

# Regulatory Focus

Issue 117

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### Brexit update

As you are no doubt aware, the UK government has stated that a no deal scenario where the UK leaves the EU without agreement remains unlikely, given the mutual interest of the UK and the EU in securing a negotiated outcome. The government has issued a series of technical notices (including one for Banking, Insurance and Financial Services Firms) which set out information to allow Firms and individuals to understand what they need to do in the event of a no deal scenario.

Last month, the European Commission warned of the impact of Brexit on EU-UK cross-border funds which will lose the ability to passport their services into EU member countries from 30 March 2019. Similarly, UCITS funds domiciled in the UK will lose their UCITS status once the UK becomes a 'third country'.

Several of our clients, predominantly UK asset managers which manage or market investment funds across the European Economic Area (EEA), have informed us of letters they have received from various EU Financial Regulators requesting them to disclose their post-Brexit plans in the event of a no-deal situation. So far, regulators we are aware of include BaFIN (Germany), FSC (Bulgaria), KNF (Poland), and ACPR (France).

Recipients of the letters are being asked to promptly inform the respective regulators of the steps they intend to take in preparation for the termination of the passport mechanisms and whether they plan to continue to manage or market investment funds in those member states post Brexit.

If Firms intend to continue operations in those member states, they are asked to set out which legal structure they will put in place to remain in full compliance with the rules applicable in that country for managing or marketing investment funds.

### Senior Manager & Certification Regime (SM&CR)

Duff & Phelps held a breakfast briefing on 13th September to discuss the SM&CR. We were joined by Alex Smith, Manager, Governance and Professionalism Policy, from the FCA, who gave the keynote speech. Mr. Smith provided a high-level overview and insight into the FCA's thinking and expectations under the new regime, and stressed that the FCA was keen to receive feedback on its consultation on the Directory, which closes on 5th October 2018. We were also joined by Peter Wright, a Partner at law firm Fox Williams, who discussed some of the legal and employment implications of the regime. The event was hosted by Mark Turner of Duff & Phelps. Jane Stoakes, also of Duff & Phelps, provided a more detailed overview of the regime, covering reasonable steps, lessons learnt from the banks and implementation.

Attendance at the event was fantastic, leading to a change of venue to accommodate the numbers and we are grateful to all those who attended. It was great to hear from the audience in the Q&A session at the end and to obtain answers directly from the FCA.

If you would like to talk to us further about assistance with SM&CR, please contact us. A good starting point would be to brief your Board or Executive Committee on SM&CR, which we would be delighted to help you with, but we would be happy to assist with any stage of the project.

# FCA consults on rules and guidance to improve conduct and communications in payment services and e-money firms

## 1 August 2018

In July 2017, the FCA was given new rule-making powers in relation to payment services and electronic money under the Payment Services Regulations 2017. Following this extension of the FCA's remit, it is now consulting on proposals to apply existing FCA rules and guidance with regards to conduct and communication across the payment services and e-money sectors.

The FCA notes that a disparity currently exists in conduct standards and communication requirements, as both FSMA and non FSMA firms operate in these sectors, resulting in payment service providers and e-money issuers being subject to different regulatory requirements. The FCA aims to ensure that firms within these sectors are also subject to the same fundamental regulatory obligations that regulated firms are expected to comply with.

The Consultation Paper proposes to extend the rules and guidance concerning communications with retail banking customers to include those communications with payment services and e-money customers, together with creating new rules and guidance on currency exchange and transfer services. The FCA has also proposed to extend the application of the Principles for Business to ensure that the core regulatory principles also apply to payment service providers and e-money issuers.

The consultation will close on 1st November 2018 and the FCA is seeking comments on the proposals set out in the paper which can be completed via the [online response form](#). If you would like to read the full consultation paper and find further information with regards to how you can provide feedback to the FCA please click [here](#).



## FCA statement on selling high-risk speculative investments to retail clients following ESMA's action on CFD products

### 1 August 2018

The FCA published a statement confirming its support for ESMA's temporary restriction on the marketing, distribution and sale of contracts for differences ("CFDs") to retail clients. The temporary measures apply across the EU to all CFD positions entered into from 1 August 2018, with firms not required to apply them to CFDs sold prior to that date. These measures require that firms provide negative balance and margin close-out protection to CFD positions. Firms should have provided notice to clients of these changes in a durable medium prior to the measures taking effect.

In its statement, the FCA highlighted that ESMA's temporary measures have been implemented to protect retail investors from the risk posed by CFDs. It was also noted that other products, such as Turbo Certificates, pose a similar risk to retail investors, particularly those products that expose retail investors to substantial leverage. The FCA intends to join ESMA and other member state regulators in reviewing and determining the impact of the sale of alternative, speculative investments to retail clients. If such instruments are shown to have a detrimental effect on the best interests of retail investors, the FCA will work with ESMA and, if needed, support further action to extend these measures.

The full statement can be found [here](#).



# FCA collaborates on new consultation to explore the opportunities of a Global Financial Innovation Network

**07 August 2018**

The FCA has announced the creation of the Global Financial Innovation Network ('GFIN') following a collaboration with 11 financial regulators and related organisations from around the world. Countries involved in this enterprise include Australia, Abu Dhabi, Bahrain, United States of America, Dubai, Guernsey, Hong Kong, Singapore and Ontario.

GFIN intends to build on the FCA's 'global sandbox' idea which it first proposed in February this year. The sandbox was set up with the purpose of providing a more efficient means for firms to interact with regulators, so they can navigate between countries as they look to test new ideas related to FinTech.

The working group has also published a consultation paper setting out the three main proposed functions of GFIN, which are to;

1. act as a network of regulators to collaborate and share experience of innovation, including emerging technologies and business models;
2. provide a forum for joint policy work and discussions; and
3. provide firms with an environment to trial cross-border solutions.

As part of the consultation, the working group is seeking views for its mission statement, its proposed functions, and where it should prioritise activity. Responses should be provided by 14 October 2018.

The final members of GFIN are yet to be determined as the group is seeking interest from other regulators or related organisations and will review responses to the consultation paper to decide its next steps.

To read and respond to the consultation, please click [here](#).



## Tribunal upholds FCA's decision to ban and fine a Chief Executive of an Advisory Firm.

**31 July 2018**

The Tribunal has upheld the FCA's decision to ban a former Chief Executive (CEO) from performing any senior management function or significant influence function in relation to any regulated activity, due to lack of competence and capability. The FCA has also imposed a £60,000 fine for failing to manage and disclose conflicts in accordance with SYSC 10.1 and 10.1.8R and Principle 8 of the FCA's Principles for Business.

Between January 2010 and January 2013, the individual performed the role of CEO of the Advisory Firm which provided advice to 1,661 customers who were contemplating transferring or switching their pension funds to unregulated investments via self-invested personal pensions (SIPPs). The CEO was also a shareholder and director of an Unregulated Introducer firm which referred clients to the Advisory Firm.

The CEO failed to take reasonable steps to ensure that the Advisory Firm assessed the suitability of the underlying products contained within the SIPPs for customers. He also failed to take adequate care to identify, manage, mitigate and disclose conflicts of interest that arose between the Advisory Firm, his role as a Director, and his other business interests.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said the individual "failed to ensure that the Advisory Firm managed its conflicts of interest, benefiting financially from his role as shareholder and director at an unregulated introducer alongside his regulated role, to the detriment of his customers. Our action sends a strong message that failing to manage conflicts of interest fairly and disclose them clearly is completely unacceptable."

To read the full press release and Decision Notice in full, please click [here](#).



## FCA Annual Report for 2017/18

### 19 July 2018

The FCA published its annual report for 2017/18.

The annual report looks back on the significant work that the FCA has undertaken throughout 2017/18. The highlights of some of the work carried out this year have included:

- Work in preparation for EU withdrawal
- Work to implement major changes to
  - the information and services that consumers can benefit from when they make payments, through the second Payment Services Directive,
  - transparency and customer protections in the markets for shares, bonds and other financial instruments through the Markets in Financial Instruments Directive II ('MiFID II')
- Extending the senior managers and certification regime to also cover non-executive directors, with the intention to eventually extend it to all financial services firms
- Work on high cost credit and consumer debt
- Launching a campaign for customers who may have taken out Payment Protection Insurance, to alert them of a deadline for complaints about mis-selling

The report discusses the FCA's cross-sector priorities for the financial services industry, which are;

- Firms' culture and governance
- Financial crime and anti-money laundering
- Promoting competition and innovation
- Technological change and resilience
- Treatment of existing customers
- Consumer vulnerability and access to financial services

The report also discusses the FCA's priorities for industry sectors, including the asset management sector, which include strengthening price competition in asset management and management of fund liquidity stress scenarios.



## OUR RECENT AWARDS

### BEST COMPLIANCE CONSULTANCY

CTA intelligence Awards 2018

### ADVISORY AND CONSULTANCY: TAX

Drawdown Private Equity Services Awards 2018

### BEST ADVISORY FIRM – REGULATON AND COMPLIANCE

HFM Week 2018

### BEST GLOBAL CYBERSECURITY SERVICES PROVIDER

Hedgweek Global Awards 2018

### BEST COMPLIANCE CONSULTING TEAM

Women in Compliance Awards 2017

### BEST GLOBAL REGULATORY ADVISORY FIRM

Hedgweek Global Awards 2017

### EUROPEAN SERVICES - BEST CONSULTANCY FIRM

CTA Intelligence 2016

### BEST EUROPEAN OVERALL ADVISORY FIRM

HFM Week 2016

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## About Duff & Phelps

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