

***"It is time for parents to teach young people early on that in diversity there is beauty and there is strength."***

**Maya Angelou**

Andrew Bailey, Chief Executive of the FCA, conducted a speech on 'The Importance of Diversity' at the PIMFA Wealth of Diversity Conference 2019. He highlighted the importance of fostering a culture of diversity and inclusiveness and how this can contribute to changing the behaviour of firms for the better.

#### Senior Managers and Certification Regime (SMCR)

With the date for implementation (9/12/19) for all firms drawing ever closer, the FCA released a video with four leading players from banks explaining why they feel SMCR made a difference to the culture in their organisation. Whilst your firm may not be a bank this video offer insights into the expectations of the FCA.

The Executive Director of Supervision – Retail and Authorisations, FCA made it clear the FCA's expectations of firms implementing SMCR:

*"SMCR is very simple but its effects are radical, they're going to shift the culture of financial services. I think there are two main outcomes that I'm seeking to achieve from this. One is that every individual in financial services that interacts with a customer, does work that could affect customer outcomes really holds themselves to a standard for their behaviour which is not just tick boxing of "I'm complying with some process" or something else, they're actually saying **"There is a standard here of my behaviour and my skills and my due diligence that I need to reach."** So that's one outcome. A second outcome I think is that leaders say: **"I'm not just accountable and take responsibility for my own actions, I'll take responsibility for leading"**.*

The work to reach compliance with the regime should be well underway but if you are not yet started **FMConsult have experience resources available to help you**, including: Project management skills; procedures and process documentation; training; Statements of Responsibilities; Fitness and Proprietary assessments etc.

#### European Commission adopts Delegated Regulation containing RTS on measures to mitigate money laundering and terrorist financing risk under MLD4

The EC adopted a Delegated Regulation supplementing MLD4 with regulatory technical standards (RTS) specifying the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering (ML) and terrorist financing (TF) risk in certain third countries.

The RTS specify how credit and financial institutions should manage ML and TF risks, as required by Article 8 of MLD4, where a third country's law prevents the implementation in their branches or majority-owned subsidiaries of group-wide policies and procedures on anti-money laundering (AML) and countering the financing of terrorism (CFT). This may occur, for example, when the sharing of customer-specific information within the group conflicts with local data protection or banking secrecy requirements.

The next step is for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither of them objects, it will enter into force twenty days after it is published in the Official Journal. The Delegated Regulation will apply three months after it has entered into force.

#### MiFID II costs and charges disclosures review findings

As part of their supervision work, the FCA looked at the costs and charges disclosures of a sample of 50 firms authorised as MiFID investment firms in the retail investments sector. They found that these firms knew about their obligations for disclosing costs and charges, but interpreted the rules in a variety of ways. They were better at disclosing the costs of their own services than at disclosing relevant third-party costs and charges. They found evidence that firms were not sharing their costs and charges with each other to meet their obligations to provide aggregated figures to clients.

Their review suggested that, overall, the industry has been slow to comply with the relevant rules and they highlighted some practices that they expected firms to address including:

- MiFID II introduced a need for firms to calculate and disclose 'transaction costs'. There were examples of firms that distribute investment products disclosing their own transaction costs but not disclosing investment product transaction costs.
- A few firms were prominently advertising low costs while disclosing higher aggregated costs in less visible parts of their website.
- The FCA found examples of firms being inconsistent in their cost disclosures depending on the stage of the customer journey. Some firms' generic pre-sale disclosure figures differed significantly from their tailored point-of-sale disclosures. This was particularly the case when they had left out investment product transaction costs from pre-sale disclosures.
- Some firms still do not consistently include charges as both cash amounts and percentages.
- One way to illustrate the impact of percentage charges over the lifecycle of example investment is to use sample investment amounts and timescales. The FCA found that some firms using this method chose very large cash amounts and very short time periods. While this practice may mirror some investment behaviour, firms should be using examples that reflect general customer experience rather than selecting numbers that are easy to calculate.
- Some firms were leaving out transaction and incidental costs and charges because they could not get the necessary data. In the absence of actual costs to use as a proxy, the rules do allow firms to use reasonable estimates. However, firms should make 'a reasonable and sufficiently accurate estimate of the total costs of the financial instrument' and also review pre-sale assumptions based on post-sale experience and adjust where necessary.
- Some firms marketed their costs and charges as lower than out-of-date industry averages these were considered to be potentially misleading for consumers.

## Next Steps

The FCA expect all firms to review their own costs and charges disclosures to ensure that they are satisfying all relevant requirements for their 'ex-ante' costs and charges disclosures, and ensure they are complying with the relevant rules. Firms should be particularly alert to the need to disclose all 'transaction' and 'incidental' costs and charges to customers - all communications to customers about MiFID business must be fair, clear and not misleading.

Where they do not see improvement in firms' costs and charges disclosures they will consider whether further action is required. This could include more detailed investigations into specific firms, individuals or practices. FMConsult are able to assist in reviewing your disclosure where required

### Breaking news - FCA Anti-Money Laundering ("AML") Visits?

There is some indication that the FCA has selected a number of small firms to be subject to a half-day visit by the Regulator in order to conduct an assessment of the firms' AML and financial sanctions systems and controls.

We understand that this is part of the FCA's routine work with smaller regulated firms. Such visits will consist of interviews with key members of staff, and firms may also be requested to provide a walk-through of their systems.

It is understood that these assessments include, but are not necessarily be limited to:

- Governance and Management Information;
- Policies and Procedures;
- Risk assessment;
- Identification of High Risk/ Sanctioned Individuals or Entities;
- Due Diligence and Ongoing Monitoring
- Communication, Training and Awareness.

If you need assistance with a planned FCA visit or wish an independent review of your AML processes please do not hesitate to contact us.

### The Importance of Diversity

Andrew Bailey, Chief Executive of the FCA, conducted a speech on 'The Importance of Diversity' at the PIMFA Wealth of Diversity Conference 2019.

Key highlights included:

- Diversity and inclusion is central to how the FCA act as a regulator and as an employer.
- Fostering a culture of diversity and inclusiveness can contribute to changing the behaviour of firms for the better.
- The culture and governance of firms is a priority for the FCA but they do not prescribe what this should be.

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

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

The FCA's asset management market study presented evidence of weak price competition in many areas of the asset management industry.

In April 2018, the FCA introduced new rules to ensure fund managers act as agents of investors in their funds.

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

### FCA proposes new measures to encourage effective stewardship

The FCA is proposing new measures and gathering views on how to encourage effective stewardship in the interests of investors. Most UK consumers hold investments, for example through their pensions, which are looked after by asset managers. Asset managers have a duty to oversee these investments in their clients' interests.

The FCA is now asking what more could be done to encourage asset managers to monitor closely the companies they invest in, actively engage with them, and hold them to account on material issues – delivering long-term, effective stewardship.

The two papers published are:

- A Consultation Paper on regulatory measures to implement the provisions of the amended Shareholder Rights Directive (SRD II) for FCA-regulated life insurers and asset managers, as well as for issuers of shares in respect of related party transactions. The Directive comes into effect in June 2019 and, assuming a transition period for EU Withdrawal is agreed, will need to be transposed in the UK. SRD II aims to promote effective stewardship and long-term investment decision-making.
- A joint Discussion Paper (DP) by the FCA and the FRC on the importance of effective stewardship. This DP aims to advance the debate about what effective stewardship should look like, what the minimum expectations should be for financial services firms who invest for clients and beneficiaries, the standards the UK should aspire to and how these might best be achieved.

### FCA confirms proposals in the event of a no-deal Brexit

The FCA has published near-final rules and guidance that will apply in the event the UK leaves the EU without an implementation period. As most of the changes proposed will be made under powers given to the FCA under the EU (Withdrawal) Act, they are subject to approval by the Treasury.

The papers also provide further details on the treatment of Gibraltar-based firms after Brexit and the temporary transition power. This power would give the FCA the ability to waive or modify changes to regulatory requirements which have been amended under the EU (Withdrawal) Act. The FCA intend to use it so firms and other regulated entities do not generally need to prepare now to meet new UK regulatory obligations. In most cases, the FCA plan to allow firms a period of 15 months to adapt to these changes.

### FCA outlines how it would use the temporary transitional power

The temporary transitional power would give the FCA the ability to delay or phase in changes to regulatory requirements made under the EU (Withdrawal) Act 2018 (the legislation that has enabled the 'onshoring' of EU legislation and rules into the UK rulebook) for a maximum of 2 years from exit.

The FCA intends to make use of this power to ensure that firms and other regulated persons can generally continue to comply with their regulatory obligations as they did before exit. This will enable firms to adjust to post-exit requirements in an orderly way.

There will be some areas where it would not be consistent with the FCA's statutory objectives to grant transitional relief using the temporary transitional power. In these areas only, firms and other regulated persons as identified below should begin preparing to comply with the changed obligations now, if there is no implementation period.

The following firms or persons should begin to prepare to comply with changes now:

- Firms subject to the MiFID II transaction reporting regime, and connected persons
- Firms subject to reporting obligations under European Market Infrastructure Regulations (EMIR).
- EEA Issuers that have securities traded or admitted to trading on UK markets.
- Investment firms subject to the Bank Recovery and Resolution Directive (BRRD) and that have liabilities governed by the law of an EEA State.
- EEA firms intending to use the market-making exemption under the Short Selling Regulation.
- Firms intending to use credit ratings issued or endorsed by FCA-registered credit ratings agencies after exit day.
- UK originators, sponsors, or securitisation special purpose entities (SSPEs) of securitisations they wish to be considered simple, transparent, and standardised (STS) under the Securitisation Regulation.

### Joint statement by UK and US authorities on continuity of derivatives trading and clearing post-Brexit

Market participants can be assured of the continuity of derivatives trading and clearing activities between the UK and US, after the UK's withdrawal from the EU, following this joint statement by the Bank of England including the Prudential Regulation Authority (BoE), Financial Conduct Authority (FCA), and the US Commodity Futures Trading Commission (CFTC).

### Continued supervisory co-operation

The BoE, FCA and CFTC have in place information-sharing and cooperation arrangements to support the effective cross-border oversight of derivatives markets and participants and to promote market orderliness, confidence and financial stability.

### Extension of existing CFTC relief and comparability for the UK

CFTC intends that existing regulatory relief granted by the CFTC to EU firms, including UK firms, will be extended to UK firms at the point of the UK's withdrawal from the EU.

### Requirements for UK trade repositories and reporting counterparties

In January 2019, the FCA confirmed that the FCA will become the UK regulator of Trade Repositories (TRs) after Brexit. This information is only applicable if the UK leaves the EU without a withdrawal agreement (a no-deal scenario). The regulations allow for:

- a conversion regime for UK based TRs who have an ESMA registration and want to keep a presence in the UK
- a temporary registration regime for UK legal entities that are part of the same group as a TR with an existing ESMA registration

### Reporting Counterparties

UK reporting counterparties must ensure they are connected to a registered, or recognised, UK TR in order to fulfil their reporting obligations from Exit day under draft regulations. The FCA encourage UK reporting counterparties to continue engagement with their TRs on their Brexit contingency planning. A list of UK TRs will be made available on the FCA webpage ahead of Exit day.

### Luxembourg Brexit Bill for the Financial Sector

On 31 January 2019, the Luxembourg finance minister introduced a bill on measures to be taken in relation to the financial sector in the event the UK leaves the EU without reaching an agreement on the final terms of its withdrawal. The Bill is currently pending. In the event of a no deal scenario, it would enter into force on **29 March 2019**.

The Bill grants the Luxembourg financial and insurance supervisory authorities special powers to authorise, on a case-by-case basis, UK-accredited financial, investment and insurance institutions to continue to provide services to existing Luxembourg-based clients during a grandfather period of up to 21 months from the withdrawal of the UK from the EU (the "Effective Brexit Date").

### Ending reliance on LIBOR

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

Key highlights included:

- Firms need to end their reliance on the London Interbank Offered Rate (LIBOR) by end-2021.
- The FCA have seen 15 sterling bond issues that have referenced compounded The Sterling Overnight Index Average-based (SONIA), with a total value of about £8.7bn, so far in 2019.
- The FCA are seeing evidence of progress, but there is work that remains to be done.

### Cross-border testing pilot for innovative firms open to applications

The Global Financial Innovation Network (GFIN) – a group of 29 international organisations including the Financial Conduct Authority – is inviting applications from firms wishing to test innovative financial products, services or business models across more than one country or jurisdiction. Currently chaired by the FCA, the GFIN is an international network of organisations committed to supporting financial innovation in the interests of consumers. The network was developed following the FCA's earlier proposal to create a global sandbox. The FCA's sandbox, which allows firms to test innovative ideas in a live market environment, was a first for financial services regulators across the world. Now international regulators and bodies have joined forces to launch a pilot for firms that wish to test innovative products and services across international markets.

The pilot tests will provide a more efficient way for innovative firms to interact with regulators across the world, as they look to scale new ideas. Each regulator will make sure that appropriate safeguards for their jurisdiction are in place for the tests.

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

The FCA has announced the appointment of Wanda Goldwag as the new Chair of the independent Financial Services Consumer Panel. The appointment, effective from 1 March 2019 for an initial three-year term, has been confirmed by HM Treasury.

Wanda will be the public face of the panel, leading and giving strategic direction by representing the Panel's views to the FCA board and to the senior staff within the FCA and represent the Panel outside the FCA. In addition to this, she will lead the development of the Panel's work and ensure that performance goals are met. Wanda succeeds Sue Lewis, who was Chair for a total of five and a half years.

### Enforcement cases

#### FCA fines former fund manager

The FCA has fined a former fund manager at an Investment Management company, £32,200 for his conduct in relation to an Initial Public Offering (IPO) and a placing. On two separate occasions, the defendant submitted orders as part of a book build for shares that were to be quoted on public exchanges. Prior to the order books for the new shares closing, the former fund manager contacted other fund managers at competitor firms and attempted to influence them to cap their orders at the same price limit as his own orders.

The FCA found that he risked undermining the integrity of the market and the book build by trying to use their collective power. As a consequence, he failed to observe proper standards of market conduct. He was also found to have acted without due skill, care and diligence by failing to give proper consideration to the risks of engaging in these communications.

#### Former sole Director sentenced to 2 years for illegally operating an investment scheme and fraud

In a case brought by the FCA, the former Director was sentenced at Southwark Crown Court to a 2 year prison sentence suspended for 2 years and he was further ordered to carry out 300 hours of unpaid work in the community. The sentence followed earlier guilty pleas to 4 charges relating to misleading consumers, fraud and the illegal operation of an unauthorised investment scheme worth over half a million pounds.

He was the sole director of a trading company and between October 2015 and November 2017 he promoted a deposit taking scheme without authorisation from the FCA mainly targeting wider family and associates. He also entered into an agreement with one investor to manage £192,500 in spread betting trading in which only £10,000 was used as promised. He received a total of approximately £600,000 in funds from investors some of whom were 'guaranteed' returns of up to 100% based on his claimed success as a currency trader. In reality, only £457,119 of those deposits were actually traded by the former Director and almost all of these funds were lost or used to fund his lifestyle. The FCA has obtained a financial restraint order against his remaining assets and will pursue confiscation proceedings in relation to his remaining assets which will hopefully go some way to compensating the victims in this case.

#### FCA's first formal decision under its competition enforcement powers.

The FCA has fined one firm £306,300 and another firm £108,600. The FCA has not imposed a fine on the third firm because it was given immunity under the competition leniency programme.

The infringements consisted of the sharing of strategic information, on a bilateral basis, between competing asset management firms during one initial public offering 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 price they were willing to pay and sometimes the volume they wished to acquire. This allowed one firm to know another's plans during the IPO or placing process when they should have been competing for shares.

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

'This is our first case using our competition law powers and demonstrates our commitment to taking enforcement action to protect competition. Asset management firms must take care to avoid undermining how prices are properly set for shares in both IPOs and placings. Failure to do so risks them acting illegally. 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. We can also take regulatory action against an individual and did so here with respect to some of the same facts.'

### 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
- Related training
- Financial Crime

#### 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

### FMConsult Contacts

#### Dallas J. McGillivray

Group Managing Director & Authorisation Services  
Tel: 020 7220 9073  
[dmcgillivray@fmconsult.co.uk](mailto:dmcgillivray@fmconsult.co.uk)

#### Andrew (Andy) Hicks

Director, Head of Monitoring Services  
Tel: 020 7220 9074  
[ahicks@fmconsult.co.uk](mailto:ahicks@fmconsult.co.uk)

#### Ross Revell

Director  
Tel: 020 7220 9078  
[revell@fmconsult.co.uk](mailto:revell@fmconsult.co.uk)

#### Colette Panebianco

Director, FMConsult USA  
[cpanebianco@fmconsult.us](mailto:cpanebianco@fmconsult.us)

#### John Clare

General Manager, FMConsult Ireland  
Tel: +353 87 2599510  
[jclare@fmconsult.ie](mailto:jclare@fmconsult.ie)

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