecting suspicious behaviour, in addition to events that have happened
- Ongoing development of systems and controls in light of newly identified risks
- Controlling information that leaves a firm
- Staff awareness of market abuse risks and understanding the consequence of any unlawful behaviour

A regulatory system that relies on controls that work by detecting when an event has happened, will never be as effective as a system that also helps ensure that misconduct does not happen in the first place. The FCA commented that the most effective regulatory system is one which combines the detection of crystallised events with controls to identify possible misconduct. Ms. Hoggett framed the conversation within the FCA's Conduct Questions approach.

Question 1: market abuse risk identification

The FCA is concerned that firms are not appropriately considering certain areas of possible market abuse risks, including:

- a failure to properly assess the risk that your institutions could be used to facilitate a financial crime taking place, and
- the risk that your staff are not sufficiently conscious of the risk that their own behaviours may pose.

Question 2: supporting individuals to conduct business appropriately

This question focuses on ensuring that individuals within institutions understand their responsibilities to conduct business in an appropriate fashion. Judgements made in respect of MAR compliance include what constitutes inside information, how this information should be handled and how inappropriate trading behaviours are identified. Wherever individuals, regardless of their seniority, possess inside information there is a risk they will use it unlawfully, firms must ensure all staff are aware of the possible consequences of doing so and be vigilant to ensure this does not happen.

Question 3: inside information systems and controls

FCA noted that, in general, firms inside information systems and controls, such as access controls, surveillance capabilities and general mindset, are not as evolved as they should be. Firms should ensure that they proactively review who is permitted to access inside information and whether access is still required. This will go some way in helping firms mitigate some of the risks associated with inside information. Control of information leaving a firm is as important as control of information moving within a firm.

Firms must conduct a proper assessment of the nature of their businesses, the market abuse risks that may arise and ensure that they have the most appropriate systems and controls to mitigate these risks and that they operate effectively. The FCA flagged the importance of firms' risk assessments keeping pace with developments in market structures, market sentiment, macro-economic & geo-political triggers and technology, and highlighted the following areas in particular:

- Evolving market structures – for example Brexit & MiFID II
- New forms of behaviour and risk – for example manufactured credit events

The FCA's Financial Crime Guide was updated in December 2018 to provide a clearer understanding of the FCA's expectations of regulated firms.

Follow these links for the full speech and the latest version of the FCA's Market Watch newsletter.

FCA announces appointment of new Chair of the Financial Services Consumer Panel

19 February 2019

The FCA has announced the appointment of Wanda Goldwag as the new Chair of the Financial Services Consumer Panel, succeeding Sue Lewis, who was Chair for a total of five and a half years. The appointment, effective from 1 March 2019, will run for an initial 3-year term, and has been confirmed by HM Treasury.

In her role as Chair, Ms Goldwag will:

- be the public face of the panel, leading and giving strategic direction by representing the Panel's views to both the FCA board and senior staff within the FCA;
- represent the Panel outside of the FCA; and
- lead the development of the Panel's work and ensure that performance goals are met.

Charles Randall, FCA Chair, stated his belief that "the Consumer Panel plays a vital role in ensuring that the FCA hears the voice of consumer" and is confident in Ms Goldwag continuing the Panel's important work. Wanda Goldwag said that she is "looking forward to meeting regularly with the Chair and Chief Executive of the FCA to promote consumer interests."

The Financial Services Consumer Panel is an independent statutory body set up to represent the interests of consumers in the FCA's policy development. It works to advise and challenge the FCA from the earliest stages of its policy development, ensuring that the regulator considers consumers' interests.

FCA issues its first decision under competition law

21 February 2019

The FCA has issued its first formal decision under its competition enforcement powers, finding that 3 asset management firms have breached competition law. The FCA fined one of the firms £306,300 and another £108,600 but has not imposed a fine on the third firm as it was given immunity under the competition leniency programme.

This is related to a separate disciplinary action against an individual at an asset manager who was fined £32,200 in relation to this conduct.

The infringements consisted of the sharing of strategic information between competing asset management firms during one initial public offering (IPO) and one placing, shortly before the share prices were set. The firms disclosed and/or accepted otherwise confidential bidding intentions, in the form of the share price that they were willing to pay and sometimes the volume of shares that they wished to acquire. Instead of competing for shares, this allowed one firm to know the plans of another during the IPO or placing process.

The FCA stated that if asset managers share detailed and otherwise confidential information about their bids with each other, it can reduce the pressure to make bids that reflect what they really think the company is worth and result in a lower share price being achieved by the IPO or placing. This, in turn, raises the cost of equity capital for the issuing company. Firms rely on equity capital as a way of financing investments, so unlawful information sharing could increase the cost of related investments or even make them unviable.

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, stated that this case demonstrates the FCA's "commitment to taking enforcement action to protect competition." Mr. Woolard further advised that the FCA "will act when markets that play a vital role in helping companies raise capital in the UK's financial markets are put at risk."

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Ending reliance on LIBOR: Overview of progress made on transition to overnight risk-free rates and what remains to be done

21 February 2019

Megan Butler, Executive Director of Supervision – Investment, Wholesale and Specialists at the FCA, delivered at the Investment Association, in London.

Butler began by reiterating that in two years the production of LIBOR is likely to end. As a result, asset managers will need to manage their LIBOR exposures in alternative ways.

Butler noted that some businesses have already begun the process of moving their LIBOR-linked derivative books across to SONIA-based swaps. She also stated that the markets for which LIBOR was originally built have changed beyond recognition in recent years; indeed, as result of the unsecured interbanking market declining and the eurocurrency markets no longer existing as a distinct entity, LIBOR has now essentially become a tool for measuring the rate at which banks are not borrowing from each other.

Butler also reiterated that there is a significant difference in transaction volumes between the LIBOR and SONIA reference rates when measured against each other: "Overnight cash transactions supporting the calculation of SONIA average £50bn a day. Transactions feeding into the calculations of three and six-month Sterling LIBOR average £187M and £87m a day respectively". As a result, she stressed the importance of planning for the future absence of LIBOR.

Please find the full speech here.

FCA urges unauthorised land banking scheme victims to get in touch to return funds

25 February 2019

In its statement the FCA explained that between 2005 and 2010 around £32.8 million was invested by around 870 members of the public into unauthorised collective investment schemes. These schemes involved plots of land being sold unlawfully.

Following a number of High Court cases where unauthorised businesses were ordered to repay investors, the FCA received approximately £2.5 million from a Panamanian entity related to one of the businesses who established and operated the schemes.

Out of the approximate 870 people who may be eligible to receive some of their money back, only 392 people have come forward. Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA has explained that the FCA needs to show the court that it '*has taken reasonable steps to identify everyone affected*' before it returns these fund to eligible investors.

The FCA have said that investors who have not yet been in touch, should do so, even if they no longer have any records or documentation about the investments.

Andrew Bailey delivered a speech focussing on the impact MiFID II has had on the use of research at the European Independent Research Providers Association

25 February 2019

Mr. Bailey's speech considered a number of ways that the market for research had been impacted as a result of the rule changes introduced through MiFID II. The overarching view of Mr Bailey's speech was that whilst there was still ongoing work, the impact of MiFID II has generally been beneficial in the research environment.

Some of the key points discussed were:

- The positive impacts the FCA has observed since MiFID II was implemented, most notably being a reduction in charges incurred by investors which may equate to savings of nearly £1bn over the next five years.
- The challenges that the FCA has faced and concerns it has received since MiFID II was introduced including:
  - Defining the scope of the regime for independent providers;
  - Ensuring pricing of research is fair and reflective of the regime including signposting the European Commission's ongoing study into the impacts of MiFID II reforms on the research market; and
  - Other Potential unintended consequences such as the potential negative impact of new rules on research coverage of smaller companies and the liquidity of their shares on secondary markets and the steps FCA had taken to limit these.
- The next steps for the FCA and how competition in the market place may evolve going forward.

The full speech can be found here.

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