

Regulation round-up



August 2017 Quick links

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Welcome to the August issue
of Regulation round-up

Jonathan Davidson, Director of Supervision – Retail and Authorisations

"The aim of the new SM&CR is to reduce harm to consumers and strengthen market integrity"

I'm pleased to welcome you to the August edition of Regulation round-up. I would like to take the opportunity to highlight our consultation papers we recently published. These papers outline proposals to change how we regulate people working in financial services. The proposals will extend the Senior Managers and Certification Regime (SM&CR) to all financial services firms that we regulate, replacing the approved persons regime.

The aim of the new SM&CR is to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. As part of this, the SM&CR aims to:

- encourage a culture of staff at all levels taking personal responsibility for their actions
- make sure firms and staff clearly understand and can demonstrate where responsibility lies

In order to make sure that the regime is proportionate for solo-regulated firms (those firms regulated by the FCA only), we are proposing to apply a baseline of requirements to many

regulated firms, which we call the 'core regime'. For some large or complex firms, we are proposing extra requirements, called the 'enhanced regime'.

Firms can [find more details on our website](#). In September we will hold a series of events around the UK for firms to gain insight into the proposed policy changes and provide feedback. You can [sign up now](#) on our website.

Hot topics

Non-public outcomes - Enforcement

Our [Threshold Conditions Team \(TCT\)](#) takes enforcement action against firms regulated by us, which fail to comply with basic regulatory requirements (such as the requirements to submit [FCA returns](#) and to pay [FCA fees](#)). Such action often results in the FCA cancelling the statuses of those firms, which means that they cease to be able to conduct regulated business and may have to cease trading altogether.

In the year to 30 June 2017, the TCT cancelled the authorisations of 207 firms for these (and other) failings.

We have provided [accessible information](#) to firms about the importance of complying with these requirements, and has notified firms that failure to comply may result in firms losing their authorisation and therefore their ability to conduct regulated business.

Non-public outcomes

Following referral to the TCT, many firms comply late, but are still able to retain their authorisation. Other firms voluntarily give up their FCA authorisation. In the year to 30 June 2017, the TCT accepted 1,387 referrals of firms who had failed to satisfy the minimum standards. 824 of those firms still managed to retain their authorisation by submitting their outstanding returns or paying their overdue fees. 122 firms applied to cancel their FCA authorisation altogether.

Where firms are repeatedly referred to Enforcement for failing to comply with basic requirements, Enforcement will recommend that their permissions are cancelled even if the firms comply late.

Consumer credit - agenda and priorities

We have [published](#) a package of work setting out our agenda and priorities for consumer credit. This includes a feedback statement on our review of high-cost credit. This is a consultation on [creditworthiness](#) and affordability checks, and information on our [motor finance](#) work.

There is clear evidence that FCA regulation of [high-cost short-term credit](#) (payday lending), including the price cap, has led to substantial benefits to consumers. We have decided not to change the price cap, and will review it again in three years' time.

We have significant doubts about whether unarranged overdrafts can continue in their

current form. Unarranged overdraft charges are high, complex and repeatedly incurred by a small minority of consumers.

We have also identified further concerns in the rent-to-own, home-collected credit and catalogue credit markets, as well as a general issue with long-term indebtedness across high cost credit markets.

We are now developing specific, tailored solutions to resolve these concerns in ways that will work for consumers, and will publish proposals for action in Spring 2018.

Most firms understand our [current rules and guidance on creditworthiness](#) and affordability, but there is also evidence of some uncertainty. We are proposing a number of changes to clarify our expectations.

Our update on [motor finance](#) sets out the issues that we are considering and the steps we are taking to develop our understanding of the market.

We are consulting on the creditworthiness measures for the next three months, and look forward to hearing your views.

Financial advisers

MiFID II

Contingency planning required if MiFID II permissions are not in place by 3 January 2018

From 3 January 2018, firms will only be able to carry on activities that require authorisation under MiFID II if they have the required regulatory permissions. We expect any firms who need to change their permissions and have not yet submitted a [complete application](#) to do so without further delay. The importance of doing so is outlined in our [second statement](#). Firms who do not have the required permissions by 3 January 2018 will need to have contingency plans in place. Our [first statement](#) outlined that firms that conduct MiFID II activities without the necessary permissions may face civil, regulatory and/or criminal consequences.

Market Data Processor

The [Market Data Processor \(MDP\) entity portal](#) is now available for entities that have to obtain samples of transaction reports from the FCA for data reconciliation purposes. Users can find more information about the [entity portal](#) on our [website](#), including how to register and make use of the test transaction report data extract facility.

Legal Entity Identifier

We have recently updated the [legal entity identifier \(LEI\)](#) section on our website to provide further clarification on who has the obligation to renew the LEI under the transaction reporting regime.

Live and Local - register for September and October events

Registration is open for the [retail investment events](#) taking place in September and October, including assessing suitability workshops, Q&A roundtable and one-to-one surgeries to be held in various locations across the UK. Further details and registration link are available on our [Live & Local webpage](#).

We will announce additional dates and locations for events in November and December in next month's Regulation Round-up.

General insurance intermediaries and insurers

CP: Insurance Distribution Directive (IDD)

We have published our [second consultation paper](#) setting out our proposals for implementing the Insurance Distribution Directive in the UK. Our third consultation paper, which we will publish in the next few months, will set out our remaining proposals for implementing the IDD.

Live & Local general insurance events announced

From September 2017, we are travelling across the UK with a new series of Live & Local events for [regulated general insurance firms](#). We will visit each region more than once during the programme to give firms more opportunity to attend a variety of events. The first series of these events will run from September to December and include:

- Interactive workshop on how firms can identify and prevent harm - topics include IDD and SM&CR
- Q&A roundtable with a panel of FCA and industry representatives

Registration is now open - details are available on our [Live & Local webpage](#).

In addition, we are planning two presentations to take place at our London office in the autumn - one aimed at retail insurers and the other at Lloyd's and London Market firms. They will focus on one or more key issues within the market as well as our business priorities. Event and registration details of the two presentations will be available in September.

Mortgage advisers and lenders

There are no updates for Mortgage advisers this month.

Banks and building societies

PS: CASS 7A

We have published our [policy statement](#) confirming our final rules and guidance on changes to the Client Assets sourcebook. Our policy statement also contains a summary of the feedback we received on our proposed changes in [consultation paper 17/2](#). The changes come into force on 26 July and complete our review of the client assets

distribution regime, the CASS rules that apply following firm failure.

CP: Information about current account services

We are [consulting on proposals](#) to require current account providers to publish information on service and performance, for example how long it takes to open an account and the number of major operational or security incidents. We announced this work in our [response to the Competition and Markets Authority](#). It forms part of a wider programme of work to review the retail banking sector business models and evaluate the impact of changes on competition and conduct. The consultation closes on 25 September.

Senior Managers Regime: Breaches of Conduct Reporting

As part of the Senior Managers & Certification Regime, firms must submit annual data on breaches of our Conduct Rules using REP008 in Gabriel. We remind firms that the FCA notification of Conduct Rule breaches or REP008 reporting window opens at midnight on 31 August 2017 and closes at midnight on 31 October 2017. It covers the timeframe from 1 Sept 2016 to 31 August 2017.

It is mandatory for these firms to submit REP008 via the Gabriel system, including nil returns for all staff members covered by the conduct rules.

CP: EU Benchmarks Regulation

Our consultation on the implementation of the [EU Benchmark Regulation \(CP17/17\)](#) is closing on 22 August. Please [send us your comments](#) on our proposals for Handbook changes. You can find out further information on EU Benchmarks Regulation on [our website](#).

Life insurance and pension providers

Review of property funds and liquidity risks

We have published the [findings of our review](#) into fund suspensions and pricing adjustments following the vote to leave the EU. Our review shows that property funds should take external events into account as part of their planning to help deal with potential liquidity risks. We are setting out our findings to help property funds respond to any future events which may impact on their liquidity.

Asset Management Market Study update

We have provided an [update](#) on recent developments and next steps on our proposed remedies concerning measures to drive competitive pressure on asset managers and proposals to improve the effectiveness of intermediaries. We are also proposing that the SM&CR be extended to cover asset managers. The [consultation](#) on our proposals explains how the SM&CR will change how we regulate individuals working as asset managers.

PS: Regulatory reporting - retirement income data

We have published [our final rules](#) requiring providers of pensions, annuities and income drawdown to report two new data items to us. These are retirement income flow data return and retirement income stock data and withdrawals flow data return. Firms should consider the changes we have made to the rules and guidance in our handbook and should put processes in place to make sure they can meet the new reporting requirements.

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CP: Client Money

We have published our [consultation paper](#) on minor amendments to the Client Assets sourcebook (CASS). Some investment firms are experiencing difficulty depositing client money at banks in accordance with CASS requirements. Our proposals are intended to address the potential harm to consumers resulting from this.

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Wealth managers

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Consumer Credit

CP: Staff incentives

We have published a [Consultation Paper](#) on how consumer credit firms should manage risks related to how they pay and manage the performance of their staff. We expect all firms to consider the way they pay and incentivise staff, and ensure they manage any

potential harm to consumers. We are consulting on a package of rules and guidance to help consumer credit firms identify and manage their risks effectively. The consultation runs until 4 October 2017. [You can read and respond to this paper through our website.](#)

The [Consultation Paper](#) includes findings from thematic work carried out with 98 consumer credit firms. We found that out of this sample, some firms had inadequate systems and controls to manage the risks of staff incentives. Some firms had not recognised the potential harm to customers that their incentive schemes could pose. For instance, the particular features of bonus calculations or where retailers paid bonuses on the sales of retail goods rather than the associated finance product.

The proposed guidance includes examples of different kinds of incentives, how they affect risks to customers, and how firms can control those risks. We also provide examples of good practice for firms to help them ensure they have robust approaches to risk management.

[Live & Local regional events in the autumn](#)

As part of our [Live & Local](#) regional firm engagement programme, we are holding three events for regulated consumer credit firms focusing on fair treatment of customers, systems and controls, and regulatory reporting. These sessions will be of most benefit to newly regulated firms.

The first event takes place in Birmingham on 27 September, followed by one in London in October, and another in Manchester in November. Registration link and event details are available on our [Live & Local webpage](#).

Credit unions

[Senior Managers Regime: Breaches of Conduct Reporting](#)

As part of the Senior Managers & Certification Regime, firms must submit annual data on breaches of our Conduct Rules using 'Form H'. Please note Credit Unions should only submit a return if disciplinary action has been undertaken relating to a conduct rule breach by staff members covered by the conduct rules.

Firms are reminded that the reporting window to notify the FCA of Conduct Rule breaches opens at midnight on 31 August 2017 and closes at midnight on 31 October 2017. It covers the timeframe from 1 Sept 2016 to 31 August 2017. If there have been no breaches of the Conduct Rules within this timeframe, credit unions do not need to submit Form H.

Credit Unions are required to send this by post, or via scanned email copy to firm.queries@fca.org.uk. You can [view the form](#) in the FCA Handbook.

Fintech and innovative businesses

[Security requirements for providers of account information or payment initiation services now available](#)

The Payment Services Directive 2 (PSD2) aims to harmonise and update regulations for firms. It aims to improve consumer security and fraud prevention and support innovation and competition by creating a level playing field for providers of account information or payment initiation services.

PSD2 also newly regulates certain payment services and makes requirements on them relating to the security of those services. Details of the security requirements for firms seeking authorisation or registration under PSD2 are now available on the FCA website. The new web pages outline what payment services are affected and what firms need to do to apply for authorisation or registration.

News and publications

[New ScamSmart website](#)

Our [ScamSmart campaign hub](#) has moved onto the main FCA website. This has brought all scam related content together, improving the user experience. We've also made significant improvements to the Warning List, updated the branding and re-written all website copy into engaging consumer-friendly language.

The [ScamSmart website](#) gives consumers tips on how to spot and protect themselves from investment fraud, and hosts the FCA Warning List. [The Warning List](#) is an online tool that warns users of the risks associated with an investment and helps them to check a list of firms the FCA knows are operating without its authorisation.

Important information

The ScamSmart url (www.fca.org.uk/scamsmart) remains the same and all existing links will re-direct automatically. If you currently use the ScamSmart widget on your website it will update automatically.

We have a range of ScamSmart resources to use and share including leaflets, posters, videos and infographics. [Access our media library](#).

[Speech: The future of LIBOR](#)

Andrew Bailey [delivered a speech at Bloomberg](#) where he examined important questions about the sustainability of the LIBOR benchmarks and the way that LIBOR is used now and in the future. He also talked about the work that we, and our domestic and international partners, have been doing to reform the interest rate benchmark landscape.

[Speech: Overview of competition at the FCA](#)

Mary Starks spoke at Credit Suisse on the [FCA's competition objective](#) – why we do this work, why it is important, and what we do to advance our competition objective. This includes market studies, competition law enforcement, and pro-competition regulation.

[GC: OPBAS](#)

The Government announced in March 2017 that a new Office for Professional Body Anti-Money Laundering Supervision (OPBAS) would be created within the FCA. We have published [our consultation on our approach to OPBAS](#). This outlines the proposed approach to supervision and text for a specialist Sourcebook for professional body supervisors.

[OP: Dark pools](#)

[News](#)

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