



Regulatory Roundup

June 2018

Issue 98



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If any of these topics raise questions or a need for guidance or support, please do not hesitate to contact us at info@complyport.co.uk



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FCA Asset Management Conference 2018 – Insights



Useful Links:

- [Investment Management Conference](#)

Key Date:

23 May 2018

Of relevance to:

All FCA regulated and authorised asset management firms

On 12 June, London’s Queen Elizabeth II Centre was home to the FCA Asset Management Conference 2018. The conference began with a keynote speech by Andrew Bailey, the Chief Executive of the Financial Conduct Authority (“FCA”), in which, among setting the regulatory agenda for the coming year for asset managers, he made a promise that the FCA would take action to address the unintended negative implications of the Packaged Retail and Insurance-Based Investment Products (“PRIIPs”) and the second Markets in Financial Instruments Directive (“MiFID II”) as early as next month.

He went on to address other key topics, including Brexit – a topic that would be discussed later on in the day by part of the FCA team in charge of porting the rules and regulations out of EU legislation and into UK legislation.

There were a number of hosted panel sessions throughout the day which included discussions on UK withdrawal from the EU, Market Trends, Conduct and Culture and the FCA’s MiFID II Supervisory Priorities.

A summary of the discussions from the panel sessions attended can be found in the main article on Complyport’s website at <https://www.complyport.com/fca-asset-management-conference-insights/>.

ESMA Guidelines on aspects of MiFID II suitability requirements



Useful Links:

- [ESMA Final Report on Guidelines on certain aspects of the MiFID II suitability requirements \(PDF\)](#)
- [ESMA's 2012 MiFID I Guidelines on suitability \(PDF\)](#)

Key dates

FCA to respond to ESMA by 28 July 2018

Guidelines applicable from October 2018

Of relevance to:

All firms providing the services of investment advice (whether independent or not) and portfolio management

The European Securities and Markets Authority (“ESMA”) has published its Final Report on Guidelines on certain aspects of the Markets in Financial Instruments Directive (“MiFID II”) suitability requirements.

The assessment of suitability is one of the most important requirements for investor protection in the MiFID framework. It applies to the provision of any type of investment advice, whether independent or not, and portfolio management.

Investment firms providing investment advice or portfolio management must, under Article 25(2) of MiFID II and Articles 54 and 55 of the MiFID II Delegated Regulation, provide suitable personal recommendations to their clients or make suitable investment decisions on behalf of their clients.

The Guidelines in the Final Report build on the text of ESMA’s 2012 MiFID I Guidelines on suitability (“2012 Guidelines”), which have been largely confirmed and broadened in order to:

- consider technological developments of the advisory market, notably the increasing use of automated or semi-automated systems for the provision of investment advice or portfolio management (robo-advice);
- build on supervisory experience on the application of suitability requirements (including the 2012 Guidelines);
- take into account the outcome of studies in the area of behavioural finance; and
- provide additional details on some aspects that were already covered under the 2012 Guidelines.

The Guidelines support a consistent and harmonised application of the suitability requirements.

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ESMA Guidelines on aspects of MiFID II suitability

(continued)



Useful Links:

- [ESMA Final Report on Guidelines on certain aspects of the MiFID II suitability requirements \(PDF\)](#)
- [ESMA's 2012 MiFID I Guidelines on suitability \(PDF\)](#)

Key dates

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Of relevance to:

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Sustainable Finance

The European Commission have stated that “[...] firms should ask about their clients’ preferences (such as environmental, social and governance factors) and take them into account when assessing the range of financial instruments and insurance products to be recommended, i.e. in the product selection process and suitability assessment.”

Accordingly, ESMA has included, pending changes to the legal framework, a good practice for firms addressing this issue. The good practice will contribute to raise firms’ and supervisors’ attention and awareness of this issue. ESMA will monitor the European Commission legislative proposals and will consider making focused amendments to the Guidelines to reflect changes to the MIFID II delegated acts on the topic of sustainability.

Next Steps

Publication of the English version of these ESMA Guidelines on 28 May 2018 triggered a two-month period for the FCA to notify ESMA whether they comply or intend to comply with the Guidelines with effect from the end of October 2018 at the latest.

Financial services legislation after Brexit – announcements from HMT and the FCA



Useful Links:

- [HMT announcement on Brexit](#)
- [The FCA's role in preparing for Brexit - statement](#)

Key Dates:

29 March 2019 and
31 December 2020

Of relevance to:

All regulated firms

The government have set out their approach to financial services legislation under the European Union (Withdrawal) Act (“EUWA”), which forms part of the wider work the government is undertaking to prepare for the UK’s withdrawal from the EU (“Brexit”), with an implementation period that will start on 29 March 2019 and last until 31 December 2020.

EUWA will repeal the European Communities Act 1972, preserve existing UK laws which implement EU obligations and convert existing EU law at the point of exit into UK law.

The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU’s single market in financial services; access to each other’s markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period. Passporting rights will continue during this implementation period and, hopefully, beyond.

HM Treasury states that the government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between the UK and EU markets, and a shared desire to manage financial stability risks, it is essential to have a stable process for maintaining equivalent regulatory outcomes as legislation evolves – including a system to resolve disagreements at regulatory and supervisory levels.

HM Treasury intends to use powers in EUWA to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios; including ‘no-deal’, in which the UK leaves the EU on 29 March 2019 without a withdrawal agreement and implementation period having been ratified between the UK Government and the EU.

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Financial services legislation after Brexit – announcements from HMT and the FCA

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Useful Links:

- [HMT announcement on Brexit](#)
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Key Dates:

29 March 2019 and
31 December 2020

Of relevance to:

All regulated firms

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The FCA will be amending the FCA Handbook to ensure it is both consistent with changes the Government is making to EU law and functions effectively when the UK leaves the EU.

As March 2019 approaches, given the scale of the Handbook changes needed for Brexit, the FCA undertakes to limit Handbook changes unrelated to Brexit to those identified as core priorities in their Business Plan as well as other essential items.

The FCA plan to consult on these changes in Autumn 2018 and plan to consult on the rules which will apply to firms in the temporary permissions regime.

Important initiatives will continue, such as the High-Cost Credit Review, the implementation of the Senior Managers and Certification Regime and next steps from the Asset Management Market Study, but the FCA will delay rule making for some initiatives, such as work on illiquid assets or the remit of Independent Governance Committees.

The FCA have stated that they do not expect firms and other regulated entities providing services within the UK's regulatory remit to have to prepare now to implement these new requirements. Firms and other regulated entities should look at the consultations and respond accordingly.

FCA publishes draft rules on how it will regulate Claims Management Companies



Useful Links:

- [FCA CP18/15: draft rules for Claims Management Companies](#)
- [FCA CP18/15: draft rules for Claims Management Companies \(PDF\)](#)

Key Date:

Consultation closes
3 August 2018

Of relevance to:

All Claims Management Companies and their advisers

The Financial Conduct Authority (“FCA”) has published draft rules outlining how it will regulate Claims Management Companies (“CMCs”) when regulation passes to it on 1 April 2019. At the same time the Financial Ombudsman Service will become responsible for resolving disputes about CMCs.

The claims management industry has grown substantially since the Claims Management Regulation Unit was established within the Ministry of Justice in April 2007 and the composition of the market has also changed, with financial services claims having overtaken personal injury as the greatest source of turnover for claims management companies. It is estimated that CMCs have taken over £3.5 billion in consumer charges since 2011 for payment protection insurance mis-selling claims alone.

The recent Financial Guidance and Claims Act 2018 enables the transfer of regulation of CMCs in England and Wales to the FCA from the existing Claims Management Regulator, and extends regulation to Scotland, where CMCs are currently unregulated. Northern Ireland will continue to have no equivalent regulatory regime.

The new regime will also include CMCs dealing with claims under section 75 of the Consumer Credit Act 1974, where the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader.

Many of the existing Claims Management Regulation rules will be carried across to the FCA Handbook, with amendment where appropriate. The FCA propose to apply new standards to CMCs in a number of areas, the majority of which will apply from 1 April 2019. However, some requirements will apply from a later date.

See full article on the Complyport website for more detailed information:
<https://www.complyport.com/fca-publishes-draft-rules-on-how-it-will-regulate-claims-management-companies/>

FCA to regulate pre-paid funeral plans



Useful Links:

- [HM Treasury call for evidence on pre-paid funeral plans](#)

Key Date:

Response to call for evidence required by 1 August 2018

Of relevance to:

All those involved in pre-paid funeral plans, including funeral plan providers, funeral directors, insurers, asset managers, and introducers

The sale of pre-paid funeral plans is currently regulated by the Funeral Planning Authority (“FPA”), a self-regulatory body, rather than the Financial Conduct Authority (“FCA”). Due to concern about the potential risk to consumers within this sector, the UK government is intending to bring all pre-paid funeral plans within the role of the FCA. A call for evidence from HM Treasury seeks views and evidence on the merits of this proposal. At the same time, the Competition and Markets Authority (“CMA”) has launched a market study into the supply of funerals in the UK.

The FPA, a Community Interest Company, has 24 members, many of which are connected to the Co-Operative Group. In 2017, FPA providers sold over 207,000 new plans, representing around 245% growth in annual sales when compared with 2006 figures. They comprise around 95% of the market and have over 1.3 million undrawn plans, equating to approximately £4bn in assets under management.

Regulation of this area is currently very light.

Entering into a funeral plan contract as a provider is a specified kind of activity under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“RAO”). Under RAO Article 59, a ‘funeral plan contract’ means a contract under which a customer makes one or more payments to a provider, who undertakes to provide, or secure that another person provides, a funeral in the UK for the customer upon their death. Providers either invest these payments in a trust fund or take out a form of insurance against the life of the customer. This enables customers to pay for a funeral in advance and safeguard against inflation.

However, RAO Article 60 exempts providers from regulation where one of two criteria are met.

See full article on the Complyport website for more detailed information:
<https://www.complyport.com/fca-to-regulate-pre-paid-funeral-plans/>

Money Market Funds Regulations 2018



Useful Links:

- [The Money Market Funds Regulations 2018](#)
- [FCA CP18/4 The European Money Market Funds Regulation](#)
- [EU Regulation 2017/1131 on money market funds](#)

Key Date:

Applies to new MMFs from 21 July 2018 and to existing MMFs from 21 January 2019

Of relevance to:

All firms managing and/or marketing, advising on and/or distributing money market funds

The Money Market Funds Regulations 2018 (the “UK MMF Regulations”) are made in relation to EU Regulation 2017/1131 on money market funds (“MMF Regulation”) which will apply in the UK from 21 July 2018. They make amendments to ensure that the Financial Conduct Authority (“FCA”) is able to authorise money market funds (“MMFs”) and enforce the provisions of the MMF Regulation.

MMFs in Europe

European MMFs (mostly established in France, Ireland and Luxembourg) manage about €1 trillion of assets and constitute around 15% of the EU’s funds industry. MMFs are an important source of short-term financing for financial institutions, corporates and governments; they are one of five workstreams identified by the Financial Stability Board in 2012 in relation to the Shadow Banking System.

The MMF Regulation introduces:

- risk management requirements which impose stress testing and internal processes to determine credit quality for money market instruments, and ‘Know Your Customer’ policies and procedures;
- liquidity management requirements for Public Debt Constant Net Asset Value (“NAV”) and Low Volatility NAV MMFs. External support to guarantee the liquidity of an MMF or to stabilise its NAV are prohibited; and
- transparency requirements to investors and competent authorities.

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Money Market Funds Regulations 2018

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Useful Links:

- [The Money Market Funds Regulations 2018](#)
- [FCA CP18/4 The European Money Market Funds Regulation](#)
- [EU Regulation 2017/1131 on money market funds](#)

Key Date:

Applies to new MMFs from 21 July 2018 and to existing MMFs from 21 January 2019

Of relevance to:

All firms managing and/or marketing, advising on and/or distributing money market funds

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Changes for UK MMFs

The UK MMF Regulations widen FCA authorisation and intervention powers in respect of unit trust funds and contractual schemes and allow funds which are Open-Ended Investment Companies (“OEICs”) or Alternative Investment Funds (“AIFs”) to be MMFs.

The Financial Services and Markets Act 2000 is amended to provide powers of authorisation and intervention for the FCA in respect of unit trust funds and contractual schemes, both of which may be types of MMF.

The Open-Ended Investment Companies Regulations 2001 are amended in order to allow funds which are OEICs to apply to become MMFs, or for funds which apply to be authorised as an OEIC to be authorised as an MMF at the same time.

The Alternative Investment Fund Managers Regulations 2013 are amended to make provision for the FCA to direct the manner in which an application may be made for an AIF to be authorised as an MMF, and the process for intervention by the FCA in respect of such a fund.

The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 is amended to enable the FCA to investigate and bring enforcement action against funds directly for contravention of a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under the MMF Regulation.

The FCA has updated their application forms to account for the introduction of the MMF Regulation. Most existing MMFs operate under the UCITS Directive, but some operate under the AIFMD. The MMF Regulation will not amend either Directive, and their managers will need to remain authorised under either one of them.

Key Dates



Key Date	Topic
1 July 2018	FCA move offices to Stratford – new address: 12 Endeavour Square, London E20 1JN
5 July 2018	Consultation closes on FCA CP18/9 : Remedies following the asset management market study
27 July 2018	New ESMA requirements for managers of Money Market Funds when reporting to the FCA
30 July 2018	Consultation closes on FCA CP18/14 : Quarterly Consultation Paper No 21, Chapter 3: Changes to the FEES manual
1 August 2018	Consultation closes on FCA CP18/11 : Reviewing the funding of the Financial Services Compensation Scheme
3 August 2018	Consultation closes on FCA CP18/15 : Claims management: how we propose to regulate claims management companies
31 August 2018	Consultation closes on FCA CP18/12 and CP18/13 : High-cost Credit Review: Consultation on rent-to-own, home-collected credit, catalogue credit and store cards, and alternatives to high-cost credit; Discussion on rent-to-own pricing; and overdrafts
Summer 2018	FCA Policy Statement expected on SME access to the Financial Ombudsman Service
6 September 2018	Consultation closes on FCA CP18/17 : Retirement Outcomes Review: Proposed changes to our rules and guidance
7 September 2018	Consultation closes on FCA GC18/2 : Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015
26 September 2018	Consultation closes on FCA CP18/16 : Authorised push payment fraud - extending the jurisdiction of the Financial Ombudsman Service
1 October 2018	Insurance Distribution Directive into force in Europe and the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 into force in the UK; FCA rules apply re transfer value comparator and the appropriate pension transfer analysis
Autumn 2018	FCA Policy Statement expected on improving the quality of pension transfer advice
21 January 2019	ESMA Technical Advice under the Prospectus Regulation in force, covering the areas of format and content of a prospectus, the EU Growth prospectus and the scrutiny and approval of a prospectus.
10 March 2019	Internalised Settlement reporting requirements – ESMA to issue regulatory and implementing technical standards
13 March 2019	Competition and Markets Authority due to complete their investigation into the supply and acquisition of investment consultancy services and fiduciary management services to institutional investors, including pension schemes, charities, insurance companies and endowment funds
11pm on Friday 29 March 2019	Brexit – European Union (Withdrawal) Bill will repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the UK from the EU
Spring 2019	Financial Guidance and Claims Act 2018 – FCA takes over regulation of Claims Management Services Senior Managers & Certification Regime to cover all FSMA authorised firms, replacing the Approved Persons Regime
1 April 2019	FCA requires managers of dual-priced authorised funds to pay box profits to the fund for the benefit of investors or to individual investors who have bought or sold units
6 April 2019	New FCA rules on pension transfer assumptions to use when revaluing benefits
3 July 2020	End of 30-month period during which the US Securities and Exchange Commission provides market participants with greater certainty regarding their US regulated activities and compliance with MIFID II rules on Investment Research
July 2020	5 th Money Laundering Directive to be adopted throughout Europe
October 2020	Pension transfer specialists to obtain the investment advice qualification
31 December 2020	Brexit – end of transitional period

FCA Business Plan 2018/19

Update on market-based activity



Firms' culture and governance	Publication type	Timings
*Establishing a public register	Consultation Paper	Q2 2018/19
Accountability	Policy Statement	Q2 2018/19
Innovation, big data, technology and competition	Publication type	Timings
*Review of Cryptocurrencies	Assessment report with HMT and BoE	Q2 2018/19
Treatment of existing customers	Publication type	Timings
Providing SMEs access to FOS	Policy Statement	Q2 2018/19
Pensions and retirement income	Publication type	Timings
Retirement Outcomes Review	Final report and Consultation Paper	Q2 2018/19
Non-workplace pensions	Feedback Statement	Q3 2018/19
Fair treatment of with-profits customers		Q3 2018/19
*Unsuitable pension transfer advice	Policy Statement	Q3 2018/19
*Savings adequacy	Occasional Paper	Q4 2018/19
Retail Banking	Publication type	Timings
Strategic Review of Retail Banking Business Models	Consultation Paper	Q3 2018/19
Improving competition in current accounts	Policy Statement	Q3 2018/19
Financial crime	Publication type	Timings
Financial crime review of e-money	Report	Q2 2018/19
General Insurance and protection	Publication type	Timings
Wholesale Insurance Brokers Market Study	Interim report	Q3 2018/19
Value in the distribution chain (Phase 1)		Q2 2018/19
*Assessing claims inflation in General Insurance		Q4 2018/19
Retail Investments	Publication type	Timings
Investment Platforms Market Study	Interim Report	Q2 2018/19
Outcomes testing on auto advice		Q4 2018/19
High-Risk Complex Investments		Q3 2018/19
Investment Management	Publication type	Timings
Asset Management Market Study remedies	Policy Statement	Q4 2018/19
Mortgages and mutuals	Publication type	Timings
Mortgages Market Study	Interim report	Q1 2018/19
Consumer credit	Publication type	Timings
Motor finance	Final Report	Q3 2018/19
Consumer Credit Act retained provisions review	Consultation Paper	Q4 2018/19
Debt Management Sector Review		Q4 2018/19
*Market Study On Credit Information	Terms of Reference	Q4 2018/19
High-Cost Credit Review	Consultation Paper and Policy Statement	Q4 2018/19
Wholesale financial markets	Publication type	Timings
LIBOR Transition		2020/2021
Implementation of the EU Benchmark Regulation	Policy Statement	Q1 2018/19
Reforms to the listing regime	Consultation Paper	Q2 2018/19
*Money Laundering in Capital Markets	Report	Q1 2019/20
*Approach to Market Integrity	Report for Consultation	Q4 2018/19

*** New projects**

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