

"Cheers to a new year and another chance for us to get it right." Oprah Winfrey

There really is no rest for the wicked as another year rolls on full of rules and regulations and quick reminders to bring the financial services industry back down from the Christmas high.

FCA statistics continue to show the regulatory backlogs with regard to both AIFMD and consumer credit applications.

Consumer Credit Applications

The consumer credit department is now made up of 240 people and is split into three divisions:

- Debt
- Credit
- Debt, Credit and Regulatory Permission (DCRB)

DCRB deal with the spill over from the other two departments as well as cancellations, hybrid applications, Approved Persons, dual applications and movements of application periods.

1009 applications were received from their predecessor, the Office of Fair Trading, with 90% currently complete with 10% withdrawn and 10 refused.

Since then the department has received 6000 new applications and completed 2500.

The FCA still expects to receive a further 30,000 applications within the second period of applications, and so far only 300 have been received.

The FCA has made a few suggestions to firms that are going through this process

- Start early
- F&P disclosures, nearly all refusals have been based on non-disclosure.
- Ensure that you are aware of the permissions you require and what they mean.
- Correctly state the income from Consumer credit.
- Proportionate business plan
- Ensure that customers are never mis-led
- Ensure affordability checks are appropriate.

New Swiss Rules on Distribution of Funds

A new regime governing the distribution of non-Swiss funds to Swiss investors comes fully into force on 1 March 2015, when the current transitional period expires.

The new regime segments Swiss investors into three categories:

1. regulated qualified investors (a more restricted list of Swiss-regulated financial entities, such as banks, securities dealers, fund managers and insurance companies);
2. unregulated qualified investors (pension plans, corporates, family offices, family trusts and high-net-worth individuals); and
3. non-qualified investors (effectively retail).

How Does Swiss Law Regulate the Marketing of Non-Swiss Funds in Switzerland?

Ultimately, there are two regimes — one governing the distribution of funds to non-qualified investors, and the other governing distribution to qualified investors.

Ways to "avoid" Distribution:

- Reverse Inquiry
- Discretionary Management Clients
- Publication of Prices, Net Asset Values and Tax Data

Regulated Qualified Investors

- A FINMA authorised and supervised bank;
- The Swiss Central Bank;
- A securities dealer;
- A fund manager;
- An insurance company.

Unregulated Qualified Investors

The following

- A public institution managing its treasury on a professional basis;
- A pension fund organised under the Swiss Federal Act on Professional Contingency;
- A commercial or industrial enterprise managing and also;
- A high-net-worth individual who meets the conditions set out in article 6 of CISO which are a written statement by the high-net-worth individual that he wishes to be deemed a qualified investor (opting in) and that he or she has either:
 1. At least CHF 5 million of assets; or
 2. At least CHF 500,000 of assets and has sufficient knowledge of the risks of the investments from education and professional experience or based on comparable experience in the financial sector (comparable experience here means that the individual has executed an average of 10 transactions of significant size in each quarter in the relevant market over the previous four quarters)

If you Distribute to 'Unregulated Qualified Investors', **What Do You Need to Consider?**

- A Swiss Representative Agreement
- A Swiss Distribution Agreement
A duty to Monitor Compliance
- A Swiss Paying Agent
- The Disclosure Requirements
- Appropriate disclaimers.

Changes to Reporting Annual Accounts using GABRIEL

The FCA has changed the process for Annual Report and Accounts reporting as of 31st December 2014.

Annual Report and Accounts will be reported using the regulatory reporting system, GABRIEL.

Where previously firms have submitted the information by email or post.

- For reporting periods ending on and after 31 December 2014, your Annual Report and Accounts must be submitted using GABRIEL. You will notice from this date that you have FIN-A on your schedule. This has replaced the corresponding NGP003 which were previously shown on your schedule to allow you to view your reporting obligations.
- All firms must submit their own Annual Report and Accounts. Group reporting does not apply for this data item.
- FIN-A includes an attestation question re the Immigration Act 2014.

FMConsult can assist with this return.

The FCA issues "Dear CEO" letter to high-cost short-term lenders

The FCA has published a "Dear CEO" letter on its expectations of high-cost short-term lenders. The letter summarises a number of concerns the FCA has uncovered in the course of supervising high-cost short-term credit (HCSTC) firms since April 2014. The FCA expects HCSTC firms to address these concerns in their applications for permission.

- taking reasonable steps to ensure that any potential customer presented to firms by a credit broker has been sourced in an appropriate manner;
- not passing on or selling customer data to any third party unless it is appropriate to do so;
- ensuring that all loans to customers are affordable;
- demonstrating to the FCA that firms have proper processes in place to make suitable lending decisions;
- ensuring communications to customers are clear, fair and not misleading;
- treating customers who are into or may be, in financial difficulties fairly particularly the vulnerable; and
- Having effective systems and controls for compliance with applicable regulatory requirements.
- The letter reminds HCSTC firms of the importance of submitting their applications for authorisation prior to the expiry of their interim permissions. FMConsult offers an authorisation service to clients.

The FCA Authorisation Quarterly KPIs

The average processing time for retail applications have risen with the longest application taking 43 weeks. This is due to resources being diverted to other areas of the FCA, mainly AIFM authorisations.

However the averages for both small and full scope AIFM's has remained high. With small authorised firms taking over 30 weeks and full scope AIFMs not far behind. This does however show a fall compared to the

previous quarter despite the volume of determined applications rising.

Retail Investment Advice

Back in 2013, The FCA investigated the extent to which there is a difference between their expectations of firms and firms' understanding of what is required of them – the 'expectations gap'.

They have this month issued a detailed paper as to what is expected of firms under the existing regulatory regime and guidance.

The paper comprehensively re-states what defines advice and separates it from guidance and comment. Using the MiFID definition, "advice involves the provision of personal recommendations to a customer (at their request or after approach by the firm) in respect of one or more transactions relating to financial instruments". The recommendation has to be specific, so recommending them to buy BT shares or to sell their shares in Tesco would be advice, but suggesting they look at buying Telecom shares or sell pet food retailers shares would not be. Talking them through their aims and aspirations, and assessing what they do with their current savings is not advice, but recommending they buy or sell something, at the end of this process would be advice.

The FCA also clarified how this works with DFMs. The FCA set out their definition of a DFM. The FCA makes the point in this paper that a DFM is not exercising its discretion under the mandate if it takes specific customer instructions to do something else. So if the customer instructs that the portfolio must be re-set to a particular asset allocation that they (and not the DFM) chooses, then the DFM is not using its discretion, and it is giving advice. If the customer insists in adding a fund to the "pre-constructed collection of designated investments" and are held under the normal advice rules.

There is plenty more food for thought in this paper for retail advisors and DFMs.

The FCA has stated that there are early indications that the reforms of financial advice is working.

The new RDR rules came into place in December 2012. These raised the minimum level of adviser qualification, removed commission payments to advisers and platforms from product providers and aimed to improve the transparency of charges and services.

An independent post-implementation review, found that the RDR has reduced product bias. In particular, there has been a decline in the sale of products which had higher commissions pre-RDR and an increase in the sale of those which paid lower or no commission pre-RDR.

The review also found that an increasing number of financial advisers were gaining further qualifications, demonstrating growing professionalism in the sector.

Martin Wheatley, Chief Executive of the FCA, said *'The RDR aimed to create a truly professional financial advice sector; one that provides advice based solely on investors' best interests. It is still early days but the indications are that the sector has responded positively to the reforms...Importantly, we have seen a reduction in*

product bias, with a very noticeable decline in the sales of those products that before RDR came with higher commission...These are positive signs but we know there is more to do. For example, early next year we'll be looking at how we might encourage better disclosure of information to consumers. And, in 2017 we'll undertake a further review of how the RDR has worked. It is vital that we continue to keep these wide-ranging reforms under review.'

The FCA updates guidance on reporting requirements relating to consumer credit activities

The FCA has updated its guidance on the reporting requirements for firms authorised to carry out regulated consumer credit activities. This includes changes to the data items that the FCA requests, as well as the guidance note for completing the data items relating to consumer credit activities. Credit broking firms that charge fees must now notify the FCA quarterly of their domain names in the form of data item CCR008.

In addition, Firms will need to complete a new complaints return form.

The FCA has consulted on improvements for complaint handling.

The FCA proposes to improve transparency by requiring firms to report all complaints to the FCA, not just those which cannot be resolved in one day.

The proposed changes are based on a thematic review. One of the proposals is that financial services firms will no longer be able to use premium rate telephone numbers for customers.

The FCA is also proposing to extend the period during which complaints can be resolved without the need for a formal letter.

Complainants will be able to refer all cases to the Ombudsman Service immediately after receiving the firm's response.

Christopher Woolard, director of policy, risk and research, said *'Consumers want a simple way to complain that does not leave them out of pocket. And they want to be assured that their concerns will be dealt with fairly and quickly. These proposed reforms will further improve the system, making it less bureaucratic for firms, easier for consumers and will provide us with improved intelligence on complaints.'*

FCA has new rules to tackle poor practice in the credit broking market that has been detrimental to consumers.

The rules will ban credit brokers from charging fees to customers, and from requesting customers' payment details for that purpose, unless they comply with new requirements ensuring that customers are given clear information about who they are dealing with, what fee will be payable, and when and how the fee will be payable. The rules came into force on 2 January 2015.

The FCA's concerns relate to:

- a lack of transparency, resulting in consumers often not realising they are dealing with a broker rather than a lender;
- fees being taken without informed consent, (hidden terms);
- consumers being misled as to the purpose of giving their payment details;
- firms passing on consumers' details, without informed consent; and
- Consumers facing difficulty in identifying the firm that has taken a fee, and in obtaining a refund from the firm or a response to their complaint.

Martin Wheatley, chief executive at the FCA, said *"The fact that we have had to take these measures does not paint this market in a particularly good light. I hope that other firms will take note that where we see evidence of customers being treated in a blatantly unfair way, we will move quickly to protect consumers from further harm."*

MiFID 2 – ESMA technical advice and further consultation on technical standards

The European Securities and Markets Authority (ESMA) has published its final technical advice to the European Commission on Delegated Acts under the revised Markets in Financial Instruments Directive and Regulation (together, MiFID 2), together with a further consultation on draft regulatory technical standards (RTS) and implementing technical standards (ITS)

The key markets-related proposals in the technical advice and draft technical standards cover the following issues:

- trade transparency for non-equities;
- the trading obligation for shares;
- the obligation to trade derivatives only on MiFID trading venues;
- position limits and reporting requirements for commodity derivatives;
- organisational requirements on investment firms and trading venues for high frequency trading;
- access to central counterparties (CCPs), trading venues and benchmarks; and
- the consolidated tape of trading data.

The key investor protection issues covered are:

- the circumstances in which portfolio managers can receive research;
- the quality enhancement requirement for inducements in the context of advice;
- product governance arrangements for product providers and distributors;
- information to clients regarding costs and charges and the cumulative effect of costs on the return;
- organisational requirements for firms providing investments advice on an independent basis; and
- regulators' powers to prohibit or restrict the marketing and distribution of financial instruments.

FCA Enforcement Cases

Debt Management to pay redress to 4,500 customers

A debt management firm will voluntarily pay over £185,000 to customers after communications from the firm to creditors on customers' behalf were delayed.

Customers were affected by the delays in two ways:

- Customers' creditors were not written to in a timely manner, meaning that interest and charges on their debts were frozen late,
- Customers were not written to in a timely manner following the outcome of the firm's negotiations with creditors on their behalf. This delay meant that customers were not notified that interest and charges on their debts had not been frozen.

Linda Woodall, director of mortgages and consumer lending at the FCA, said "*Debt management customers are struggling financially and often in difficult situations so it's important that when people are putting their trust in a firm, they get the service they have paid for.*"

Two former senior executives fined and banned for compliance failings related to LIBOR

The Financial Conduct Authority (FCA) has fined and banned two former senior executives of an interdealer broker for compliance and cultural failings at the firm.

This follows previous enforcement action against the firm, as they were fined £630,000 last year for misconduct relating to the London Interbank Offered Rate (LIBOR)

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said "*Both individuals also ignored obvious risks such as the risk that brokers would give or accept inducements. This risk did in fact crystallise when brokers at [the firm] were induced to assist in LIBOR manipulation in exchange for corrupt brokerage payments. Consequently, the integrity of the financial markets was compromised...This case and other recent Significant Influence Function (SIF) outcomes should serve as a warning to everyone that holds a significant influence function that if a firm's misconduct can be attributed to cultural failings, then we expect senior management to answer for this.*"

FCA fines a sponsor firm £231,000 for failings

The Firm failed to tell the FCA's UK Listing Authority (UKLA) that two thirds of its sponsor team - including the individuals responsible for leading and executing sponsor services - had left between June and November 2013, and continued to market itself as a competent sponsor throughout this period. This is the first use of the FCA's power to fine sponsors, introduced in 2013.

FCA fines a Consumer goods firm for failing to monitor share-dealing by its senior executives

The firm's failings were:

- failed to review its share dealing policy to identify or mitigate certain risks;
- The firm's systems and controls were inadequate as they did not enable it to monitor effectively all share dealing by persons discharging managerial responsibility ("PDMRs") or to identify potential breaches of its share dealing policy and the Model Code;
- The Firm assumed PDMRs were already familiar with their obligations under the Model Code and Disclosure and Transparency Rules (DTRs);
- The firm used an informal clearance process for share dealing and failed to keep adequate records;
- The firm did not provide regular or structured training to PDMRs or reminders of the share dealing policy (except in advance of close periods and as part of an annual certification process);
- when it became aware of share dealing by two PDMRs, it did not notify the market within the required timeframe; and
- the notification, when made, did not include required information such as date of dealings.

Irish News

Markets Update Issue 8 2014 - 17 December

On 17 December 2014 the Central Bank published Issue 8 of 2014 of its Markets Update. The Markets Update advises interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and MiFID firms. Items such as recent speeches are also included. The Markets Update is published as required, rather than on a regular periodic basis. Previous publications are also available on the Central Bank website.

CP90: Consultation on the Supervision of Non-Financial Counterparties under EMIR

The Central Bank issued a Consultation Paper on 4 December 2014 on the supervision of Non-Financial Counterparties under EMIR.

This consultation closes on 30 January 2015.

FMConsult News

FMConsult UK offers authorisation services to all types of Consumer Credit firms, whether you have an interim authorisation of not.

All offices provide clients with:

- Compliance monitoring services
- Company and consumer credit authorisation services
- Fund authorisation services
- Outsourced MLRO services
- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)

UK and Ireland also provide:

- Investment & Operational Risk management services
- Fund restructuring services
- Internal Capital Adequacy Assessment Process (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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