

# Regulatory Update

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## 1.0 FCA UPDATES & DEVELOPMENTS

### 1.1 FCA Update on Share Trading Obligations

The FCA has taken positively to the revised approach provided by the European Securities and Markets Authority (ESMA) via a [published statement](#) on the scope of the EU's share trading obligation (STO). According to ESMA, the proposed approach will mean that EU banks and investment firms will be able to trade all UK shares in the UK.

The FCA is looking to engage with ESMA and other European authorities to allow both UK and EU STOs to maintain the status quo for a limited period of time after exit. In the absence of this, the FCA will engage with market participants and trading venues on the steps needed to protect the integrity of the UK market.

The FCA will continue to consider its approach to any implementation of any STO that is needed in a hard exit and will look to set out its approach if it is clear there will be a no-deal exit. This will include expectations of how firms can comply with applicable requirements.

### 1.2 FCA Quarterly Consultation

The FCA is consulting on the [proposed amendments to its Handbook](#) as part of its quarterly consultation paper. These are:

- Modifications to GEN and FEES for 2019/20 to Gibraltar-based firms
- Introduction of new notification procedures for changes to the management body
- Amendment of the Handbook form SUP 10C Annex 10D: Statement of Responsibilities
- Update of the Handbook form SUP 8 Annex 2 Application form for a waiver or modification of rules

Any comments should be submitted by 7 August 2019.

### 1.3 FCA Thematic Review on Money Laundering Risks in Capital Markets

The FCA has published its latest [thematic review \(TR19/4\)](#) on money laundering risks in capital markets. The review covered 19 sectors including investment banks, brokers and trading firms.

In general, the FCA noted that there was an insufficient understanding of their exposure to money laundering risks in capital markets. Too much reliance is placed on the second line of defence, whereas a great deal of focus should be on the first line of defence. The training provided by firms is too high level and needs to be tailored according to the identified money laundering risks.

From participant responses, the FCA has included, in its Annex, a set of typologies to help firms inform risk assessments, transaction monitoring and training.

Firms are expected to consider their approaches in identifying and assessing money laundering risks which they are exposed to as a result of this report. They should take note of this report and ensure their systems and controls are adequate and proportionate to their risks.

CCL have years of experience in supporting firms with their AML control frameworks and can help you create proportionate controls for your business as well as benchmarking you against peer firms. For more information or help on money laundering, please [contact us](#).

### 1.4 FCA Update on EMIR Notification, Exemption and Reporting

The FCA has updated its [webpage on EMIR notifications and exemption](#) to include:

- Small financial counterparties exceeding the clearing threshold
- Intragroup exemption from the reporting obligation

The article notes that from 17 June 2019 onwards, the EMIR portal will be discontinued, and firms will need to register on Connect to make EMIR notifications.

## **1.5 FCA Confirms Recognition of Market Codes of Best Practice**

The FCA in 2018 established its ‘codes recognition scheme’ for recognising industry codes for unregulated financial markets and activities. The regulator has now [confirmed the first codes recognised under the scheme](#) to be:

- [FX Global Code](#) by the Global Foreign Exchange Committee. The code sets out global principles of good practice standards in the foreign exchange market.
- [UK Money Markets Code](#) by the Money Markets Committee. This code sets standards and best practice for participants in the deposit, repo and securities lending markets in the UK.

Individuals subject to the Senior Managers and Certification Regime (SM&CR) will need to meet the requirements for market conduct for both regulated and unregulated activities. Acting in line with FCA recognised codes will tend to indicate a person is meeting their obligation to observe proper standards of market conduct.

The SM&CR rules have not changed as a result of the code recognition scheme and firms and their senior managers are still expected to train, monitor and, where necessary, discipline staff in relation to the individual conduct rules. The FCA will not supervise firms or individuals directly against these codes in unregulated markets.

For a list of FCA recognised industry codes, click [here](#). For support in assessing, designing and implementing your SM&CR project, please [contact us](#).

## **2.0 PRA UPDATES & DEVELOPMENTS**

### **2.1 PRA Regulated Fees and Levies Proposal 2019/20**

The PRA has [published a policy statement](#) providing feedback on responses to consultation paper CP 9/19 and setting out its final policy for:

- The fee rates for the period 1 March 2019 to 29 February 2020
- Amendments to the fees part in the PRA Rulebook
- Updates to Supervisory Statement SS 3/16

The implementation and updated date for the fees came into force on 1 July 2019.

### **2.2 Pillar 2 Liquidity: PRA110 Reporting Frequency**

The PRA has set out a [proposal in its consultant paper](#) to amend the reporting frequency of the PRA110 template for when a firm is in stress.

For firms that have a total asset of £5 billion or above, it is proposed that they report on every business day if there is a specific liquidity stress or market liquidity stress relating to the firm, branch or group.

## **3.0 EU REGULATORY UPDATES**

### **3.1 ESMA Q&A Updates**

ESMA has updated the following Q&As:

The implementation of [investor protection topics](#) under the Market in Financial Instruments Directive and Regulation (MiFID II/MiFIR). The Q&A provides new answers on best execution -specifically in relation to reporting and information on costs and charges - and predominantly in relation to ex-ante disclosure to clients who are placing orders.

To see how we can help with these ESMA updates, please [contact us](#).

### **3.2 ESMA Launches a Supervisory Action with NCAs on MiFID II Appropriateness**

ESMA is [launching a Common Supervisory Action](#) (CSA) for National Competent Authorities (NCAs) to carry out in the second half of 2019. The activity will focus on the application of the MiFID II appropriateness requirement. NCAs will carry out this action by sampling investment firms under their supervision and assess the application of the appropriateness requirement.

If your Firm has been selected by the FCA to participate in the review, or if you would like to assess your measures for appropriateness, [contact our team of experts](#) for guidance and support.

### **3.3 EBA Publishes Opinion on Strong Customer Authentication on PSD2**

The European Banking Authority (EBA) has [published an opinion on Strong Customer Authentication](#) (SCA) under the Payment Services Directive 2 (PSD2). The document responds to key queries raised by the industry about compliance with the requirements of the SCA. Responding to some industry concerns, the EBA has allowed the FCA to give firms extra time to implement the SCA.

The FCA has provided a [response](#) and aims to formulate a plan with stakeholders of the industry to set out a plan for compliance, key milestones and a timetable to achieving the steps. Once the plan has been finalised, the FCA expects all participants to meet the required milestones and delivery date. The regulator has noted that no enforcement actions will be taken against firms if they do not meet the requirements for SCA from 14 September 2019 in areas covered by the agreed plan, where there is evidence that necessary steps were taken to comply with the plan.

### **3.4 Payment Service Regulator Publishes its Report on Access to Payment Systems**

The Payment Service Regulator (PSR) has [published its fourth report](#) on access to payment systems and the governance of payment system operators in the UK. The report looks to provide an update on the developments in access and governance over the last 12 months following on from the 2018 report. A [factsheet](#) has been provided to summarise the report.

The report covers the following developments:

- Record year for new participants joining Faster Payments Scheme (FPS), Bacs and CHAPS – up from 7 to 12
- Expanded access - the first non-bank payment service providers joined these payment systems
- More indirect access providers in the market
- Increased number of payment service providers with access to interbank payment systems leading to improvements in quality and range of services received by consumers

This report is relevant to operators of payment systems, payment service providers accessing the systems.

## **4.0 FINANCIAL CRIME**

### **4.1 HM Treasury Updates AML/CTF Notice on Controls in Higher Risk Jurisdictions**

HM Treasury has [published an updated advisory notice](#) on anti-money laundering and counter terrorist financing controls in higher risk jurisdictions. The Treasury advises firms to consider the following:

- Democratic People's Republic of Korea as high risk and apply counter measures and enhanced due diligence measures according to the risks
- Iran as high risk and apply enhanced due diligence measures in according to the risks and any other measures as specified by the Financial Action Task Force (FATF)
- For the following firms, take appropriate actions to minimise the risks which may include enhanced due diligence in high risk situations:

- The Bahamas
- Botswana
- Cambodia
- Ethiopia
- Ghana
- Pakistan
- Panama
- Sri Lanka
- Syria
- Trinidad and Tobago
- Tunisia
- Yemen

For guidance or support on utilising the risk-based approach through your AML systems and controls, please [contact us](#).

## 5.0 ENFORCEMENT ACTION

### **5.1 FCA Imposes Decision Notice on Cathay International Holdings Limited**

The FCA has imposed a penalty of £411,000 on [Cathay International Holdings Limited \(Cathay\)](#) for breaches of listing principles and disclosure and transparency rules (DTR). The company did not forecast and monitor how its financial performance was against market expectation and therefore was in breach of listing principle 1, which required the firm to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.

Furthermore, Cathay had breached DTR rules by failing to disclose to the market as soon as possible material changes in its actual and expected financial performance for the year.

In connection with the fine received by Cathay, the company's CEO, [Mr Jun Yi Lee](#), and its finance director, [Mr Ka Chi Siu](#), have been fined £214,300 and £40,200 respectively.

### **5.2 Bank of Scotland Fined for Failing to Report Suspicions of Fraud**

The FCA has [fined the Bank of Scotland](#) £45,500,500 for failing to disclose information regarding its suspicions that fraud may have occurred at the Reading-based Impaired Assets team of Halifax Bank of Scotland.

It was found that the firm had failed to be open and cooperative in not disclosing appropriate information to the then regulator, the FSA. The failure to alert the regulator and police on suspicions of fraud caused delays to the investigations as full disclosure early on would have allowed both the regulator and police to identify the criminal misconduct and to assess the firm's response to the issue and its approach to customers and complaints.

The Bank of Scotland agreed to resolve the issue and qualified for a 30% discount. If not for the discount, the fine imposed would have been £65,000,000.

## ABOUT CCL

Established in the UK in 1988, 2006 in the UAE and 2012 in India, CCL provides specialist compliance services to firms regulated by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA).

### Consultancy Services & Support

- Regulatory Technology – CCL C.O.R.E
- Compliance Advisory
  - Assurance Reviews
  - Compliance Remediation
  - Compliance Support Services
  - Documentation
  - Financial Crime Prevention
  - Corporate Governance
  - Risk Management
- FCA Authorisation
- Prudential Rules & Regulatory Reporting
- Hot Topics
  - Senior Managers & Certification Regime (SM&CR)
  - Fifth Anti-money Laundering Directive (5MLD)

### Training (through CCL Academy)

- Compliance Skills
- AML & Financial Crime Prevention
- FCA Regulations
- Senior Managers & Certification Regime (SM&CR)
- Risk Management
- CISI Qualifications

If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact one of the directors using the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by the FCA/PRA which are still current, proposed changes to the Rules and Guidance set out in the FCA and PRA Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to FCA/PRA-regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the particular FCA/PRA document referred to.