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2020 Regulatory Bulletin Issue 8

"Diversity has many dimensions, and so people with different life experiences (whether because of their race, gender, age, sexual orientation or other characteristics) can bring significantly new thinking and new approaches to problem-solving and decision-making."

Marc Teasdale, FCA

UK Regulatory News

FCA update following the recent coronavirus restrictions statements on Tuesday 22 September

Firms should continue to **follow Government advice** on working from home until notified otherwise.

The financial services industry has continued to operate during the coronavirus pandemic with homeworking and some workers operating in locations such as branches and call centres.

The FCA has previously published advice on the steps financial services firms should take, for example identifying key workers and the **responsibilities of senior managers** – these statements have been updated to reflect recent developments.

FCA publishes rules that will apply at the end of the transition period

The FCA has published an updated version of the FCA Handbook to show the rules that will apply at the end of the transition period. They have also set out details on how they intend to use the Temporary Transitional Power (TTP).

The TTP gives the FCA flexibility as to how and when changes to its rules apply following the end of the transition period, allowing firms to transition to the new regime. Where it applies, the TTP means that firms and other regulated persons can continue to comply with their existing requirements for a limited period.

The FCA intends to apply the TTP on a broad basis from the end of the transition period until 31 March 2022. This means firms and other regulated persons do not generally need to prepare now to meet the changes to their UK regulatory obligations brought about by on shoring.

There are areas where it would not be appropriate for the FCA to grant relief at the end of the transition period, including where doing so would not be consistent with our statutory objectives. By reviewing the new Handbook site, alongside the updated TTP information, firms will be able to see which changes will apply to them.

A regulatory perspective: the drivers of culture and the role of purpose and governance

Speech by Marc Teasdale, Director of Wholesale Supervision – delivered at The Investment Association, Culture in Investment Management Forum.

Culture and the drivers of culture
To the FCA culture means the typical, habitual behaviours that characterise a particular organisation.

The 4 'drivers of culture'

- Leadership including the tone that is set from the very top of the firm, and how effectively that tone cascades through the organisation.
- People policies, and in particular the types of behaviour that are incentivised or disincentivised within the firm, and how this is done. This most obviously includes remuneration, but also extends to a far broader set of considerations including progression, promotion, recruitment, diversity and inclusion, speak-up culture and psychological safety.
- Governance, in the broadest sense of how decisions are made within a firm.
- Purpose, Marc spends some time describing purpose (see below).

The FCA's view of purpose
Over the last couple of years, a lively debate on corporate purpose has developed, both in the U.K and in the US, which at times has come close to re-defining the role of the modern corporation.

The FCA sees corporate purpose as a fundamental driver of culture. The FCA sees a firm's purpose as being a description of its economic function. But, in order to understand how a firm's purpose drives its culture, you need to understand how a company describes, to itself and others, the essential purpose of the firm, its products and its services, and so its reason for existing, and why the world would be worse off without the value it provides.

So, when the FCA talks about purpose, it really means that combination of a firm's business model, and the way in which it thinks about the social or economic contribution it provides.

In the FCA's view, where a firm is unable to articulate its purpose in this way, the FCA are more likely to see poor outcomes for consumers and markets.

Purpose in the Asset Management Sector
This view of the purpose of the asset management industry is underpinned in law through the obligation of an Authorised Fund Manager, or AFM to act in the best interests of investors, and was central to the FCA's thinking when they undertook the Asset Management Market Study.

The role of governance in supporting purpose
The Asset Management Market Study itself diagnosed weak governance as an important root cause of the sector's failure to consistently deliver good value, especially as the demand side discipline that might otherwise help produce good outcomes, seemed particularly weak in much of this market.

The importance of diversity and inclusion for both governance and purpose
Diversity has many dimensions, and so people with different life experiences (whether because of their race, gender, age, sexual orientation or other characteristics) can bring significantly new thinking and new approaches to problem-solving and decision-making. This is why the FCA is focussed not just on diversity at the Board level, but throughout an organisation.

First firms to begin move to new data collection platform, RegData

The first firms will be moved from Gabriel to RegData over the weekend of 17 and 18 October. Those firms will then complete their regulatory reporting on RegData. Firms will continue to be moved to RegData from Gabriel in the coming months as we move users across in stages, based on their reporting requirements.

All 52,000 firms will receive direct emails from Gabriel advising them of their moving date. Compliance consultants will receive reminders for every firm their user account is currently associated with in Gabriel.

In 2019, the FCA asked firms and other users to provide feedback on their experiences of using Gabriel. Firm feedback identified areas for improvements which were factored in when building the first iteration of RegData. RegData is faster than Gabriel, easier to use, and is built with more flexible technology.

FCA announces proposals to update Dual- regulated firms Remuneration Code.

The FCA have published a consultation paper with proposals to amend its Dual-regulated firms Remuneration Code and relevant non-Handbook guidance in line with the Capital Requirements Directive V (CRD V).

The proposals aim to ensure that the FCA's remuneration regime applicable to banks, building societies and PRA-designated investment firms:

- continues to promote healthy cultures and minimise harm to consumers and markets
- remains largely consistent with the PRA's remuneration framework

FinCEN files leak is more stark evidence of the UK's role in global money laundering and corruption

A major leak of law enforcement data has once again exposed Britain's role as a facilitator of global corruption and money laundering. It also highlights the increasingly urgent need for an overhaul of the UK's dirty money defences.

The leak, known as the 'FinCEN Files', and subsequent investigation by a global consortium of investigative journalists focuses on reports sent from banks in the United States to a US law enforcement agency about suspected money laundering.

These Suspicious Activity Reports (SARs) repeatedly cite weak money laundering defences in the UK financial sector as a major problem. The leak shows how UK banks continually fail to address suspicious activity and instead offered their services to those with money to hide. Transparency International UK's research has already identified 86 UK banks and financial institutions which have, unwittingly or otherwise, helped corrupt individuals acquire assets and move suspicious wealth.

The investigation also shows how UK shell companies remain a vehicle of choice for money launderers around the world. In particular, one address already identified by Transparency International UK's research as a hotspot for high-risk activity is highlighted as a major concern. Broadly, our research has found at least 929 UK shell companies used in 89 corruption and money laundering cases, amounting to around £137 billion globally in potential economic damage.

FCA launches consultation on the regulation of international firms

This is relevant to EEA firms that intend to seek authorisation in the UK in the future, including those entering the Temporary Permissions Regime, as well as firms from non-EEA countries that have applied or intend to apply for authorisation in the UK, or are already authorised in the UK.

International firms serving UK customers through branches can sometimes create different risks of harm compared to UK firms because of the way their businesses are structured and operate. As part of this consultation, the FCA wants to hear views on how these risks can be mitigated, and when it would be appropriate for an international firm to seek authorisation as a UK-incorporated firm for all or part of its business.

When the FCA decides whether to authorise an international firm, it applies the same minimum standards as it does for UK firms. Before seeking authorisation, any international firm needs to demonstrate it is ready, willing and organised and meets the relevant minimum standards. Once authorised, firms need to continue to meet those standards, which are designed to protect consumers and ensure the integrity of markets.

The FCA expects a firm seeking authorisation to have an active place of business in the UK to enable us to effectively supervise its UK activities.

Coronavirus and 10% depreciation notifications: further temporary measures for firms

The FCA's original measure on 10% depreciation notifications took effect from Tuesday 31 March 2020 to Wednesday 30 September 2020.

They are extending the previous flexibility with some amendments. The FCA won't take action for breach of COBS 16A.4.3 EU for services offered to retail investors from Thursday 1 October 2020 provided that the firm has:

- issued at least one notification in the current reporting period, indicating to retail clients that their portfolio or position has decreased in value by at least 10%
- informed these clients that they may not receive similar notifications should their portfolio or position values further decrease by 10% in the current reporting period
- referred these clients to non-personalised communications, perhaps made available on public channels, that outline general updates on market conditions (these could contextualise potential drops in portfolio or position value to help consumers meet their objectives, rather than making impulse decisions about their investments) and
- reminded clients how to check their portfolio value, and how to get in touch with the firm

Firms must still pay due regards to the interests of their customers and treat them fairly (Principle 6), and pay due regard to the information needs of their clients, and communicate information to them in a way which is clear, fair and not misleading (Principle 7).

If the FCA have concerns that potential serious misconduct may cause (or have caused) significant harm to consumers, then they will consider the appropriate response, which may include opening an investigation.

They are also amending our extension of the previous flexibility regarding professional investors. For services offered to professional investors, from Thursday 1 October 2020 they will not take action for breach of COBS 16A.4.3 EU provided that firms have allowed professional clients to opt-in to receiving notifications.

They will adopt this approach for 6 months (to 30 March 2021).

FCA proposes the next stage of support for consumer credit and overdraft customers

The proposals will cover users of credit cards and other revolving credit (store card and catalogue credit), personal loans, overdrafts, motor finance, buy-now pay-later (BNPL), rent-to-own (RTO), pawnbroking and high-cost short-term credit (HCSTC) products.

The draft guidance published this month applies both to consumers who have benefitted under the current guidance who continue to face financial difficulties, as well as those whose financial situation may be newly affected by coronavirus after the current guidance ends. The FCA expects the current guidance will expire on 31 October 2020, but will keep this under review depending on how the wider situation develops.

The FCA will monitor firms to ensure borrowers are treated fairly having regard to their individual circumstances.

Additionally, the FCA is proposing that firms contact overdraft customers who have received temporary support to determine if they still require assistance. Where a customer needs further support, firms should use measures such as reducing or waiving interest, agreeing a programme of staged reductions in the overdraft limit, or supporting customers to reduce their overdraft usage by transferring the debt. The guidance sets out when these options may be appropriate.

Amerdeep Somal appointed as Complaints Commissioner

The FCA, the Prudential Regulation Authority (PRA) and the Bank of England have today announced the appointment of Amerdeep Somal as Complaints Commissioner.

The Commissioner oversees the final stage of investigations into complaints against the FCA, PRA and the Bank. The role is independent from the three organisations. Amerdeep will replace current Commissioner Antony Townsend on 1 November.

Before taking her role, Amerdeep will step down from positions as the independent assessor of the Financial Ombudsman Service, a council member on the General Medical Council, and as a senior independent panel member for public appointments at the Cabinet Office. She will retain her positions as a judge of the Asylum and Immigration Tribunal and as Chief Commissioner at the Data and Marketing Commission.er and will serve an initial term of three years.

FCA publicly censures former Worldspreads CEO for market misconduct

The Financial Conduct Authority (FCA) has on 9th September published a Final Notice in respect the former Chief Executive Officer of Worldspreads.

In the Notice they publicly censuring him for market abuse, in lieu of a financial penalty of £658,900 (due to evidence of serious financial hardship). They also banned him from performing any roles linked to regulated activity.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said: 'Mr Foley misled investors in the Worldspreads Group and manipulated the market for its shares in a concerted and deliberate scheme. He should have no place in UK markets.'

Mr Foley was involved in drafting admission documentation ahead of a flotation on the Alternative Investment Market. These documents contained misleading information and omitted key information that investors would have needed to make an informed decision about the company. In particular, the documentation did not mention that some WSG executives had made significant loans to WSG and its subsidiaries. This was also never disclosed in the annual company accounts.

It also did not mention an internal hedging strategy by which certain of WSG's subsidiaries hedged considerable trading exposures internally with company executives. This was not disclosed in the annual accounts until at least 2009.

Between January 2010 and March 2012, large spread bets were placed on the shares of WSG on the trading accounts of WSL clients on terms which made statements in WSG's Annual Accounts as to its credit policy false and misleading. In addition, large spread bets were carried out on two clients' accounts by Mr Foley himself without the knowledge of the clients and this had the effect of giving the appearance of greater demand for WSG shares than in fact existed.

Mr Foley is the third and last executive of WSL against whom the FCA has taken action following its collapse in March 2012.

FCA publishes Decision Notice against an experienced trader and a portfolio manager for market manipulation

The FCA has published a Decision Notice in respect of an experienced trader and a portfolio manager, partner and Chief Investment Officer, for market abuse, imposing a financial penalty of £100,000 and prohibiting him from performing any functions in relation to regulated activity.

The FCA considers that between 20 January and 15 May 2017, the trader repeatedly placed in the market large misleading orders for Contract for Differences (CFDs), referenced to equities, which he did not intend to execute. At the same time, he placed smaller orders that he did intend to execute on the opposite side of the order book to the misleading orders.

Through his large and misleading orders, the trader falsely represented to the market an intention to buy/sell when his true intention was the opposite. At the same time, his misleading orders were for volumes of shares far greater than the typical market size, which would also have created a false and misleading impression regarding the true supply of and demand for the shares in question to other market participants.

Irish Regulatory News

Recent Regulatory Changes Affecting Companies and Limited Liability Companies

It should be noted that due to recent amendments to the Companies Law (2020 Revision) and Limited Liability Companies Law (2020 Revision) certain additional information will be required to be filed with the Registrar of Companies from 1 September 2020. In addition, such information will be made publicly available online from 1 October 2020 upon request, upon payment of a fee of CI$50/ US$61. It is expected that a guidance document to assist with the filings to the Registrar will be published shortly.

"Learning the lessons from the global financial crisis in addressing the distress arising from the pandemic" – Deputy Governor Ed Sibley

On 28 September, the Central Bank of Ireland jointly hosted a webinar on distressed debt with University College Limerick.

During the webinar, Deputy Governor Sibley spoke about the importance of supporting borrowers whose income has been affected by Covid19. "Recognising problems and finding the most appropriate treatment for borrowers who cannot return to their repayment schedule after a six month break is likely to lead to better outcomes for more borrowers than pretending that the problems do not exist. There is no regulatory impediment to lenders offering further payment breaks to borrowers, providing they are appropriate for the individual borrower circumstance".

Deputy Governor Sibley discussed how effective engagement between lenders and distressed borrowers is critical to preventing the build-up of arrears and successful restructuring of loans where the ability to pay the debt has been reduced.

The Central Bank also remains focused on those borrowers (primarily mortgage borrowers) who were in distress before the pandemic.

There are extensive supports and protections in place for borrowers experiencing repayment difficulties. These include the Code of Conduct on Mortgage Arrears, the Consumer Protection Code, and Regulations for firms lending to SMEs. The aforementioned protections exist to help borrowers, and ensure they are treated fairly by their lender. Borrowers who have difficulty paying their mortgage due to COVID-19 – or any other reason – are encouraged to talk to their lender and get advice from the Money Advice and Budgeting Service.

Enforcement Action Notice: An Irish Bank (The Bank) has been reprimanded and fined €18,314,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customer accounts

The Central Bank has imposed a fine at the highest end of its sanctioning powers, reflecting the gravity with which the Central Bank views The Bank's failures. The impact of The Bank's failings on its customers, which related to 3,741 accounts, was devastating and included significant overcharging and the loss of 66 properties.

Additionally, The Bank's engagement and co-operation with the Central Bank's Tracker Mortgage Examination (the "TME") was deeply unsatisfactory. The Bank caused avoidable and sustained harm to impacted customers due to the Firm's unwillingness to acknowledge its failings until December 2017 and to take immediate action to apply the protections of the TME. Had The Bank adhered to the TME guidelines sooner, without the need for significant and sustained Central Bank intervention, the harm to its customers – particularly incidences of property loss - would have been significantly reduced. The Central Bank determined that the appropriate fine was €26,162,857, which was reduced by 30% to €18,314,000 in accordance with the settlement discount scheme provided for in the Central Bank's ASP. This will be paid to the Exchequer.

This fine is in addition to the €153,524,363 that The Bank has been required to pay to date in redress and compensation and account balance adjustments under the TME to its impacted tracker mortgage customers.

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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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