

**“Quality is never an accident. It is always the result of intelligent effort.”**

**John Ruskin**

The FCA has announced that it is seeking views on how technology can make it easier for firms to meet their regulatory reporting requirements and improve the quality of the information they provide.

**FCA and ICO publish joint update on GDPR**

The Financial Conduct Authority (FCA) and the Information Commissioners Office (ICO) have published an update on the EU General Data Protection Regulation (GDPR).

As we know, the EU General Data Protection Regulation (GDPR) will apply in the UK from **25 May 2018**. It is an essential step forward in enhancing the privacy and security of personal data. The GDPR will be regulated and enforced in the UK by the Information Commissioner’s Office (ICO). Financial services firms will need to consider how the GDPR will apply to them, and ensure that they are ready to comply with the regulations from **May 2018**.

Compliance with GDPR is now a board level responsibility, and firms must be able to produce evidence to demonstrate the steps that they have taken to comply. The requirement to treat customers fairly is also central to both data protection law and the current financial services regulatory framework.

The FCA and ICO are working closely together in preparation for the GDPR, and recently jointly hosted a GDPR Roundtable with firms and industry bodies to listen to industry concerns. One example of how they are working together is innovation, where the ICO is providing tailored input to the FCA’s Innovation Hub.

**The Future of the City**

Andrew Bailey, Chief Executive of the FCA, delivered a speech on The Future of the City Future in London.

Key highlights included:

- We are treating Brexit as a high priority and will do our utmost to make it work in the interests of the people of this country.
- There is a range of operational issues arising from Brexit which, if not tackled, will create financial stability risks and issues for both the UK and the European Union (EU).
- We are working with the Government to take action to ensure we have a functioning regulatory regime from day one by implementing the EU withdrawal bill.

**FCA discussion paper on effective competition in non-workplace pensions**

The FCA has published a discussion paper on non-workplace pensions to gather views on the non-workplace pensions market (DP18/01). The paper analyses how the differences between the workplace and non-workplace markets affect competition.

The key issues for discussion raised in the paper include:

- market complexity;

- the factors influencing consumer motivation to spend time making decisions related to their pensions;
- whether consumers are able to move freely between products; and
- fund choice and the use of informal defaults.

**MAR – ESMA report on ITS on supervisory cooperation for market abuse investigations**

The European Securities and Markets Authority (ESMA) has published its final report on draft implementing technical standards (ITS) on forms and procedures for supervisory cooperation in respect of market abuse investigations under Articles 24 and 25 of the Market Abuse Regulation (MAR).

The draft ITS aim to facilitate the communication between the EU authorities, agencies, entities and public bodies where the information that has been provided to them, further to a request for assistance, is intended to be used for purposes not stated in the request, but falling under MAR or the Regulation on wholesale energy market integrity and transparency (REMIT).

**FCA launches call for input on the use of technology to achieve smarter regulatory reporting**

The FCA has announced that it is seeking views on how technology can make it easier for firms to meet their regulatory reporting requirements and improve the quality of the information they provide.

In November 2017, the FCA and the Bank of England, held a two-week TechSprint to examine how technology can make the current system of regulatory reporting more accurate, efficient and consistent.

At the TechSprint, participants successfully developed a ‘proof of concept’ which could make regulatory reporting requirements machine-readable and executable. This means that firms could map the reporting requirements directly to the data that they hold, creating the potential for automated, straight-through processing of regulatory returns.

This could benefit both firms and regulators as:

- the accuracy of data submissions could be improved;
- costs could be reduced;
- changes to regulatory requirements could be implemented more quickly; and
- a reduction in compliance costs could lower barriers to entry and promote competition.

**Senior Managers and Certification Regime**

The industry is awaiting the FCA’s final rules concerning the extension of the senior managers and certification regime. The starting point for all firms will be to work out what their classification is under the regime (core, enhanced or limited scope) and then allocate the appropriate senior management functions. Firms that are classified as ‘enhanced’ will need to prepare management responsibilities maps and have appropriate handover procedures.

These firms will also be the only subset of firms joining the senior managers regime to which the 'no gaps' principle applies. This requires the firm to allocate responsibility for each business area, activity or management function. Notwithstanding this all firms within the senior managers regime will need to prepare individual statements of responsibilities for their senior managers. Following the banking experience of this regime, the allocation of responsibilities can be a difficult matter for a board where emotions often run high.

#### ESMA risk assessment work programme 2018

The European Securities and Markets Authority (ESMA) has published its risk assessment work programme, which sets out its priorities for assessment of securities markets for 2018.

These priorities include:

- enhancing ESMA's risk monitoring capacities, generating market descriptive statistics as well as sophisticated risk indicators and metrics on the basis of new proprietary data; and
- launching an annual report series on EU derivatives markets, based on data collected from the reporting obligations under the European Markets Infrastructure Regulation (EMIR), and an annual report series on EU alternative investment funds, based on data provided pursuant to the Alternative Investment Fund Managers Directive (AIFMD).

#### FCA report on the supervision of algorithmic trading in wholesale markets

The report summarises the key areas of focus for algorithmic trading and highlights areas of good and bad practice observed within previous cross-firm reviews. Automated technology brings significant benefits to investors, including increased execution speed and reduced costs. However, it can also amplify certain risks. It is therefore essential that key oversight functions, including compliance and risk management, keep pace with technological advancements.

The report focuses on five key areas within algorithmic trading compliance in wholesale markets:

- Defining Algorithmic Trading
- Development and Testing Process
- Risk Controls
- Governance and Oversight
- Market Conduct

#### FCA update on global sandbox

The FCA is considering extending the existing regulatory sandbox to a global sandbox, which could help firms to conduct regulatory tests in different jurisdictions at the same time.

The FCA believes that a global sandbox could:

- help firms facing regulatory problems that cross jurisdictional boundaries, by working with regulators to define where these common problems exist and to collaborate to find solutions;
- support specific firms with cross-border ambitions across any sector; and
- address policy and regulatory challenges by convening joint events and/or papers on emerging trends and challenges, to leverage the diverse experience of participating regulators and firms.

#### Advisers frustrated by LEI applications under MiFID II

Advisers have been urged to shop around if they need a Legal Entity Identifier under MiFID II as fears have been raised that scam companies could take advantage of the market. LEIs will be required where the client is not an individual, for example if they are acting under a legal entity or structure such as a company, charity or trust.

Many firms are currently applying for LEIs to make sure they are compliant with plenty of time ahead of July. The deadline for firms to have LEI's for their clients was initially 3 January but this was extended by **six months** by the European Securities and Markets Authority.

However, advisers have cited frustrations with the application process. One adviser, says he grew frustrated with the application process when he tried to register through the London Stock Exchange for a code. The LSE was charging £138 including VAT for registration.

He explained: "I struggled to navigate my way through a highly complex and confusing process and gave up after two attempts."

#### New credit card rules introduced by the FCA

The FCA has published its final policy statement on new rules for the credit card market. They estimate that the changes will save consumers between £310 million and £1.3 billion a year in lower interest charges.

The new rules come into force on **1 March 2018**, but firms have until **1 September 2018** to comply. The changes will provide more protection for credit card customers in persistent debt or at risk of financial difficulties.

The changes are being introduced following a comprehensive study of the credit card market. The study analysed the accounts of 34 million credit card customers over a period of five years, and surveyed almost 40,000 consumers.

Under these new rules firms will be required to take a series of escalating steps to help customers who are making low repayments over a long period, beginning when the customer has been in persistent debt over 18 months. After this time firms need to contact customers prompting them to change their repayment and informing them their card may ultimately be suspended if they do not change their repayment pattern.

Once a consumer has been in persistent debt for 36 months, their provider will have to offer them a way to repay their balance in a reasonable period. If they are unable to repay the firm must show the customer forbearance. This may include reducing, waiving or cancelling any interest, fees or charges.

### ESAs warn consumers of risks of virtual currencies

The European Supervisory Authorities (ESAs) have issued an EU-wide warning to consumers regarding the risks of buying virtual currencies. The ESAs warn consumers that virtual currencies are highly risky and unregulated products and are unsuitable as investment, savings or retirement planning products.

They are concerned that an increasing number of consumers are buying these currencies while unaware of the risks involved. They warn that virtual currencies, such as Bitcoin, are subject to extreme price volatility and have shown signs of a pricing bubble and consumers buying them should be aware that there is a high risk that they will lose a large proportion or all of the money they invest. They also warn that due to operational problems with virtual currency exchanges, consumers have been unable to buy or sell virtual currencies when they wanted to and have suffered losses due to changes in price during the period of disruption.

### HMRC Scrutiny of Asset Managers

HMRC have recently adopted a more aggressive approach to the salaried members rules, leading to increasing numbers of enquiries into LLPs' partnership tax returns. Over recent weeks, increasing numbers of UK asset managers established as LLPs have been receiving notices of enquiry and partnership tax return checks from HMRC in relation to their approach to the "salaried member" rules introduced in April 2014.

These rules have not raised the amount of revenue from the asset management sector, that HMRC had forecast.

As a result, asset managers should expect scrutiny of the positions they have taken since April 2014 over the coming months, as well as some changes in HMRC's prior approach to the rules, in both cases with a view to making up the current shortfall in tax revenues.

### FCA Enforcement cases

#### **Convicted illegal money lender sentenced to three and a half years imprisonment.**

Illegal money lender, was sentenced to three and a half years imprisonment by a Judge in Southwark Crown Court after guilty verdicts yesterday (8 February 2018) for offences under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000.

In addition to this custodial sentence, the offender has been issued with a Serious Crime Prevention Order (SCPO). This is the first time the Financial Conduct Authority has sought such an order, which underlines the seriousness of his conduct. Breaching the terms of the order is a criminal offence, punishable by up to five years' imprisonment.

Between 2012 and 2016, he acted as an illegal lender despite being refused a consumer credit licence by the OFT, or securing any authorisation from the FCA. Over the 4 year period, his own loan books showed that he issued approximately £1 million of new loans and took in at least £2 million in payments from old and new consumers, none of whom were aware that did not have a licence.

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

"The court is sending a very clear message that deliberate and repeated offending will lead to long periods of imprisonment. The FCA will continue to take whatever action is necessary to bring offenders to justice and protect consumers."

## SUMMARY OF REGULATORY MATTERS IN IRELAND

### Central Bank to Amend the Requirements for Loan Origination QIAIFs

The Central Bank has published a notice of intention to amend the requirements for loan origination Qualifying Investor AIF set out in the AIF Rulebook. The amendment currently proposed would permit lending within a broader credit focused strategy.

The change outlined therein will come into effect from **7 March 2018** when the Central Bank will publish a revised AIF Rulebook.

### GDPR and the Data Protection Bill 2018

GDPR will replace the 1995 Data Protection Directive on **25 May 2018**, and EU member states' national implementation laws related thereto. GDPR represents a paradigm shift in the approach to EU privacy law and will pose significant compliance and operational challenges for asset managers that have any EU and/or UK operations. An Irish Funds GDPR Working Group has outlined the scope and key impacts of the GDPR.

The Irish Government has published the Data Protection Bill 2018 (the "Bill") to give effect to GDPR and to provide, in the limited areas permitted, for national derogations. The Bill repeals the Data Protection Acts 1988 and 2003 (the Acts), except for those provisions relating to the processing of personal data for the purposes of national security, defence and the international relations of the State.

### Central Bank Communication to Firms Seeking Authorisation in 2018

The Central Bank has issued a communication to firms seeking authorisation in 2018. In light of the UK's decision to withdraw from the European Union and an uptake in firms therefore engaging with the Central Bank, the Bank has offered an encouragement to proceed with any application process in good time and has committed significant further resources to deal with the additional enquiries.

### Enhancements to the Regulated Disclosures Submission Process

The Regulated Disclosures teams within the Central Bank are in the process of upgrading their document management and workflow system. The Bank has provided that user testing of the new system is underway, deployment of Excel templates required with each submission is planned for early April and website instructions related to the Excel templates are planned for 10 to 14 days prior to adoption. It is anticipated that the new system will go fully live in mid Q2 2018.

In addition, an update on the new submission process will be provided at the Prospectus Regulations Stakeholder Meeting on **5 March 2017**.

## FMConsult Services

### All offices

- Compliance monitoring services
- Company authorisation services
- Fund authorisation services
- Outsourced MLRO services
- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
- Compliance 'Health' checks
- Policy and procedures
- Systems and Controls
- GDPR assistance
- SMCR assistance

### 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.

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