



Regulatory Roundup

31 May 2017

Issue 88



In Brief

FCA Review: Suitability: Results of Suitability Review published

FX Global Code: New code introduced to FX market participants.

Money Laundering: Further Updates to Guidance: Changes to Guidance issued by Joint Money Laundering Steering Group.

PRIIPs: Final Rule: Reminder of upcoming PRIIPs implementation.

EMIR Review: FCA issues EMIR update alert.

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If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact [Peter Carlisle](#).



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FCA Review: Suitability



Useful Links:

[FCA Suitability Review](#)

Of relevance to:

Firms providing personal recommendations to retail customers

The FCA seems happy with the outcome of a review of suitability it undertook last year which captured 1,142 individual pieces of advice given by 656 firms.

The review looked at pension and investment personal recommendations delivered by firms to retail customers during 2015 – it did **not** consider how firms met the suitability rules when **managing investments**.

The FCA found that ‘suitable advice’ was given in **93.1%** of cases reviewed. The FCA describes this as a ‘positive result’ which they **attribute to the RDR**. In addition, 2.5% of cases were described as ‘**unclear**’ due to inadequate information on file – which the FCA regards as a breach of COBS 9 (‘Suitability’) as the firms responsible were unable to demonstrate that suitable advice had been given.

The exercise also looked at **disclosures** (relating to firms’ charges and services, product information and suitability reports) although the findings were less positive with only 52.9% of cases being deemed ‘acceptable’ in respect of all three areas.

We are advised that there will be a communication programme rolled out over 2017/18 which will share further details of these findings including examples of good and poor practice. We are also warned that there will be a repeat of the review in 2019 which will “measure how the sector has responded to our findings and communications plan”. This review will not only look at suitability of advice and compliance with the disclosure rules, but also compliance with any new relevant rules, including those under **MiFID II, PRIIPs and IDD**.

FX Global Code



Useful Links:

[FX Global Code](#)

[Global Foreign Exchange Committee](#)

[Template re 'Statement of Commitment'](#)

[FCA Welcomes Code](#)

Of relevance to:

FX market participants

This new Code is relevant to all FX market participants, whether buy-side or sell-side, regardless of 'product', including E-Trading Platforms (page 4 provides a guide to the types of entities to which the Code will be relevant – ranging from the treasury operations of family offices to hedge funds and “financial institutions”).

Promotion and maintenance of the Code is one of the objectives of the **Global Foreign Exchange Committee** (“GFXC”) which was established this May. The members of the GFXC consist of various global Foreign Exchange Committees; the UK is represented by the London Foreign Exchange Joint Standing Committee which is chaired and administered by the Bank of England.

Areas covered by the Code include ‘Governance’, ‘Execution’ and ‘Risk Management and Compliance’.

Annex 1 provides examples of **good and bad practice**.

Those entities wishing to promote their adherence to the Code are provided with a **template** ‘Statement of Commitment’ in Annex 3.

The FCA has made a positive statement on the publication of the FX Global Code.

Money Laundering: Further Updates to Guidance



Useful Links:

[Regulatory Roundup 86](#)

[JMLSG Guidance Consultations](#)

Of relevance to:

All FCA regulated firms

In addition to proposed changes (see Regulatory Roundup 86) to Part I of the Guidance issued by the Joint Money Laundering Steering Group (“JMLSG”) there are now **changes** to **Part II** (Sectoral Guidance) and **Part III** (Specialist Guidance) up for consultation.

As might be surmised, the changes are brought about by the publication by HM Treasury of the proposed new “Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations” (see Regulatory Roundup 86) which in turn implement the relevant Fourth Money Laundering Directive and accompanying Fund Transfer Regulations (“FTR”) (although the latter is a Regulation, and hence binding upon all Member States, Article 17 of the FTR requires Member States to set out rules on administrative sanctions and measures for breaches).



Useful Links:

[Regulatory Roundup 87](#)

[PS17/6](#)

Of relevance to:

Most firms providing investments or investment services to retail investors, including AIFMs, UCITS Management Companies and the Authorised Fund Managers of NURS

As advised in Regulatory Roundup 87, the Packaged Retail and Insurance-based Investment Products Regulation (“PRIIPs”) will apply from **1 January 2018** (although the carve out for UCITS/NURS applies until 31 December 2019).

As a reminder, at its heart the PRIIPs Regulation – which applies to both PRIIPs ‘**manufacturers**’ and to those that **advise on** or **sell** such products – is to help investors better understand and compare the key features, risks, rewards and costs of different PRIIPs by way of a **Key Information Document** (“KID”) as per Articles 5 and 13 of the PRIIPs Regulation:

- “Before a PRIIPs is made available to retail investors, the PRIIPs manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website.”
- “A person advising on, or selling, a PRIIP shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP.”

Note that a distributing firm that makes any changes to an existing PRIIP will be regarded as a PRIIP ‘manufacturer’.

The FCA has now published **PS17/6** “FCA’s disclosure rules following application of PRIIPs Regulation” containing the final rules. Chapter 2 is certainly worth a read as it gives a high-level overview of the impact of PRIIPs and addresses various issues e.g. the circumstances when the **AIF** rather than the AIFM would be deemed to be the ‘**manufacturer**’ of a PRIIP.

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PRIIPs: Final Rule (continued)



The FCA recognises that there are **uncertainties** on the application of PRIIPs such as what “made available to retail investors” means in the context of PRIIPs that are traded on a securities exchange or when an investment is not intended for retail investors but which could be ‘made available’ via a secondary market. Unfortunately there are no immediate guidelines which can be referenced to address such issues but the FCA advises that it will continue to work with European Supervisory Authorities and the European Commission and the FCA “may comment further in a separate communication later this year”.

Annex 2 includes a list of products which the FCA views as either being **PRIIPs** (e.g. AIFs or derivatives, including contracts for differences) or **non-PRIIPs** (e.g. ISA wrappers or fixed interest debentures).



Useful Links:

[EMIR Proposal](#)

[EMIR Proposal: Annex](#)

[2017/751 – Delay](#)

[European Commission: EMIR](#)

[Regulatory Roundup 62](#)

[Regulatory Roundup 71](#)

[Regulatory Roundup 77](#)

Of relevance to:

Firms subject to European Markets Infrastructure Regulation

The FCA has issued an EMIR update alert to inform us that the European Commission has published proposals to amend EMIR.

Aspects of the proposals include the **removal** of the **frontloading** and **backloading** requirements - frontloading concerns the clearing of contracts before the clearing obligation takes effect whilst backloading concerns the reporting of historical transactions – see Regulatory Roundups 71 and 62.

It is noted that the **definition of a ‘financial counterparty’** as far as **AIFs** are concerned changes.

The **current** definition refers to “an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU”.

This is **amended** under the proposals to read “an AIF as defined in Article 4(1)(a) of directive 2011/61/EU”. Article 4(1)(a) states:

‘AIFs’ means collective investment undertakings, including investment compartments thereof, which:

- i. raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- ii. do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;

As such, the amended definition makes no mention of the AIFM to be “authorised or registered” under the AIFMD for an AIF to be categorised as a ‘financial counterparty’.

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Other proposals highlighted in the FCA alert include amendments to:

- incentivise the offering of clearing services and increase access to clearing
- increase requirements for Central Counterparties' transparency
- the risk-mitigation techniques for uncleared OTC derivatives by introducing a new supervisory pre-approval of firms' risk management procedures
- the registration and supervision of trade repositories as well as amendments to the requirements for trade repositories.

The alert also reminds us that the publication of Delegated Regulation 2017/751 in the Official Journal means that the date for the central clearing of OTC derivatives applicable to '**Category 3**' counterparties has been pushed back until **21 June 2019**.

As a reminder (see e.g. Regulatory Roundup 77) the EMIR clearing obligation will be phased in over a period of time depending upon the **categorisation of the counterparties**.

Counterparties are **categorised** under EMIR as follows (the below is a fair **general summary** but reference should be made to the **precise wording** contained within **each** of the Delegated Regulations mentioned in Delegated Regulation 2017/751):

- Category 1 includes counterparties that are clearing members for at least one of the classes of OTC derivatives subject to the clearing obligation.
- Category 2 captures those counterparties not falling within Category 1 above that are financial counterparties (or AIFs that are non-financial counterparties) and which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives is above €8bn
- **Category 3** are financial counterparties (or AIFs that are non-financial counterparties) not falling into either of the two categories above
- Category 4 comprises non-financial counterparties not belonging to Categories 1, 2 or 3 above.

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