

**“The price of greatness is responsibility.”**

**Winston Churchill**

On Wednesday 9 January 2019 the FCA placed on their website a letter addressed to the CEOs of all their regulated firms to remind them of their responsibilities relating to the use of financial promotions.

**Notification window for the temporary permissions regime now open**

The temporary permissions regime will allow EEA-based firms currently passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation, if the UK leaves the EU on exit day without an implementation period in place. It will also allow EEA-domiciled investment funds that market in the UK under a passport to continue temporarily marketing in the UK.

**Notifying the FCA that you want to enter the regime**

Firms will need to notify us that they wish to enter the temporary permissions regime using the FCA’s Connect system. Fund managers will also need to notify us of which of their passported funds they wish to continue to market in the UK temporarily via Connect.

The notification window opened on 7 January 2019 and closes at the end of 28 March 2019.

There will be no fee for notifying for the regime and firms and fund managers should not wait for confirmation of whether there will be an implementation period before they submit their notification.

Firms that have not submitted a notification will not be able to use the regime.

**Dear CEO letter – financial promotions**

On Wednesday 9 January 2019 the FCA placed on their website a letter addressed to the CEOs of all their regulated firms to remind them of their responsibilities relating to the use of financial promotions.

The FCA have recently become aware of firms issuing financial promotions which suggest or imply that all of the activities which they undertake are regulated by the FCA and/or the PRA when they are not.

The letter reminds firms’ senior managers and boards of what constitutes fair, clear and unambiguous financial promotions.

Jonathan Davidson, Executive Director of Supervision – Retail and Authorisations at the FCA, said:

‘It is completely unacceptable for firms, which are regulated for some of their business, to market unregulated investments by implying to customers that all their business is regulated. We are committed to stamping out this misleading practice and recommend that customers should ask firms whether what they are buying is really regulated by the FCA.’

**FCA- Conflict of Interests Policy**

FCA have sent out its own internal policy on Conflicts of Interest. In particular we would note that:

1. It encourages employees to “be open about the relationships and personal interests that could be seen as influencing your independent judgement”
2. It states that employees “do not leave yourself open to (or perceived to be open to) improper influence through the acceptance of gifts and hospitality, or otherwise”.
3. Cautions employees to manage “your finances and do not undertake transactions that, by their nature or purpose, would be improper.”
4. PA Deal must be dealt within 2 days of permission being received and held for at least 6 months
5. Spread bets in financial instruments/indicies are prohibited
6. Gifts received under £30 maybe retained everything above must be surrendered
7. Hospitality – must all be recorded accept for breakfast or lunch.
8. Cannot accept anything excessive, exclusive or expensive – but this is not defined but intimate that anything beyond a meal or drinks could be seen as excessive but could still be accepted if appropriate by their manager.
9. Some flexibility as to what is acceptable when abroad – ability to consider local customs when making the deliberation.

**Statement on treatment of Gibraltar in the FCA’s Handbook after Brexit**

As stated in CP18/29, on the day we leave the European Union, the FCA intend to maintain the current regulatory position on Gibraltar within its Handbook. This position is in line with the Government’s commitment that Gibraltar financial services firms should, until **December 2020**, have the same market access in the UK as they do now.

For Gibraltar-based firms able to exercise passport rights, the Government’s commitment means they will continue to be able to exercise such rights on exit day. As a result, they will not enter the temporary permissions regime or the financial services contracts regime for firms or funds wishing to operate in the UK from the European Economic Area.

These arrangements will be accompanied by an SI seeking to preserve the pre-exit regulatory provision in relation to Gibraltar more widely, unless specifically provided otherwise, to support continued market access between the UK and Gibraltar more generally.

**CMCs can now register for temporary permission to continue operating**

Claims management companies (CMCs) can now register for the temporary permission they’ll need to operate when the Financial Conduct Authority (FCA) takes over regulation from **April 2019**.

From April 2019, all CMCs set up or serving customers in England, Scotland and Wales will have to be authorised by the FCA to continue operating legally. Some claim managers, including CMCs that are incorporated in Scotland, and only serve Scottish customers, will be entering regulation for the first time. CMCs have until the end of March to register for temporary permission. This will allow them to continue operating legally until they are

fully FCA-authorized. If they don't register with the FCA before then they will not be able to continue operating. Firms should not leave it to the last minute to register to avoid potential problems or delays.

They will have to demonstrate they meet minimum standards to operate. Once registered, CMCs must comply with FCA standards and could face action if they don't.

## Opening up and speaking out: diversity in financial services and the challenge to be met

Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered a speech on diversity at Ropemaker Place, London.

Key highlights included:

- The debate has moved well beyond diversity as a 'nice to have' – it is now increasingly recognised as a commercial imperative for firms.
- But while things are moving in the right direction, progress has been slow – the FCA stats show the percentage of women at the senior management level below the Board has increased only 1.5% over the last 10 years.
- How a firm approaches diversity and inclusion tells us a lot about its culture. And the way firms handle non-financial misconduct, including allegations of sexual misconduct, is potentially relevant to the FCA's assessment of that firm, in the same way that their handling of insider dealing, market manipulation or any other misconduct is.
- In fact, over the last 12 months, the FCA have seen a noticeable upturn in reports which concern issues like discrimination and sexual harassment in financial services. The FCA's message to firms is clear: non-financial misconduct is misconduct, plain and simple.

## ESMA consults on integrating sustainability risks into UCITS Directive and AIFMD

On 19 December 2018, ESMA published a consultation paper on integrating sustainability risks and factors into the UCITS Directive and the AIFMD. ESMA is aiming to clarify that all authorised fund managers subject to the UCITS Directive and the AIFMD will need to incorporate sustainability risks into certain internal processes. Sustainability risks are the risks of fluctuation in the value of positions in a fund's portfolio due to environmental, social and governance (ESG) factors.

Proposed changes to the UCITS and AIFMD framework include:

- Incorporation of sustainability risks into organisational procedures, consideration of the types of conflicts of interest that can arise, and systems and controls to ensure that they are properly taken into account in the investment and risk management processes.
- Consideration of required resources and expertise for the integration of sustainability risks, including clarification that this is a senior manager responsibility.

- Consideration of sustainability risks when selecting and monitoring investments, designing written policies and procedures, and implementing effective arrangements.

## Consumer Credit - Extended protections for high-cost credit products

As part of the FCA's High-Cost Credit Review, as well as publishing their consultations on overdrafts and on rent-to-own pricing, the FCA have made new rules strengthening the protections for consumers using home-collected credit (doorstep lending), catalogue credit and store cards. The FCA are also consulting on further measures on buy now pay later offers. Responses to the consultation can be submitted **until 18 March**.

As part of the FCA's work to help consumers get essential household goods and less expensive forms of credit, the FCA has also published finalised guidance for registered social landlords.

## FCA consults on cryptoassets guidance

The FCA is consulting on guidance, which, once finalised, will set out the cryptoasset activities it regulates.

The guidance will help firms understand whether their cryptoasset activities fall under FCA regulation. Firms will have a better understanding of whether they need to be authorised and can ensure they are compliant and have appropriate consumer safeguards in place.

The consultation is in response to industry request for greater clarity, and to the Cryptoasset Taskforce's recommendation that the FCA provides additional guidance on the existing regulatory perimeter.

## FCA proposes rules on investment pathways and other measures to improve retirement outcomes for consumers

The FCA is consulting on measures to stop up to 100,000 consumers a year losing out on pension income when they access the pension freedoms.

The FCA has previously expressed concern about consumers moving into drawdown and holding their funds in investments that will not meet their needs. The FCA is proposing that firms offer customers who do not take advice a range of investment solutions that broadly meet their objectives, otherwise known as 'investment pathways'. The FCA is also proposing that consumers' pension investments are not defaulted into cash savings unless the customer actively chooses this option. These measures are a part of the FCA's wider pensions strategy, and follow from the Retirement Outcomes Review report in summer 2018.

The FCA is also announcing new rules on the 'wake up packs' that must be given to consumers as they approach retirement, and on the disclosure of charges by pension providers.

## Enforcement cases

**Bank fined £32.8m for serious failings in its probate and bereavement process**

The FCA has fined the bank £32,817,800 for failing to effectively process the accounts and investments of deceased customers.

The bank did not transfer funds totalling over £183m to beneficiaries when it should have done. 40,428 customers were directly affected. It also failed to disclose information relating to the issues with the probate and bereavement process to the FCA after it became aware of them. The bank breached Principle 3 and Principle 6 between 1 January 2013 and 11 July 2016 by failing to take reasonable care to organise and control its probate and bereavement process responsibly and effectively, with adequate risk management systems, and by failing to treat its customers and those who represented them on their death fairly.

The bank's probate and bereavement process contained weaknesses which:

- reduced its ability to effectively identify all the funds it held which formed part of a deceased customer's estate;
- resulted in it failing to effectively follow-up on communications with deceased customer representatives which increased the likelihood of probate and bereavement cases not being closed; and
- led to it ineffectively monitoring open probate and bereavement cases to allow it to determine whether cases had progressed to closure.

In some cases, funds were held for many years contributing to beneficiaries being deprived of the use of them for a considerable amount of time. Since 2015, the well known bank has carried out remediation exercises, to transfer funds from affected accounts to beneficiaries. These exercises are almost complete.

### Director banned from working in the financial services sector

The FCA has banned former director from working in the financial services sector. The FCA discovered that he had used customers' money for the purchase of his debt management firm. This showed a serious lack of honesty and integrity. The FCA has decided that he is not a fit and proper person.

The director funded the purchase of this new debt management company from its accounts, with client money, rather than his own funds. He directed or allowed £322,500 to be transferred from the accounts to the previous owner.

The firm went into administration on 28 May 2014 with a shortfall of £7,156,036 from over 4,000 customers. Customers are not able to recover compensation for their losses from the Financial Services Compensation Scheme.

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- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
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### UK and Ireland

- Consumer Credit Authorisation, whether you have an interim authorisation or not
- Investment & Operational Risk management services
- Fund restructuring services
- ICAAP review and development
- ACD / Management Company structuring and governance review
- Fund and firm re-domiciliation advice
- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.
- Related Training

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