DUFF & PHELPS

Protect, Restore and Maximise Value

Regulatory Focus

Issue 127

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 and European regulators during July 2019.

INSIDE

Senior Managers and Certification Regime Banking Stocktake Report

The FCA has undertaken a review into the embedding of the Senior Managers and Certification Regime (SM&CR) in the banking sector, based on interviews with individuals in the sector. The FCA was interested to know whether there are any issues that need more focus from both firms and the FCA. The results of the review will be of interest to banking sector firms and insurance firms, but also to solo regulated firms to whom the regime will apply from 9th December 2019.

The key findings were as follows:

Senior manager accountability

- Most firms were clear on what accountability means.
- There was a perceived risk that lines were blurring between non-executive directors and executive directors. FCA made it clear that they are not looking for a change in the role of non- executive directors and do not expect them to act more like executive directors.
- The FCA stated their expectation is that senior managers should be doing what they reasonably can to prevent misconduct. Having adequate controls is part of this but encouraging a healthy culture within firms is also important.

Certification

The FCA states that generally firms have implemented robust processes for certification. However, firms may not have gone far enough to enhance their processes for the certification regime. The FCA gives an example of where managers of certification staff were not being included in the certification regime.

Regulatory References

Firms were positive about regulatory references and its intentions of addressing the potential issue of “rolling bad apples”. However, firms felt that improvements can clearly be made in the quality, timeliness and consistency of regulatory references.

Conduct Rules

Interviewees believed that staff generally understand the conduct rules. However, the FCA found that the conduct rules training should be more tailored for staff members jobs, so that they understand how the conduct rules apply to them.

Impact on culture

Most firms felt that they had undertaken work on cultural change before implementation and described a stronger tone from the top. However, firms found it challenging to know how to measure culture and they continue to work to find ways to do this. Firms said the new regime was having an impact on the mindset of senior managers.

Unintended consequences

Some firms said that there was a culture of fear when SM&CR was first implemented. This has now largely disappeared, because firms have worked to develop an environment of healthy challenge and openness, and the regulator is working collaboratively with them to achieve positive outcomes.

Embedding and overcoming initial implementation issues

Implementation issues faced by firms have largely been overcome. Initial implementation was challenging for firms, but they have come to see the clear definition of accountability as beneficial.

Summary

The report from FCA contains generally positive feedback from the interviews with individuals. It is interesting but not surprising to see that whilst banking sector firms have largely resolved any implementation issues, there is still further work to do three years after implementation. The FCA will increase its focus on the conduct rules and will continue to build links between the SM&CR and firm culture.

The timing of this “stocktake” is useful for firms that are preparing for SM&CR to be implemented on 9th December 2019, less than four months’ time. If you would like to talk to us about how we can help you with your implementation, please contact us.

‘Dear CEO’ letter to wealth managers and stockbrokers

The FCA wrote to the CEO’s of wealth management and stockbroking firms on 13 June 2019 setting out the four key areas of potential harm it had identified within those sectors:

1. Reduced levels of savings and investments due to fraud, investment scams and inadequate client money/assets controls
2. Reduced levels of savings and investments due to order handling procedures and execution processes not delivering best outcomes
3. Loss of confidence in the industry’s ability to deliver financial objectives due to mismanagement of conflicts of interest and market abuse
4. Inability to understand costs of services provided by firms due to insufficient or inaccurate disclosures of costs and charges

The regulator set out the supervision strategy developed to identify, diagnose and seek to remedy these harms. This strategy covers a two-year period from April 2019 and focusses on:

- **Fraud, investment scams and market abuse** – The FCA expects firms to ensure the suitability of client portfolios and not include high risk investments inappropriately. The FCA will use a range of data to identify firms who cause issues in this area, whether deliberate or not.
- **Best execution** – The FCA expects firms to endeavor to obtain the best result for clients when executing orders, or passing them to other firms for execution, and may consider focused supervision work in this area.
- **Costs and charges disclosure** – The FCA expects firms to review their costs and charges disclosures to ensure they satisfy all relevant requirements, particularly in light of the FCA’s recent work in this area and the possibility of further work in the future.
- **Senior Managers and Certification Regime (SM&CR)** – The FCA notes it may undertake assessments of some of the submissions made as part of SM&CR implementation.
- **EU Withdrawal** – Where this may impact client relationships, the FCA expects firms to act in their client’s best interests and maintain clear communication throughout.

The full letter can be found here.

The European Securities and Markets Authority (ESMA) updates its EMIR Q&A

12 July

ESMA issued an update of its Q&A regarding the European Markets Infrastructure Regulation (EMIR). The purpose of EU Level 3 Q&A is to promote common supervisory approaches and practices by providing responses to questions posed by the general public, market participants and competent authorities regarding the practical application of EMIR.

Following the entry into force of the EMIR review, otherwise known as the EMIR Refit, ESMA is reviewing the existing Q&A in order to align them with the new text's requirements.

The changes refer to:

- Removal of references to the frontloading requirement (the requirement under the Clearing Obligation for certain contracts concluded prior to the relevant clearing effective date to be subject to the clearing requirement) as frontloading no longer applies under EMIR Refit;
- Removal of references relating to backloading (the obligation to report certain OTC and Exchange Traded Derivatives entered into prior to the implementation of EMIR reporting), following the elimination of the backloading requirement;
- Identification and reporting obligations for funds, block trades and allocations;
- Clarification on the applicability of reporting for intragroup transactions;
- Reporting of the notional amount field for credit index derivatives.

The updated Q&A can be found here.

CSSF Brexit notifications

15 July

The Luxembourg financial services regulator, the Commission de Surveillance du Secteur Financier (“CSSF”), published two press releases setting out mandatory notification requirements for UK firms in the context of Brexit.

In the case of a “Hard Brexit” (i.e. if the UK leaves the EU without a withdrawal agreement in place) UK firms will lose their passporting rights under the relevant financial services EU single market directives and will, as of that date, be considered “third-country firms” from an EU perspective.

UK firms operating in Luxembourg on a cross-border basis using an EU passport should **notify the CSSF by no later than 15 September 2019** if they wish to benefit from a 12 months transitional period which will enable them to continue servicing existing contracts in the case of a Hard Brexit. If they wish to conclude new contracts after a Hard Brexit they will have to apply for authorisation to the CSSF and this can take up to 12 months.

UK Undertakings for Collective Investment (“UCIs”) and UK AIFMs and Management Companies managing Luxembourg-based funds (“UK managers”) will also have to notify the CSSF if they wish to continue operating in Luxembourg during a 12-month transitional period following a Hard Brexit. In addition, UK managers will also have to either apply for direct authorisation or provide information about alternative plans to the CSSF by no later than 31 October 2019 if they wish to benefit from the transitional arrangements.

For more details on the above, please see our webpages.

ESMA publishes a consultation in relation to performance fees for UCITS funds

ESMA has published a consultation paper proposing to harmonise supervisory practices in the European Union in relation to performance fees for UCITS funds. The consultation paper follows a review by ESMA of supervisory practices amongst member states of the European Union which showed differing practices amongst National Competent Authorities in relation to performance fees.

The FCA applies performance fee rules to UK authorised funds which are UCITS or Non-UCITS retail funds, as set out in Chapter 6 of COLL in the FCA handbook. ESMA's proposed guidelines are more detailed than these FCA rules however.

The guidelines cover the following elements:

- performance fee calculation method;
- consistency between the performance fee model and the fund's investment objectives, strategy and policy;
- frequency for the crystallisation of the performance fee;
- negative performance recovery;
- disclosure of the performance fee model.

The guidelines set minimum factors for inclusion in the performance fee methodology such as the crystallisation period and computation frequency.

The guidelines are consistent with the rule implemented in the FCA's policy statement PS 19/4, which came in on 7 August 2019, that any performance fee in a prospectus of an authorised fund must be calculated on the basis of performance after deduction of all other payments from the fund's property.

The proposed guidelines say that a manager's performance should be assessed and remunerated on a time horizon that is, as far as possible, consistent with the investors' holding period. This is of interest because the recommended holding period for many equity funds can be five years or more.

Of interest too is the proposal that any underperformance or loss previously incurred during the performance reference period should be recovered before a performance fee becomes payable.

The consultation is open until 31 October 2019.

Regulating financial innovation – going behind the scenes

2nd July

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered a speech at the Cambridge Centre for Alternative Finance annual conference, Judge Business School.

Mr. Woolard began by referencing the announcement made by Facebook regarding its plans for Libra, the 'stablecoin' it is planning to launch. Mr. Woolard noted the questions that developments such as this pose for regulators, as well as for society and the government, on what is acceptable and desirable in this space.

What are stablecoins?

Stablecoin is the term used to describe a variety of cryptoassets; the aim of stablecoin is to decrease volatility in comparison to the traditional cryptoassets.

The FCA, in a joint report that was written alongside the Bank of England and HM Treasury as part of a domestic Cryptoassets Taskforce, categorised cryptoassets into 3 broad types:

1. Exchange tokens. Commonly known as Bitcoin, Litecoin and equivalents. They are not issued or backed by a central bank or authority and are used for the purpose of an exchange for investment purposes.
2. Security tokens. These amount to a 'specified investment', which may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits. They may also be transferable securities or another type of financial instrument under the EU's Markets in Financial Instruments Directive II (MiFID II).
3. Utility tokens. These can be redeemed for access to a specific product or service that is typically provided using a distribution ledger technology (DLT) platform.

Mr. Woolard stated that the term 'stablecoin' could refer to, for example, cryptoassets that are backed by fiat currency. He noted that, in certain cases, a fiat-collateralised cryptoasset could constitute e-money if it meets the definition provided in the Electronic Money (e-money) Regulations. If a cryptoasset is classified as e-money, then the issuer needs to be authorised as an e-money issuer and therefore comply with the E-Money and Payment Services Regulations.

However, the term 'stablecoin' could also be applicable to algorithmically controlled tokens, or those backed by assets such as securities or, indeed, other cryptoassets. Such stablecoins would need to be evaluated on their own characteristics, but could amount to regulated products, including for example collective investment schemes.

Taking all of this into account, Mr. Woolard posed the question of how useful this one term 'stablecoin' is when it comes to labelling such a wide variety of different products.

Mr. Woolard noted that this example serves to illustrate the wider point, that we must look beyond the marketing language of cryptoassets in order to determine the technical details, the technology and the legal position: Mr. Woolard said "we need to bring new technology, jargon and marketing back to first principles before we can answer tricky policy questions on topics such as consumer protection, market integrity or competition."

This should not be regarded as a dismissal of new cryptoassets such as stablecoins, but rather a reminder of the need for regulators, firms and consumers to take a step back and independently scrutinise the reality of each product, to avoid repeating past mistakes. Mr. Woolard cautioned: "Historically, this may have been a sector that has lived by the mantra of 'move fast and break things', but the issues raised here require deep thought and detail."

When considering changes brought about by financial innovation, the FCA must be prepared to learn and adapt – and always be ready to protect consumers, competition and market integrity.

To see the full speech, please click here.

EMSA consults on MiFID II compliance function requirements

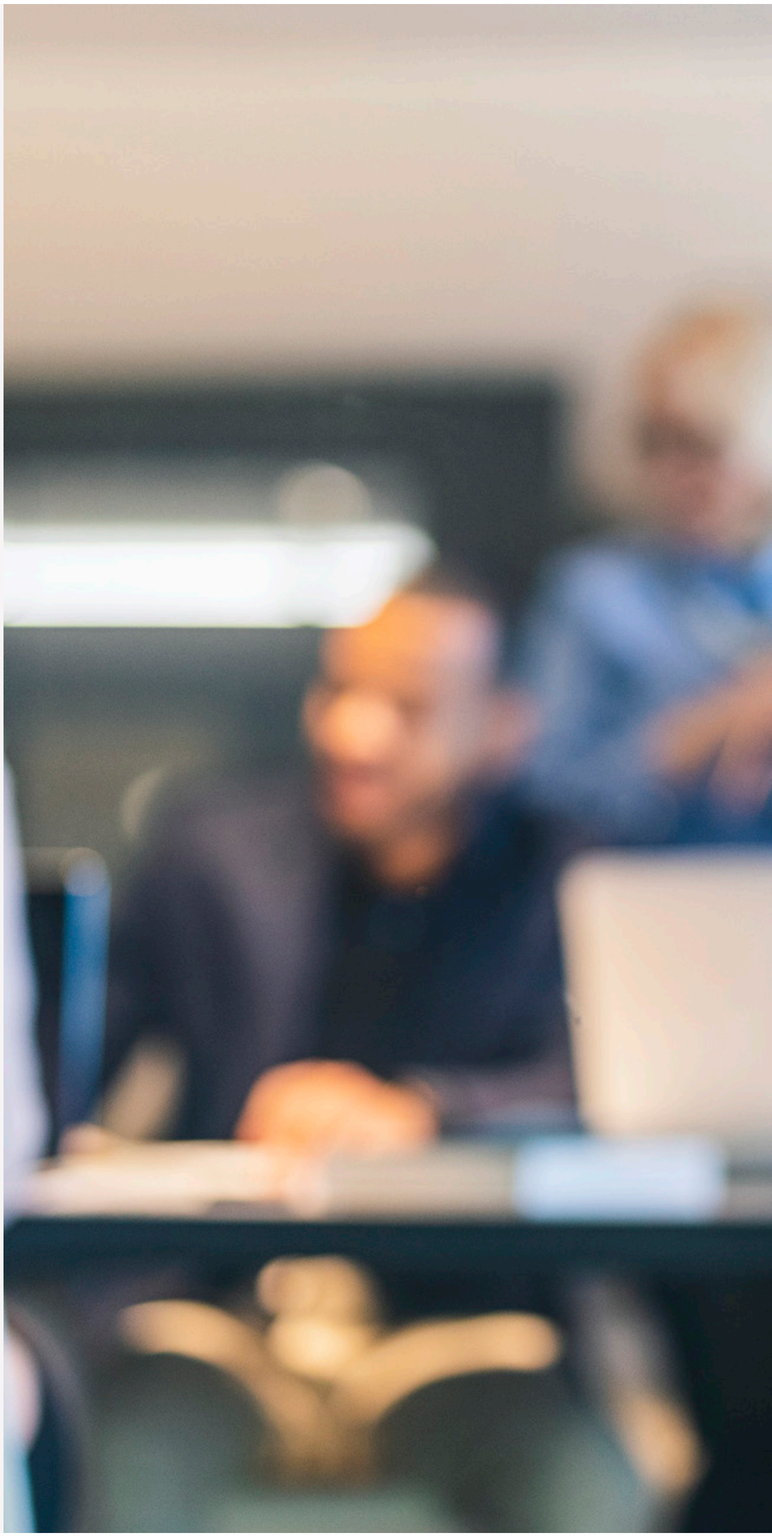
15 July

ESMA began its consultation on proposed draft guidelines which will impact the compliance function requirements under MiFID II.

These proposals, which build on the current existing guidelines, have been produced to support firms in increasing the effectiveness of their compliance function, to aid clarity, and to foster convergence on the expanded role of compliance in light of the changes brought about by MiFID II.

ESMA calls on stakeholders to provide comments by 15 October 2019. The target for the final report and the publication of final guidelines is estimated for Q2 2020.

Full article can be found here.



The FCA launches consultation guiding firms on the fair treatment of vulnerable consumers

23 July

The FCA published Guidance Consultation Paper GC19/3 which provides guidance to firms regarding the fair treatment of vulnerable consumers. This is the first stage of the consultation and the FCA is requesting comments by 4 October 2019. Details of how to respond can be found here.

The draft Guidance is set out in three main sections:

- Understanding the needs of vulnerable consumers;
- Ensuring staff have the skills and capabilities needed; and
- Translating that understanding into taking practical action.

Protecting vulnerable consumers is a key priority for the FCA and it ultimately wants to see firms doing the right thing for vulnerable consumers and embedding this within their culture. The aim of the Guidance is to ensure consistency of outcomes for vulnerable consumers across the financial services sectors.

The FCA notes that whilst many firms have made great progress towards ensuring that vulnerable consumers are treated fairly, there are still some firms that are failing to recognise how vulnerable consumers are treated.

Christopher Woolard, Executive Director of Strategy and Competition, stated: ‘Where we find that firms are not doing enough to ensure that consumers are treated fairly, we will take action.’

If you would like to read the Guidance please click here.

The FCA provides clarity on current crypto assets regulation

31 July

The FCA has published Final Guidance setting out the cryptoasset activities which fall under FCA regulation, in response to the FCA consultation paper published in January 2019.

The cryptoasset market, and the underlying Distributed Ledger Technology, is developing quickly and this Guidance will assist firms in determining whether the cryptoassets they are using are within the regulatory perimeter.

The Guidance sets out where different types of cryptoasset tokens are likely to be:

- specified investments under the Regulated Activities Order
- financial instruments under the Markets in Financial Instruments Directive
- e-money under the E-Money Regulations
- captured under the Payment Services Regulations
- outside of regulation

The Guidance also covers some of the following questions:

- How do I know if my token is a specified investment?
- Do I need to be authorised by the FCA if carrying on an activity involving cryptoassets?
- Does the FCA regulate exchange tokens?
- Does the FCA regulate utility tokens?
- Can cryptoassets be used to facilitate regulated payment services?
- What are regulated tokens?

The Final Guidance, which includes a Q&A appendix, can be found here.

Unauthorised firm and directors to pay restitution to consumers

10 July

On 28 June 2019, an Order of the High Court was made in respect of two entities and two associated individuals to pay funds to the FCA which they raised in unauthorised investment schemes operated by them.

Over £15 million was raised from more than 1,000 individuals before the FCA's enforcement action forced the closure of the schemes. Of the £15 million, £9.25 million was paid out to investors as returns and the defendants spent about £2.7 million. Approximately £3.4 million will be distributed to affected investors, leaving them with a loss of £2.7 million.

The defendants illegally operated unauthorised investment schemes which claimed to involve the buying and selling of wholesale Chinese goods. The returns guaranteed to investors were unrealistic in nature, at times being as much as 100% of the investment sum. The schemes accepted deposits in breach of Financial Services & Markets Act 2000 and no substantial trading took place; rather, existing investors' returns were funded by capital from new investors.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, reminded consumers "not to invest in schemes being offered by firms that are not authorised by the FCA and that look too good to be true".

To read the full publication, please click here.

An individual's conviction for money laundering revealed after reporting restrictions lifted

11 July

An individual was convicted of dealing in £1.5million of criminal property, representing the proceeds of a conspiracy to insider deal with two other individuals between October 2007 and November 2008.

The individual set up a company in Panama to receive the £1.5million, which represented the profit from one inside deal in October 2007 and over the course of the following year he transferred the money between his other Panamanian companies and off-shore accounts in order the conceal the true source of the funds.

The FCA also brought contempt of court proceedings against the individual for breach of a June 2011 Restraint Order preventing him from disposing of, or dealing with, any of his assets, which he admitted on 13 November 2015.

The individual was tried in his absence as he absconded from justice during the proceedings and remains at large. Sentencing will take place on 3 September 2019 and confiscation proceedings will also be pursued.

Reporting restrictions prevented any information in relation to the individual's conviction being published before 11 July 2019.

The full article can be found here.

FCA fines Firm £30 million for non-advised pension sales failures

23 July

The FCA has taken enforcement action against a major investment firm ("the Firm") in relation to non-advised sales of annuities, issuing a fine of £30,792,500.

The Firm failed to establish adequate controls to monitor the quality of calls between call handlers and non-advised customers. Simultaneously, the Firm offered employees significant financial incentives to sell annuities (retirement income products that can be bought with some, or all, of a customer's pension pot), thereby encouraging staff to place their own financial interests ahead of their customers' needs. This presented a significant risk that the Firm's call handlers would fail to provide customers with the information they required to select an annuity that was appropriate.

As part of the non-advised annuities sales process, firms are required to explain to customers that they may obtain a better rate if they look on the open market. Where customers have health impediments that may adversely affect their life expectancy, an enhanced annuity could be available. Firms need to ensure that they provide fair, clear and not misleading information about enhanced annuities to help customers make an informed decision about what product to buy.

The Firm used call guidelines that gave call handlers significant discretion as to how they interacted with customers, resulting in cases where customers were not provided with appropriate information about enhanced annuities, including the option to shop around for a better deal.

The Firm's call handlers had the opportunity to receive substantial bonuses if they met or exceeded sales targets. During the period of misconduct, nearly 22% of call handlers received more than 100% of their basic salary in bonus payments. This created a risk that call handlers would place their own financial interests ahead of fair customer outcomes.

Ultimately, the Firm failed to establish robust systems and controls to mitigate the risks created by high level call guidelines and substantial bonuses. It did not adequately monitor calls between call handlers and customers, nor provide sufficient management information to enable senior management to identify failings regarding the quality and volume of call monitoring.

The Firm did not dispute the FCA's findings and their agreement to accept the FCA's findings meant they qualified for a 30% discount. Otherwise, the FCA would have imposed a financial penalty of £43,989,300.

For more information, please click here.

FCA confirms permanent restrictions on the sale of CFDs and CFD-like options to retail consumers

1 July

The FCA confirmed new rules which restrict the sale, marketing and distribution of contracts for difference (CFDs) and CFD-like options to retail customers.

The rules applied from 1 August 2019 for CFDs and will apply from 1 September 2019 for CFD-like options, and address harm to retail consumers by making the ESMA's temporary restrictions of CFDs sold to retail clients permanent. For CFDs and CFD-like options sold to retail clients, firms will be required to do the following:

- Limit leverage to between 30:1 and 2:1.
- Close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions on their CFD account.
- Provide protections that guarantee a client cannot lose more than the total funds in their CFD account.
- Stop offering monetary and non-monetary inducements to encourage trading.
- Provide a standardised risk warning, which requires firms to tell potential customers the percentage of their retail client accounts that make losses.

By including CFD-like options, the FCA believes this will ensure that firms do not try to avoid the FCA's measures by offering similar products, which could pose the same risk of harm.

The FCA has also clarified the scope of its CFD-like option restrictions by:

- Excluding firms that sell CFD-like options in other jurisdictions, where the product is sold through an intermediary outside the UK.
- Excluding the sales and distribution activities of EEA firms outside the UK. These firms are still prohibited from actively marketing unrestricted CFD-like options to UK retail consumers.

Any intermediaries who sell, market, or distribute CFD-like options in or from the UK will be subject to FCA rules, providing protection for UK consumers.

To read in full click here.

ESMA issues opinions on product intervention measures by Sweden, France and the United Kingdom

2 July

ESMA has issued an opinion on the product intervention measures taken by the FCA, amongst other National Competent Authorities in the European Union.

As mentioned in the previous article, the FCA recently published rules restricting the sale, marketing and distribution of Contracts For Difference (CFD) and CFD-like options to retail customers.

ESMA is required under the Markets in Financial Instruments Regulation to adopt an opinion on whether the National Competent Authority's measure is justified and proportionate. ESMA concluded that the FCA's measures in relation to CFDs are justified and proportionate except for:

- The FCA's proposal not to apply the national restrictions to CFD-like option providers authorised in other Member States other than through a UK branch or tied agent in respect of the sale or distribution of those products to UK retail clients; and
- The FCA's proposal to apply a 30:1 leverage limit for CFDs referencing certain government bonds, instead of the 5:1 leverage limit in ESMA's CFD measures.

ESMA opined that it is necessary for the NCAs of other Member States to take product intervention measures that are at least as stringent as ESMA's measures.

A copy of the ESMA opinion in respect of the FCA's CFD rules can be found here.

FCA statement on the Opinion of European Securities and Markets Authority (“ESMA”) on our final rules for CFDs and CFD-like options

2 July

The FCA published Policy Statement PS18/19 (“The Policy Statement”) regarding product intervention measures restricting the sale, marketing and distribution of contract for differences (“CFDs”) and CFD-like options to retail clients in or from the UK.

Despite ESMA’s Opinion mentioned in the previous article the FCA has decided to proceed with these proposals and as required by MiFiDII published its reasons for doing so.

CFD-like options

The FCA considers CFD-like options to pose the same risk of harm as CFDs given their common product features. Including them in these rules ensures that UK firms do not seek to avoid the FCA’s CFD measures. However, the FCA does not consider it to be ‘proportionate, practical or effective’ to apply these rules to overseas firms not supervised by the FCA and subject to alternative rules in their jurisdictions. Therefore, UK retail clients will be able to continue to open accounts to trade CFD-like options with EEA product providers, so long as they have not actively marketed the products in the UK. The FCA also notes that CFD-like options are not frequently sold by UK firms nor are they commonly traded by retail consumers within the UK, unlike CFD’s which are more commonly used.

Leverage

The FCA took account of feedback that a 5:1 leverage limit is disproportionate for main government bonds since they are less volatile than more major FX pairs. They are often used for hedging purposes when compared to CFDs with other underlying assets. Since the FCA used ESMA’s methodology for setting this limit, and has not exceeded the highest leverage limit for other asset classes in ESMA’s measures, it has concluded that this leverage limit is justified and proportionate.

The full article can be found here.

FCA proposes ban on sale of crypto-derivatives to retail consumers

3 July

The FCA has published a Consultation Paper which proposes a prohibition on the sale of crypto-derivatives and Exchange Traded Notes ("ETN") that reference unregulated transferable cryptoassets to retail consumers. The regulator is of the view that retail consumers are unable to consistently assess the value and risks of cryptoassets. The FCA has estimated the potential benefit to retail consumers from banning these products to be between £75 million and £234.3 million a year.

Christopher Woolard, Executive Director of Strategy & Competition at the FCA, said:

"…Most consumers cannot reliably value derivatives based on unregulated cryptoassets. Prices are extremely volatile and as we have seen globally, financial crime in cryptoasset markets can lead to sudden and unexpected losses. It is therefore clear to us that these derivatives and exchange traded notes are unsuitable investments for retail consumers".

Please click here to read details of the consultation.

FCA publishes Annual Report and Accounts 2018/19

9 July

The FCA has published its Annual Report and Accounts for 2018/19, which looks back on the key pieces of work it has undertaken throughout the year.

Highlights from the FCA's year include:

- extending SM&CR to insurers, in its drive to make every FCA regulated firm subject to the regime and increasing individual accountability;
- its continuing actions to improve protection for users of high-cost credit;
- its actions to prepare for EU Withdrawal;
- its campaign to help people take action on PPI, ahead of the deadline of 29 August 2019;
- its actions to stop people becoming scam victims; and
- its promotion of innovation, including the launch of the Global Financial Innovation Network.

The FCA has made decisions on over 4,000 applications for authorisation throughout the year, leading to approximately 60,000 firms now being supervised. As well as this, the FCA has assessed over 1,750 whistleblowing allegations and launched 484 preliminary market abuse investigations.

The Annual Report also includes the FCA's gender pay gap for the year ending 31 March 2019, which is 20.6% (median) and 17.8% (mean). Additionally, the report includes the FCA's ethnicity pay gap, which has been published for the first time and is 28.7% (median) and 27.2% (mean).

The full Annual Report and Accounts for 2018/19 were published alongside the FCA's Competition, Diversity, Enforcement and Anti-Money Laundering reports which can all be found here.

LIBOR: preparing for the end

15 July

The Securities Industry and Financial Markets Association's (SIFMA) LIBOR Transition Briefing in New York focused on the next steps for the industry in transitioning away from the London Inter-bank Offered Rate (LIBOR).

Andrew Bailey, CEO of the FCA, delivered a speech on the transition from LIBOR which, amongst other things:

- Provided an update on the transition away from LIBOR, including the significant increase in contracts using alternatives to LIBOR (such as SONIA (Sterling Over Night Index Average) and SOFR (Secured Overnight Financing Rate)) as well as the challenges faced in replacing existing contracts.
- Highlighted the importance of moving away from LIBOR in loan markets.
- Discussed the benefit to borrowers in transitioning away from LIBOR.
- Outlined the expectations of banks during the transition, including ensuring those already on a LIBOR-related loan maturing after end-2021 are treated fairly.
- Detailed the work of the Risk-Free Rate Working Group in the UK and the push for a term rate based on SONIA.
- Considered the prospect for LIBOR post end-2021 and the potential legacy LIBOR will leave behind.

Mr. Bailey's full speech can be found here.

New platform to replace Gabriel and improve the way the FCA collects data from firms

16 July

The FCA has announced that it is planning to improve the way it collects data from authorised firms which will include replacing GABRIEL, the FCA's regulatory reporting portal.

This work is at an early stage but forms part of the FCA's Data Strategy and will also support its existing Digital Regulatory Reporting work. These plans are expected to improve the experience of submitting data to the FCA together with the quality of information provided, which will deepen the FCA's understanding of both markets and consumers and will allow it to identify potential harms and take appropriate action more efficiently.

The FCA is asking all firms who use GABRIEL to complete a survey ahead of a programme of events designed to capture further stakeholder views and test the new platform.

The full article can be found here.

Andrew Bailey speech at the Annual Public Meeting 2019

17 July

During the FCA's Annual Public Meeting, Mr. Bailey highlighted several key themes from the previous year as well as signposting important issues for the year ahead. Topics covered included:

- Brexit and the impact of this on the FCA's time and resources;
- The work the FCA has done to try and understand the experiences of consumers managing their finances;
- The developments in the high-cost credit and pensions sector as well as the work the FCA has done to protect consumers in these areas;
- The Senior Managers & Certification Regime (SM&CR) and the importance of a customer-centric culture;
- Key enforcement actions the FCA has been involved in;
- The FCA's plans to invest in the Financial Services Register; and
- The FCA's Perimeter report published during June 2019 and the challenges it has faced in areas where its powers to intervene are limited.

It was widely reported in the press that Mr. Bailey was heckled during the public meeting about the FCA's recent performance on several issues. Mr. Bailey's full speech can be found here.

FCA Statement on the Memorandum of Understanding ("MoU") with the Bank of England

18 July

The FCA has published an updated MoU between themselves and the Bank of England who exercise its prudential regulatory duties through the PRA. When it was first agreed back in 2013, it set out high-level framework the Prudential Regulation authority and the FCA use to co-ordinate and co-operate in carrying out their respective responsibilities. The update has come about to reflect the expansion of the regulators' remit and organization changes since the MoU was first signed.

As a result of the update, the title of the MoU has been changed to reflect the PRA becoming fully integrated into the Bank of England, following its de-subsidisation in March 2017.

To read the full MoU click here.

Optimising the Senior Managers and Certification Regime ("SM&CR"): Policy Statement 19/20 and Feedback to CP 19/4

26 July

The FCA has published its final rules on the extension of SM&CR concerning FCA solo-regulated firms. The rules follow the feedback the FCA has received following Consultation Paper 19/4 and are aimed at providing clarity to firms on the scope and requirements of the SM&CR.

The rules impact all SM&CR firms, including claims management companies. The key changes implemented to the final rules are as follows:

- The Head of Legal function is excluded from the requirement to be approved as a Senior Manager;
- Senior Manager Conduct Rule 4 (SC4) has been extended to non-approved Executive Directors at Limited Scope firms.

The full statement can be found here.

FCA and Practitioner Panel publish findings from 2019 joint survey

31 July

The FCA undertakes a joint survey on FCA-regulated firms with the Practitioner Panel on an annual basis. The results from the survey provide the FCA with the industry's views on its performance, helping it to improve its functioning and to better understand the issues faced by firms.

This year, the survey was completed by 2,888 firms, including both fixed portfolio and flexible portfolio firms. The survey asked for feedback on how well the FCA is achieving its three operational objectives, namely protecting consumers, enhancing integrity and promoting competition. The scores for the first two objectives increased slightly and, whilst the confidence of fixed portfolio firms also grew in relation to the third objective, the overall score for all firms decreased by 2% to 70%.

The results also highlighted two particular areas for improvement. Firstly, firms remarked that they felt that the FCA issued a disproportionate number of information requests and noted the costs associated with this. The FCA commented that "we need to ensure the costs of providing information imposed on firms are proportionate to the benefits achieved". Secondly, flexible firms felt that FCA staff lack appropriate experience and qualifications and fixed firms felt that supervisors lack the knowledge to understand their firm. As such, since conducting the survey, the FCA has clarified its approach to supervision and will assess the outcome of this in the next survey.

To read the report in its entirety, please click here.

DUFF & PHELPS

Protect, Restore and Maximize Value

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