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Quote: "Corruption, Money Laundering and Tax evasion are global problems, not just challenges for developing countries".

Sri Mulyani Indrawati

On 10 January 2020 changes to the Government's Money Laundering Regulations came into force. They update the UK's AML regime to incorporate international standards set by the Financial Action Task Force (FATF) and to transpose the EU's 5th Money Laundering Directive

Information for firms during the Brexit implementation period

On 31 January 2020 at 11pm the UK left the EU and entered an implementation period, which is due to last until 31 December 2020. During the implementation period, EU law will continue to apply. Firms and funds will continue to benefit from passporting between the UK and EEA. Consumer rights and protections derived from EU law will also remain in place. There will therefore be no changes to the reporting obligations for firms, including those for MiFIR transaction reporting, under EMIR. The windows for EEA firms to notify the Financial Conduct Authority ("FCA") closed on January 30th. Firms and fund managers that have already submitted a notification need take no further action at this stage. The FCA will confirm plans for reopening the notification window later this year, which will allow additional notifications to be made by firms and fund managers before the end of the implementation period.

Andrew Bailey, Chief Executive of the FCA said: '*The FCA intends to use this time to work with government, the Bank of England, firms and other regulators to ensure the financial services industry is ready for the end of 2020*.' All financial services firms should consider how Brexit will impact their business and what action they need to take to be ready for 1 January 2021 to minimise risks to customers.

Money Laundering Regulations

On 10 January 2020 changes to the Government's Money Laundering Regulations ("MLRs") came into force. They update the UK's AML regime to incorporate international standards set by the Financial Action Task Force (FATF) and to transpose the EU's 5th Money Laundering Directive. This page highlights some specific new areas that firms need to comply with.

High-risk factors: Amendments to regulation 33 of the MLRs requires firms to include new additional high-risk factors when assessing the need for enhanced due diligence, and seek additional information and monitoring in certain cases.

E-money thresholds for customer due diligence (CDD): Amendments to regulation 38 regarding electronic money mean that firms can only forego CDD measures in specific situations; monetary thresholds reduced from €250 to €150.

Customer due diligence: Amendments to regulation 28 require firms to update their records relating to the beneficial ownership of corporate clients. Firms also need to understand the ownership and control structure of their corporate customers, and record any difficulties encountered in identifying beneficial ownership.

Duty to respond to requests for information about accounts and safe-deposit boxes: From 10 September 2020, credit institutions and the providers of safe custody services must respond to requests for information, from a law enforcement authority or the Gambling Commission regarding accounts and safe-deposit boxes.

Compliance under MLRs: The FCA expects firms to comply with the new, amended regulations from 10 January 2020. In assessing the approach to firms that may not be compliant on that date, the FCA will take into account evidence that the firms have taken sufficient steps before that date to comply with these new obligations.

Cryptoassets ("Crypto") activities: The FCA is now the anti-money laundering and counter terrorist financing (AML/CTF) supervisor for businesses carrying out certain Crypto activities. Any UK business conducting specific Crypto activities falls within scope of the regulations and will need to comply with the requirements. Amongst other things, Crypto t businesses are required to:

- identify and assess the risks of money laundering and terrorist financing which their business is subject to;
- have policies, systems and controls to mitigate the risk of the firm being used for the purposes of AML/CTF;
- appoint an member of the board or senior manager to be responsible for compliance with the MLRs, where appropriate to the size and nature of its business;
- undertake customer due diligence when entering into a business relationship or occasional transactions;
- apply enhanced due diligence, when dealing with customers who are a Politically Exposed Person or may present a higher AML/CTF risk;
- undertake ongoing monitoring of customers to ensure transactions are consistent with the firm's knowledge of the customer and their risk profile.

New UK firms undertaking Crypto business must register with the FCA before conducting business. Existing firms already conducting Crypto activity before 10 January 2020 must ensure their compliance with the MLRs with immediate effect, and be registered by January 2021. To ensure this deadline is met, firms must submit a completed application via Connect by June 2020. Existing Financial Services and Markets Act firms, e-money institutions or payment services businesses undertaking Crypto activity must also apply for registration. **FMConsult can assist in these applications.**

FCA issues 4 Dear CEO letters

These letters were issued to Asset Managers, Alternative Asset Managers, Financial Advisers and Platforms.

Please see attached document for further information with regards to the four "Dear CEO letters".

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Firms now need to update or confirm their Firm Details annually

From 31 January 2020, firms that come under Sup 16.10 reporting requirements have to check, amend or confirm the accuracy of their Firm Details annually, even if there have been no changes, using the FCA's Connect portal. They will need to do this within 60 business days of their Accounting Reference Date (ARD).

If your firm has not registered on Connect then the FCA encourages you to do so as soon as possible to be able to comply with this reporting requirement.

FCA statement on Assessing Suitability Review 2

The FCA announced their intention in their business plan to review the market for pensions and investment advice for a second time – the Assessing Suitability Review 2.

The review will focus on the advice that consumers receive around retirement income. The review will involve a representative sample, to build a view of the retirement income advice market. The FCA aim to publish a report setting out the results of the review in 2020. The review is a key element of the FCA's wider strategy for the financial advice sector.

Other key priorities include their ongoing work on defined benefit pension transfer advice; their activities targeting pension and investment scams; how firms have implemented the new senior managers and certification regime (SM&CR); and their focus on firms holding adequate financial resources and professional indemnity insurance.

Speech by Mark Steward, FCA Executive Director of Enforcement and Market Oversight, delivered at the City & Financial Global Ltd event, London.

Highlights

- The point of financial penalties is deterrence but this is not the point of enforcement which is about just outcomes. In 2019 the FCA imposed financial penalties of over £310 million on firms that also paid or are paying over £231 million in restitution**. Addressing both serious misconduct as well as its consequences ensures just outcomes.**
- Most of the cases involving financial penalties have involved serious breaches of the General Principles. In these cases too little attention is paid to the General Principles in planning and organising what a firm is doing. **Firms need to engage with the Principles when undertaking regulated activities.**
- It is important to value reactions and responses by firms after things go wrong. This includes systems and controls designed to detect things going wrong at the earliest point in time. **The FCA may impose tougher sanctions where they see firms failing to correct relevant deficiencies and make good losses to consumers caused by those failings**
- In rare cases, the quality, extent and speed of that redress may justify very significant reductions in sanction.
- When issuing a penalty, the FCA will consider the following:
  - a breach is deliberate or reckless
  - the duration of the breach
  - the amount of benefit or loss avoided
  - whether it reveals serious or systemic weaknesses
  - the impact of the breach, including its impact on confidence and trust in markets
  - the quantum of loss to consumers or other market users, if any; and
  - the extent to which financial crime may have been facilitated by the breach

FCA, ICO and FSCS publish joint statement to insolvency practitioners and authorised firms

A joint statement was issued from the FCA, the Information Commissioner's Office (ICO) and the Financial Services Compensation Scheme (FSCS), warning insolvency practitioners and FCA-authorised firms to be responsible when dealing with personal data.

The FCA are aware that some insolvency practitioners (IPs) and FCA-authorised firms have attempted to sell clients' personal data to claims management companies (CMCs) unlawfully. This can happen either before or after a firm has gone into administration and where it is likely claims for compensation will be made to FSCS. The terms, conditions and clauses within a standard contract are highly unlikely to constitute sufficient legal consent for personal data to be shared with CMCs to market their services, and may not be lawful.

FCA acts to help customers get better rates for cash savings

The FCA has proposed to reform the easy access cash savings market. Under new rules all firms will have to set a single easy access rate (SEAR) across all easy access accounts. Firms will have flexibility to offer multiple introductory rates for up to 12 months, and then they will need to choose one SEAR for their easy access cash savings accounts, and one for their easy access cash savings ISAs.

The FCA has previously raised concerns that competition is not working well for many of the 40 million consumers who hold either an easy access savings account or easy access cash ISA. Many longstanding customers currently receive poor outcomes and the FCA wants firms to focus more on these savers.

The FCA's proposals aim to improve competition in the market, encouraging firms to increase the interest rates they offer as well as protecting those consumers that currently receive the lowest interest rates.

FCA and Bank of England announce proposals for data reforms across the UK financial sector

The FCA's refreshed Data Strategy sets out a transformation plan to become a highly data-driven regulator. The strategy outlines the organisation's increased focus on the use of advanced analytics and automation techniques to deepen its understanding of how markets function and allow the FCA to efficiently predict, monitor and respond to firm and market issues. Alongside investment in new technology and increased use of external data, the FCA will pursue a broader transformation, investing in skills and new ways of working to enable it to better understand and use data and innovative technology. The Bank of England has published a Discussion Paper (DP), Transforming data collection from the UK financial sector to improve the timeliness and effectiveness of data collection from firms across the financial system.

The Bank's DP sets out the issues facing the current data collection system and identifies and explores a series of potential solutions, to prompt feedback from and further discussion with industry. In addition, the FCA, the Bank of England and seven regulated firms have jointly published a Viability Assessment report on the latest Digital Regulatory Reporting (DRR) pilot.

DRR will potentially allow firms to automatically supply data requested by the regulators, thereby reducing the cost of collection, improving data quality and reducing the burden of data supply on the industry.

The FCA fines car finance provider £2.77m for unfair treatment of customers in arrears

The FCA have imposed a fine of £2.77 million on a car finance provider for not treating customers fairly when they fell behind with loan repayments while in financial difficulties, between 1 April 2014 and 4 October 2017.

The provider also did not communicate the likely financial consequences of failing to keep up with payments to customers in a way which was clear, fair and not misleading. More than 1,400 customers – many of whom were vulnerable - subsequently defaulted after entering into unsustainable short-term repayment plans.

The provider has voluntarily provided redress of more than £30 million to all 5,933 customers potentially affected by these failings without requiring them to demonstrate that they have suffered any financial detriment.

The provider provides motor finance for used vehicles predominantly to customers who typically cannot access finance from mainstream lenders due to their personal circumstances. Such customers are at an increased risk of financial vulnerability as they often have a poor or no credit history or past problems with credit due to periods of unemployment, ill-health or other adverse life events. They are also at greater risk of suffering detriment if they fall into arrears.

The provider did not dispute the FCA's findings. The firm's agreement to accept the FCA's findings meant it qualified for a 30% discount in addition to the credit it received for the redress paid to customers. Otherwise, the FCA would have imposed a financial penalty of at least £3,963,500.

SEC extension of no-action relief re MiFID II Research

On 8 November 2019, the FCA published a statement on the US Securities and Exchange Commission's announcement to extend the SEC staff "no action letter" relating to the MiFID II Directive inducements and research provisions.

There is a potential conflict between US regulation and MiFID II. The existing relief was due to expire on 3 July 2020 but has now been extended until 3 July 2023.

This means that broker-dealers subject to the US regime may receive payments for unbundled research from firms subject to MiFID II or equivalent rules of EU member states without being considered an investment adviser under US law.

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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

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