

**"I used to go away for weeks in a state of confusion." Albert Einstein**

COREP reporting has left many firms confused, the industry can perhaps draw some solace in the fact that even Mr Einstein would sometimes become confused.

There has also been guidance on the development of the industry with regards to innovation and a few changes to the client assets regulations.

### **COREP Confusion**

Common Reporting (COREP) is a capital adequacy and liquidity CRD IV report that implements the requirements of Basel III.

Relevant firms affected are firms under CRD III that were:

- BIPRU €125k or €730k firms; and
- BIPRU €50k firms performing the safekeeping and administration of financial instruments for the account of clients and/or placing financial instruments without firm commitment basis.

It also affects all banks and building societies

The first reporting date was put back from the 2nd June to the 30th however the FCA decided not to update GABRIEL to reflect this.

Many firms decided to limit their permissions to avoid this set of reports and completed a VoP (Variation of Permission) in order to remain within CRD III. However there has been some inconsistencies with this:

- Some firms have been told by the FCA that, submitting a VoP application will take them out of the scope of CRD-IV upon approval and that they may ignore COREP requests on GABRIEL.
- Some firms with VoP applications approved prior to the 31 March 2014 have had difficulty in persuading the FCA's Firm Contact Centre to remove the initial COREP return from their reporting schedule.
- other firms that had VoP applications approved after 31 March 2014, have noted that the initial COREP return has been removed from their reporting schedule, despite the fact that CRD-IV applied to them on that date;

It is not possible to predict whether the FCA or European Banking Authority (EBA) will take action against firms that have failed to report on the deadline, for whatever reason.

Firms that have received an approval of a VoP application should check their GABRIEL reporting schedule and, if it continues to include COREP items, seek assurances from the Firm Contact Centre that this will be removed and that no COREP reporting is due on 30 June 2014.

**A major Private Bank has issues a Suitability warning to all UK clients.**

The bank's chief executive sent a letter to all their UK clients warning that there may have been some suitability issues with their portfolios held by clients on 26 November 2012.

Their review will not be completed before early 2015 however clients who are affected will be notified once their investments have been reviewed. If it is found that they were indeed unsuitable investments the client will be offered compensation and the right to exit the investment.

The bank had previously been fined, £6.3 million, in 2011 for Suitability issues. That came in the same year that the regulator issued two other major banks £10.5 and £7.7 million respectively for similar failings.

### **FCA speech "Making Innovation work for firms"**

Martin Wheatley, Chief Executive, of the FCA has given a speech relating to how the FCA sees the regulator's role in the market. He stated that they have moved a long way away from Ronald Reagan's ideology in the 80s *"If it moves, Tax it. If it keeps moving, regulate it. And if it stops moving, Subsidise it."*

In his view the FCA is now a strength of the UK economy with a very clear statutory objective to make markets work well for firms as well as consumers, offering more balance than at the time of the last financial crisis.

Whilst he understood the industry's desire for clarity in the rules over broader principles, he explained the intention was to allow a certain level of freedom to allow the development of new products, innovation and business models.

Two main areas of development raised were;

- The importance of the regulator being receptive to industry concerns and insights; and
- The value of firms taking their own responsibility to move things forward.

He asserted the importance of change in the regulatory stance as the market evolves during an economic recovery. There can be an over confidence created by the recovery that leads to market friction towards regulatory reform that could lead to an instability in the market. Therefore it is important the regulator does not fall for the temptation to enter into a *"regulatory race when the good times roll."*

He also spoke of other issues, such as how the regulations relating to the improvements in technology are coming more and more into the regulators discussions; and also the issues relating to disclosure and the ever expanding terms and conditions associated with financial products. He recognised that a majority of people do not read disclosures these and other disturbing stats exists such as 20% of financial services customers don't understand whether a higher or lower APR represents a better deal.

**FCA finalises changes to the client money and client assets rules (CASS).**

These changes affect all firms that are subject to the CASS regulations.

David Lawton, Director of Markets said *"The protection of client assets is central to confidence in the UK markets and fundamental to consumers' rights and the trust they place with firms. These changes will improve the protection offered to client assets and should speed up the recovery of client assets on a failure of a firm."*

The changes include a rewrite of the client money rules for investment firms and amendments to the custody rules. The changes aim to improve firms' systems and controls around segregation, record keeping and reconciliations and set out how investment firms must address client assets risks within their business.

The FCA believes a various aspects of the independent review produced by HM Treasury will be enabled by the changes in the policy statement. Changes or improvements in the behaviour, specifically;

- Good recordkeeping;
- Enhanced reporting to clients;
- Improved understanding or client asset regime; and
- Increased clarity around certain intra-group relationships.

Investment firms are advised to review how the changes affect their business and be in a position to comply with the new rules by the required dates. The most imminent date is 1 July 2014, where the changes include;

- General guidance reminding firms of their obligations under the client's best interest rule when agreeing to a collateral arrangement;
- Clarity of when firms are and are not required to pay clients the interest earned on client money;
- Certain clarifications and revisions to accommodate transfer of business, unclaimed client money and a firm's legal obligations to pay client money to a third party; and
- Prohibiting firms from placing money in a deposit with an unbreakable term of more than 30 days.

**FCA announce new online system**

The new system, Connect, will be launched on 1st October 2014 and will be used for online notifications and applications. Connect will now be used for Approved Persons, Appointed Representatives, Cancellations, Standing Data and Variation of Permissions applications.

Any new applications or notifications that you create from the 1st October 2014 will be done through Connect. The FCA will give you time to submit any draft applications/notifications that you are working on in ONA until the 1st December 2014.

**Regulatory Changes within MiFID2 & MiFIR**

MiFID introduced harmonised pre and post-trade transparency requirements on shares admitted to trading on regulated markets. The transparency requirements have now been expanded to include equity instruments other than shares admitted to trading on trading venues (i.e. an RM, MTF or OTF) including depositary receipts, ETFs, certificates and other similar financial instruments.

**Fixed income and derivative markets transparency**

The introduction of new transparency requirements for the fixed income and derivatives markets likely to pose implementation challenges for firms on an operational level.

**Transaction reporting**

MiFIR expands the original MiFID transaction reporting obligation. There will be a significant increase in the volume of reportable data. Investment firms that execute transactions in financial instruments must report complete and accurate details of the transactions to the competent authority as quickly as possible, and no later than the close of the working day following the trade.

The obligation applies to the following types of instrument

- financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;
- financial instruments where the underlying is a financial instrument traded on a trading venue; and
- financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue;

**Conduct of Business and investor protection**

The conduct of business provisions of MiFID2 are the primary means by which the directive achieves improvements in investor protection after a variety of mis-selling scandals.

The main changes to conduct of business rules relate to:

- Extending the scope of the conduct of business rules to include structured deposits;
- Product design;
- Title transfer with retail clients;
- Conflicts of interest;
- Execution only business; and
- Best execution performance and public disclosure.

**Remuneration**

The European Securities and Market Authority (ESMA) has chosen to introduce new requirements for firms on the remuneration of staff. Firms will be required to have a policy, signed off by the board, to show how the interests of clients are put first when paying any staff remuneration with a direct or indirect involvement in investment business. In particular, where variable pay is

involved, commercial considerations must become a secondary concern. The primary interest in calculating variable pay will be whether the individual has been serving the interests of clients, and performing compliantly.

### **FCA Enforcement Cases**

#### **The Upper Tribunal have upheld two instances of market abuse**

The Tribunal upheld the FCA's decision that a financial worker had engaged in two instances of market abuse by disclosing inside information other than in the proper course of his employment in two emails.

The Tribunal also commented on the standards of behaviour it expected of professional advisers when handling inside information:

*"We consider that it could never be in the proper course of a person's employment for him to disclose inside information to a third party, where he knows that his employer and client would not consent to the public disclosure of that information, unless he knows that the recipient is under a duty of confidentiality and that he knows that the recipient understands that to be the case."*

#### **Two banks fined for promotional failings**

Two banks have been fined £2,398,100 and £1,429,000 respectively are failing to ensure financial promotions were clear, fair and not misleading.

The product was advertised with a key element of the advertising showing a potential of 40-50% growth, when in fact the chance of this happening was close to 0%.

The product was advertised to clients that were classified as "stepping stone customers," by the firms. The product was typically sold to unsophisticated investors with limited investment experience and knowledge through a number of distributors. 83,777 customers invested a total of £797,380,716 in the product.

Tracey McDermott, FCA's director of enforcement and financial crime said *"It is crucial that firms consider the needs of their customers from the time that products are being designed through to their marketing and sale. The information provided to customers forms an important part of this. Financial promotions are often the primary source of information for consumers and in this case [the two firms] let their customers down badly. These promotions were a serious breach of the requirement to be clear, fair and not misleading."*

#### **Payday lender agrees to compensate customers more than £2.6 million**

The FCA has come to an agreement with a "payday" lender which will see the firm pay compensation to around 45,000 customers for unfair and misleading debt collection practices.

An investigation carried out by the Office of Fair Trading (OFT) and then the FCA found that the firm sent letters to customers in arrears from fictional law firms, threatening legal action.

Between October 2008 and November 2010, the lender and other companies within its group, used unfair debt collection practices which pressurised customers to make loan repayments that few could afford.

Clive Adamson, director of supervision at the FCA, said: "[the firm's] misconduct was very serious because it had the effect of exacerbating an already difficult situation for customers in arrears. We are pleased that [the firm] has been working with us to put matters right for its customers and to ensure that these historical practices are truly a thing of the past.

The investigation found that in some cases charges were also added to customers' accounts to cover the administration fees associated with sending letters.

The practice was uncovered by the OFT when the firms was asked to disclose certain information about its debt collection practices. The FCA took over the investigation on 1 April 2014 when it became responsible for consumer credit.

Adamson added "The FCA expects firms to pay particular attention to fair treatment of those who have difficulty in meeting their loan repayments."

FCA considers preventing these issues to be at the forefront of their objective and it is important that firms have in place appropriate procedures for treating customers fairly. FMConsult can assist firms in reviewing their arrangements and providing expert analysis of whether the firms systems and controls are adequate to meet FCA requirements.

### **Irish News**

#### **MAD Criminal Sanctions – Market Abuse Directive Keeps Pace with Changing Market**

The European Parliament has recently approved a new directive on criminal sanctions for insider dealing and market manipulation.

The Directive is due to come into force later this year and is part of an on-going process concerned with updating and strengthening the enforcement framework relating to financial markets. The Directive defines four main offences:

1. Insider dealing;
2. Recommending or inducing another person to engage in insider dealing;
3. Market manipulation; and
4. Unlawful disclosure of inside information.

These offences will carry criminal sanctions when sufficiently serious and intentionally committed. Various factors will be taken into account when determining the severity of the offence, including the impact on market integrity and the level of profit or loss involved. In addition, inciting, aiding and abetting as well as attempting to commit an offence will be punishable as a criminal offence.

The penalties under the new Directive will include up to four years' imprisonment for insider dealing, recommending or inducing another person to engage in

insider dealing and market manipulation, and up to two years for the unlawful disclosure of inside information. Companies or other legal entities can also face sanctions such as judicial winding-up, disqualification from commercial activities and closure.

### AIFMD Q&A – Updated Central Bank

The Central Bank of Ireland (the 'Central Bank') updated its AIFMD Q&A document ('Q&A') clarifying two points relating to funds originally authorised under the pre-AIFMD Non-UCITS regime which are in the process of converting to AIFMD status. Currently subject to the Central Bank's Non-UCITS regime (including the NU Notices/Guidance Notes), these funds will instead be subject to the AIF Rulebook with the old regime falling away.

### Unregulated master funds

Under the Non-UCITS regime the Central Bank permitted QIFs, in certain limited circumstances, to invest up to 100% of their assets in unregulated master funds. QIFs which wanted to do so needed a derogation from the Central Bank. Going forward these QIFs will be subject to the Central Bank's AIF Handbook.

AIFs may continue to operate in accordance with the derogation previously given and they are not required to apply to the Central Bank for approval to do so. However no new derogations are likely to be granted.

### Update on CRD IV transposition/implementation

On 31 March 2014, the Minister for Finance, signed into Irish law two regulations to give effect to CRD IV, namely the European Union (Capital Requirements) Regulations 2014 which give effect to the Capital Requirements Directive and the European Union (Capital Requirements) (No. II) Regulations 2014 which give effect to a number of technical requirements in order that the CRR can operate effectively in Irish law.

### FMConsult News

All offices provide clients with:

- 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)

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
- AIFMD impact assessment and implementation project
- AIFM Authorisation

Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.

### [Join Our LinkedIn Group](#)

Ask to join our LinkedIn Group for News and Updates on regulatory compliance and risk,



### [FMConsult website](#)

For more information on the services we provide and detailed profiles of our team, please visit our website

### [Opt Out of newsletter](#)

Please let us know if you do not wish to receive further newsletters.

### FMConsult Contacts:

#### Dallas J. McGillivray

Group Managing Director  
& Authorisation Services

Tel: 020 7220 9073

[dmcgillivray@fmconsult.co.uk](mailto:dmcgillivray@fmconsult.co.uk)

#### Colette Panebianco

Director FMConsult USA

[cpanebianco@fmconsult.us](mailto:cpanebianco@fmconsult.us)

#### Andrew (Andy) Hicks

Director, Head of Monitoring Services

Tel: 020 7220 9074

[ahicks@fmconsult.co.uk](mailto:ahicks@fmconsult.co.uk)

#### Satrajit Roy

Director FMConsult Arabia

Tel: +97150 9209315

[sroy@fmconsult.ae](mailto:sroy@fmconsult.ae)