2018 Regulatory Bulletin Issue 4

> ***"It is nice to have valid competition; it pushes you to do better."***
> ***Gianni Versace***

The FCA has published the latest step in its response to the concerns identified through its asset management market study to improve competition within the industry.

ARE YOU READY FOR GDPR?
LESS THAN A MONTH TO GO!

GDPR is a new data protection framework which puts individuals back in control of their personal data. As we know, it will apply in the UK from **25 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.

By now firms should have:

1. undertaken GDPR awareness training with staff;
2. carried out a data mapping inventory identifying what personal data is held, where and under what lawful basis this data is held;
3. assessed current Privacy Notices for compliance with the new GDPR requirements for Privacy Notices;
4. assessed contracts in place with 3rd parties for compliance with the new GDPR provisions relating to contract clauses; and
5. have updated data protection policies and procedures.

FCA Business Plan 2018/19

The FCA has published its Business Plan for 2018/19 which sets out the key priorities for the coming year.

The priorities in this year's Business Plan reflect the high level of resource the FCA needs to dedicate to European Union (EU) withdrawal. Alongside this work, the FCA will focus on **seven** cross sector priority areas, based on assessments of where there is the greatest harm or potential for harm, and where intervention can have the greatest impact.

The priority areas are:

- Firms' culture and governance which should drive behaviours and produce outcomes likely to benefit consumers and markets.
- High-cost credit, building on the significant impact already made in the market.
- Tackling financial crime, including fraud, scams and anti-money laundering to make the UK financial services sector a hostile place for criminals and a safe place for consumers.
- Data security, resilience and outsourcing since technology plays a pivotal role in delivering financial products and services.
- Innovation, big data, technology and competition which are driving change in markets.
- The treatment of existing customers to ensure that they do not get less attention or receive poorer outcomes than new customers.
- Long-term savings, pensions and intergenerational differences which reflects the changing UK population and their financial needs.

FCA guidance consultation on financial crime systems and controls: insider dealing and market manipulation

The FCA recently published a guidance consultation on amending its Financial Crime guide for firms. The guide consolidates the FCA's guidance on financial crime.

Although it is not binding on firms, the guidance is intended to enhance firms' understanding of the FCA's expectations, and firms are expected to take note of it and use it to inform their own financial crime systems and controls.

The proposed changes include, among others, updating the guide with an additional chapter on insider dealing and market manipulation which will outline the FCA's observations of good and bad market practice around the requirement to detect, report and counter the risk of financial crime, as it relates to insider dealing and market manipulation.

The FCA also points out that where firms separate their surveillance function from their financial crime or money laundering reporting officer teams, it is important that they ensure that there is adequate communication between the two areas such that the firm can effectively counter the risk of insider dealing and market manipulation.

FCA sets out next steps to improve competition in the UK's asset management industry

The FCA has published the latest step in its response to the concerns identified through its asset management market study. This is part of a package of remedies to ensure fund managers compete on the value they deliver, and act in the interests of the millions who entrust them with their savings.

The final rules and guidance cover:

- a requirement for fund managers to make an annual assessment of value, as part of their duty to act in the best interests of the investors in their funds
- a requirement for fund managers to appoint a minimum of two independent directors to their boards
- the introduction of a new prescribed responsibility under the Senior Managers and Certification Regime to bring individual focus and accountability
- technical changes to (i) improve fairness around the way in which fund managers profit from investors buying and selling their funds and (ii) facilitate the movement of investors into cheaper share classes

These measures will deliver better protection for all investors, both those who are actively engaged with their investments and those who don't follow their investments closely.

New FCA data show 3.76 million complaints about financial services firms

Complaints about payment protection insurance (“PPI”) drove a 13% increase in the number of complaints made to financial services firms in the second half of 2017, according to figures published by the FCA.

During the second half of 2017 a total of 3.76 million complaints were received, an increase of 427,032 on the first half of the year. Complaints about PPI rose by 40% to 1.55 million, the highest level of complaints about PPI for more than four years.

In January 2018 firms paid out £415.8m in redress to customers who complained about PPI. This is the highest figure since March 2016 and takes the amount paid since January 2011 to £30bn.

Excluding PPI the number of complaints received by firms was 2.21million, around 13,000 fewer than the previous six months.

After PPI, the next most complained about products are current accounts, with 509,047 complaints and then credit cards with 314,586 complaints.

FCA introduces 5 Conduct Questions Programme

The 5 Conduct Questions are part of the FCA’s strategy for supervising wholesale banks.

The FCA introduced the 5 Conduct Questions for wholesale banking in 2015. Since then, leading wholesale banking firms operating in the UK have invested substantial efforts in change programmes related to conduct and culture.

When firms started addressing the 5 Conduct Questions, they developed their own definitions of conduct risk. They shared their experience with the FCA, providing examples of what they thought did and didn't work well in the design and implementation of their change programmes

The second 5 Conduct Questions report, published this year, indicates that most firms have made further progress. It's clear that programme design has implications for speed of implementation, staff buy-in and, ultimately, continuing effectiveness.

The report includes:

- the importance of a design and overall governance
- identifying conduct risk
- fostering staff engagement and responsibility
- provision of broad support for staff
- insightful use of management information
- considering the risks or unintended consequences of internal initiatives

Payments after PSD2: evolution or revolution

Karina McTeague, Director of Retail Banking Supervision at the FCA, delivered a speech on payments after PSD2 at the Pay360 Conference in London.

Key highlights included:

- From a consumer protection and market integrity perspective, the FCA has a real interest in the Open Banking Implementation Entity’s successful delivery of the CMA’s Open Banking API requirements and wider adoption of APIs by the industry.
- Customer communications should be balanced, and not seek to dissuade customers from using third party AIS or PIS providers through their communications or terms and conditions.
- The FCA welcomes the development of industry arrangements designed to facilitate the successful delivery of PSD2 objectives (including voluntary guidelines and dispute management system).
- The FCA will be looking to see that firms’ culture prioritises treating customers fairly, and doesn’t take inappropriate advantage of ill-informed, naïve or vulnerable consumers.

The Joint Money Laundering Steering Group (JMLSG) publishes proposed revisions

The Joint Money Laundering Steering Group (“JMLSG”) published proposed revisions to two of the sectors in Part II of its Guidance on the prevention of money laundering and the financing of terrorism for the UK financial services industry.

The proposed revisions, to sector 12: Asset finance, and sector 17: Syndicated lending, and do not change the substance of the guidance provisions, but seek to describe in more current terms the way the sectors work, how to assess the risks in the sector and how to identify who the customers are.

Cryptocurrency derivatives

The FCA are aware of a growing number of UK firms offering so-called cryptocurrencies and cryptocurrency-related assets. As indicated in the Feedback Statement on DLT, cryptocurrencies are not currently regulated by the FCA provided they are not part of other regulated products or services.

Cryptocurrency derivatives are, however, capable of being financial instruments under MIFID II, although the FCA do not consider cryptocurrencies to be currencies or commodities for regulatory purposes under MiFID II. Firms conducting regulated activities in cryptocurrency derivatives must, therefore, comply with all applicable rules in the FCA’s Handbook and any relevant provisions in directly applicable European Union regulations.

It is likely that dealing in, arranging transactions in, advising on or providing other services that amount to regulated activities in relation to derivatives that reference either cryptocurrencies or tokens issued through an initial coin offering (“ICO”), will require authorisation by the FCA.

This includes:

- **cryptocurrency futures** – a derivative contract in which each party agrees to exchange cryptocurrency at a future date and at a price agreed by both parties
- **cryptocurrency contracts for differences (CFDs)** – a cash-settled derivative contract in which the parties to the contract seek to secure a profit or avoid a loss by agreeing to exchange the difference in price between the value of the cryptocurrency CFD contract at its outset and at its termination
- **cryptocurrency options** – a contract which grants the beneficiary the right to acquire or dispose of cryptocurrencies

Brexit: what does it mean for financial markets to be open?

Andrew Bailey, Chief Executive of the FCA delivered a speech at the 'The International Financial Services Forum' in London.

Key highlights included:

- Now is the time for the UK and EU authorities to come together and work on the solutions to reduce the risks to financial stability that Brexit could pose.
- The FCA wants to work closely with ESMA and national EU regulators to continue to enhance the stability and effectiveness of global markets.
- This has global implications, not just for the UK and EU, so it is important that we get this right.

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  (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
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