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Finishing is one of the most difficult things to do in cricket. A player can't be a finisher in just 6 months or one year. You have to be used to that responsibility, keeping on doing what is required from you over a period of time.

- MS Dhoni

Now that Senior Managers & Certification Regime (SMCR) is rolled out to the wider industry, Senior Managers are beginning to realise that the Buck stops with them. In their defence they must demonstrate that they have taken reasonable steps.

FCA extends the Senior Managers and Certification Regime to 47,000 firms

If you were not already aware the FCA have extended SMCR to around 47,000 firms from 9 December 2019, including senior managers and certification staff in those firms. This extension is a key step to creating a culture across financial services where individuals step forward and take accountability for their own actions and competence.

SMCR encourages greater individual accountability and sets a new standard of personal conduct in financial services by:

- ensuring senior managers are accountable for conduct in their areas of responsibility;
- ensuring a minimum standard of behaviour for everybody working in the sector through 5 Conduct Rules;
- enhancing professionalism in the industry by requiring firms to certify that their staff are fit and proper.

By 9 December 2020 all firms caught by the extension will need to ensure:

- all relevant staff are trained on the Conduct Rules and specifically how they apply to their roles;
- all staff in certified roles are fit and proper to perform that role and are issued with a certificate;
- they submit data to us for the directory of all certified function employees – see below.

SMCR Certification staff and the Directory

The directory will be the new public register which will allow the public to check the details of key, non-Senior Management Function employees working in financial services. As part of SMCR, the directory will provide a full range of information. From 9 September 2019 firms are required to submit their data. Deadline for submitting information:

- Banks, building societies, credit unions and insurance companies must submit their data by **9 March 2020.**
- All other firms must submit their data by **9 December 2020.**

The Policy Statement (PS19/7) has useful background about the directory and information for preparing your submission. Submit your data using the new Directory Persons Connect form. In this form you will have 2 ways of submitting your data, using a single entry form for a single record notification or a multiple entries template.

The FCA will publish the directory persons data for banks, building societies, credit unions and insurance companies in March 2020. The FCA will publish the directory persons data for all other firms in December 2020.

The Fifth Money Laundering Directive (5MLD)

5MLD is a series of amendments to the structure of the Fourth Money Laundering Directive (4MLD).

The main changes are focused on enhanced powers for direct access to information and increased transparency around beneficial ownership and trusts. What are the key changes:

1. Enhanced Due Diligence (EDD) – There is a requirement for all entities to carry out enhanced monitoring for any business relationship or transaction involving a high risk third country. The Money Laundering Regulations (MLRs) already include a similar requirement, but this is specifically for any business relationship with a person established in a high risk third country. The EDD measures prescribed by 5MLD are:
    - Obtaining additional information with regards to the nature of the business relationship
    - Obtaining additional information on the beneficial owner
    - Obtaining information on the source of funds and source of wealth for the customer or beneficial owner
    - Senior management sign off of the business relationship
    - Enhancing ongoing monitoring of the business relationship

2. CDD – Electronic identification process – 5MLD sets out the circumstances under which secure, remote or e-verification processes may be taken into account when undertaking CDD.

3. Increasing transparency of beneficial ownership of corporates – There will be wider access to each Member State's central register of beneficial ownership of corporates. Any member of the general public can access basic information without the need to demonstrate a 'legitimate interest' (this is already available in the UK). Trusts will also be required to meet greater transparency obligations, including the beneficial ownership requirements.

4. Regulating Bitcoin – Under 5MLD, virtual currencies such as Bitcoin will have a legal definition. Virtual currency platforms and wallet providers will also become regulated entities under the scope of the directive. While many already conduct due diligence and report suspicious transactions, 5MLD will make it a legal requirement.

5. Prepaid cards – 5MLD will lower the requirement for customer verification from €250 to €150, and even to €50 for some remote transactions. Prepaid cards issued outside the EU are now prohibited unless they were issued in a territory enforcing legislation equivalent to the EU's AML/CFT and KYC standards.

6. Increased reach – 5MLD has been extended to cover all forms of tax advisory services, lettings agents and art dealers. Members of the public will be able to request information from real owners of firms operating in the EU,a measure aimed at squashing letter box companies established solely to launder money and hide wealth.

7. Politically Exposed Persons (PEPs) – 5AMLD requires EU member states to compile and publicly release a functional PEP list made up of prominent politically exposed public functions. This requirement extends to accredited international organizations: the EU will also release an EU-level version of the list.

In the UK, 5MLD will be implemented as part of a new Treasury bill, yet to be finalised, which will update UK MLRs for the issues noted in the latest Financial Action Task Force (FATF) review of the UK.

New Prudential Requirements for Investment Firms

Following the official adoption of both texts by the European Parliament and Council, the Regulation on Prudential Requirements of Investment Firms and the Directive on the Prudential Supervision of Investment Firms were published in the Official Journal of the European Union on 9th December 2019.

The Regulation will enter into force on 26th December 2019 and will apply from 26th June 2021.

These rules if adopted by the UK will change the Financial resource requirements for many firms and increase in many cases the minimum capital requirements.

MIFID investment firms will need to use a new form to notify FCA of management body changes for Non-SMF Directors

From 9 December 2019, MIFID investment firms and optional exempt firms are required to use a new form to submit information to the FCA when appointing Non-SMF Directors to, or withdrawing them from, their management body.

If a firm's management body changes, they will need to download the form, complete it and email it to the FCA via NonSMFNotification@fca.org.uk.

This is a temporary process. From Q1 2020, you will be able to submit the form via Connect, the FCA's online platform. Any firms who don't currently have access to Connect should prepare by registering now. The FCA consulted on these changes in June 2019 and published their final rules in September 2019.

Statement on MiFID II inducements and research

The FCA welcomed the US Securities and Exchange Commission's (SEC) extension of no-action relief relating to the Markets in Financial Instruments Directive II (MiFID II) inducements and research provisions. The SEC has announced an extension of the SEC staff 'no action letter', which addresses the potential conflict between US regulation and MiFID II, until 3 July 2023. The existing relief was due to expire on 3 July 2020.

During the remainder of the current period and the extended period of the no-action relief, 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. This will also apply to UK firms in the event of EU withdrawal before or during the extended period. The FCA's own multi-firm review findings published in September 2019 found that rules have improved asset managers' accountability over costs, saving millions for investors.

FCA and Bank of England statement on joint review of open-ended funds

In its Financial Stability Report, the Financial Policy Committee (FPC) has set out initial findings of a joint review by the FCA and the Bank of England on open-ended investment funds and the risks posed by their liquidity mismatch. The FPC has reviewed the progress of the work and identified that, if greater consistency between the liquidity of a fund's assets and its redemption terms is to be achieved:

- Liquidity of funds' assets should be assessed by reference to the price discount needed for a quick sale of a representative sample (or vertical slice) of those assets or the time period needed for a sale which avoids a material price discount. In the US, the SEC has recently adopted measures of liquidity based on this concept.
- Redeeming investors should receive a price for their units in the fund that reflects the discount needed to sell the required portion of a fund's assets in the specified redemption notice period, ensuring fair outcomes for redeeming and remaining investors.
- Redemption notice periods should reflect the time needed to sell the required portion of a fund's assets without discounts beyond those captured in the price received by redeeming investors.

The review will now consider how these principles could be implemented in a proportionate and effective manner. The FCA will use the conclusions of the review which will be released in 2020 to inform the development of the FCA's rules for open-ended funds.

Building operational resilience: impact tolerances for important business services

The Bank of England (the Bank), Prudential Regulation Authority (PRA) and FCA published a shared policy summary and co-ordinated consultation papers (CPs) on new requirements to strengthen operational resilience in the financial services sector. The policy proposals make it clear that firms and FMIs are expected to take ownership of their operational resilience and that they will need to prioritise plans and investment choices based on their impacts on the public interest.

If disruption occurs firms are expected to communicate clearly, for example providing customers with advice about alternative means of accessing the service.Under the proposals, firms and FMIs would be expected to:

- identify their important business services that if disrupted could cause harm to consumers or market integrity, threaten the viability of firms or cause instability in the financial system
- set impact tolerances for each important business service, which would quantify the maximum tolerable level of disruption they would tolerate
- identify and document the people, processes, technology, facilities and information that support their important business services
- take actions to be able to remain within their impact tolerances through a range of severe but plausible disruption scenarios

To complement the policy proposals on operational resilience, the PRA has published a CP on 'Outsourcing and third-party risk management'. The objectives of this consultation are to deliver on the Bank's commitment to 'facilitate greater resilience and adoption of the cloud and other new technologies', as set out in the Bank's response to the Future of Finance report, and to support the proposals on operational resilience.
It reinforces the PRA's expectation that firms should ensure that their important business services are able remain within their impact tolerances even when they rely on outsourcing or third party providers.

The FCA's Consultation Paper on operational resilience also contains a chapter on outsourcing.

FCA and PRA publish Decision Notices given to former CEO who paid excessive remuneration to his wife to reduce his tax liability

The FCA and the PRA have decided to ban and fine a former CEO of a small mutual insurer, £78,318 and £76,180 respectively.

The regulators' respective decision-making committees found, following a joint investigation, that between February 2010 and July 2016 the CEO transferred excessive amounts of his own remuneration to his wife to reduce his own tax liability and took steps to conceal that arrangement.

The former CEO of a small mutual insurer paid his wife a proportion of his own salary in compensation for providing some out of hours administrative support and occasional hospitality at home. Up until 2010, the wife was paid between £5,000 and approximately £10,000 per annum, which was not obviously unreasonable for the work she was undertaking.

From 2010, the CEO transferred increasing amounts of his salary, and in most years all or part of his own bonus, to his wife in order to reduce his tax liability. Between 2010 and 2016, just over £200,000 of his pay was transferred to his wife, and by the 2015/16 tax year, the wife's remuneration was just over £52,000, more than any other employee.

As a result of these arrangements, the CEO paid approximately £18,000 less in income tax than he should have done. Although the Board and Remuneration committee were aware that the wife was being paid a proportion of the salary, the CEO concealed the level of payments.

The CEO created false minutes to give the misleading impression that the Remuneration Committee had agreed the salaries of both the CEO and his wife. In fact, it had only agreed the CEO's salary.

The Upper Tribunal will determine what, if any, is the appropriate action for the FCA and the PRA to take, and will remit the matter to the FCA and PRA with such directions as the Upper Tribunal considers appropriate to give effect to its determination.

FCA secures confiscation order totalling £291,070 against convicted fraudster

This confiscation order follows the FCA prosecution in which the individual was sentenced to 5 years' imprisonment for defrauding investors of just under £3m in relation to unauthorised investment schemes he operated between 2008 and 2017.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said: 'The FCA will continue to take steps to ensure that proceeds of criminal activity are confiscated from the criminals we prosecute so that victims can be compensated as far as possible.'

The Court found that the fraudster had derived a benefit of £3,010,982.18 from his criminal conduct, but that the total realisable assets for confiscation was £291,070.36. The individual had spent the rest of the victims' monies maintaining his comfortable lifestyle.

The monies will be used to compensate the 14 victims of his crimes who lost around £1.8 million in total. If this convicted fraudster doesn't pay the confiscation order on time, he is liable to spend a further 2.5 years in prison.

PRA fines an American multinational investment bank and financial services corporation £44million

The PRA has fined an investment bank's UK operations £44 million for failings in their regulatory reporting governance and controls. An investigation found that between 2014 and 2018, the firms' UK regulatory reporting framework "was not designed, implemented or operating effectivelyThe PRA says these failures led to significant errors in the firms' returns which were unreliable and did not provide the PRA with an accurate picture of the firm's capital or liquidity position. The investment bank agreed to resolve the matter and therefore qualified for a 30% reduction in the fine. Without this discount, the fine imposed by the PRA would have been £62,700,000.

FCA secures confiscation order totalling £5 million against illegal money lender

On 11 December 2019, Southwark Crown Court made a confiscation order against an illegal money lender in the sum of £5,118,018.72. The effect of the order is to confiscate all his criminal proceeds as an illegal money lender. The individual was also ordered to pay almost £230,000 in compensation to consumers.

This follows the FCA's prosecution in which this individual was convicted of illegal money lending and sentenced to 3 and a half years in prison. The individual illegally loaned money to vulnerable consumers at high rates, securing the loans against their properties. He sought to take possession of the properties if the consumers failed to repay their loans.

If the offender does not pay the confiscation and compensation orders on time, he is liable to spend a further 11 years in prison. The individual is also subject to a travel ban preventing him from leaving the UK until he has paid the orders, and also continues to be subject to a Serious Crime Prevention Order, preventing him from undertaking further money lending for 5 years.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said how this individual's offending has caused substantial harm to vulnerable consumers. He explained that this order seeks to deprive him of all his ill-gotten gains and to compensate victims.

FCA fines a claims management firm for misleading consumers and banks in first CMC case closed by the regulator

The FCA has fined a claims management firm £70,000 for misleading consumers through its websites and printed materials.

This decision follows the transfer of regulatory responsibility for claims management companies (CMCs) to the FCA on 1 April 2019.

The Firm's websites and printed materials prominently used the logos of five major banks which was liable to mislead consumers into believing they were submitting redress claims for miss-sold payment protection insurance (PPI) directly to their banks, rather than engaging the Firm as a CMC to pursue claims on their behalf in return for payment of a success fee.

The claim management firm also failed to present accurate, fully formed, detailed and specific complaints to banks. It had submitted Financial Ombudsman Service (FOS) questionnaires to banks on behalf of different consumers. The questionnaires in part contained identical factual allegations where evidence specific to each client should have been presented.

The Firm was originally investigated and fined by the previous regulator for CMCs, the Claims Management Regulator (CMR), under the CMR's prior regulatory framework applicable before 1 April 2019. The CMR launched an investigation following a number of complaints between October 2015 and March 2017 from clients.

On 5 December 2018, the CMR determined that PPC had breached the previous CMC conduct rules and The CMR imposed a £70,000 fine for these failings. The firm appealed on 21 December 2018 to the First-tier Tribunal against the CMR's penalty notice.

While the appeal was pending, the FCA took over regulation of CMCs from the CMR. The FCA therefore replaced the CMR as the respondent to the Firm's pending appeal.

After reviewing the evidence put forward by the FCA, the Firm withdrew its appeal, and the FCA therefore imposed the £70,000 fine on the claims management firm for the failings identified in the CMR's penalty notice.

First-tier Tribunal upholds decision to fine a claims management firm for data breaches and unauthorised copying of client signatures

The £91,000 fine was initially imposed by the CMR under the previous regulatory regime for CMCs due to data breaches and unauthorised copying of client signatures. The Firm appealed to the Tribunal against the fine. Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA said,

'The failure to take previous advice and warnings from the former claims management regulator and the firm's repeated use of consumer data and customer signatures without their consent are clear examples of a firm falling short of the standards we expect."

'The decision by the Tribunal to uphold the findings of the CMR is another important message to industry that firms must conduct all business with integrity and due care, skill, and diligence.'

On 5 March 2019, the CMR found that the firm had breached rules requiring CMCs to take all reasonable steps to ensure that any referrals, leads or data purchased from third parties had been obtained in accordance with applicable laws. Marketing text messages concerning PPI claims were sent to consumers' mobile telephone numbers, without the firm having taken sufficient steps to check that affected consumers had consented to receiving such messages. In addition, when reviewing a sample of 16 of the firm's client files, the CMR found that in 8 of the files clients' signatures on claim documentation had been copied without authorisation. The Tribunal upheld the CMR's decision in its entirety.

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UK and Ireland

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

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