



## Financial Services Alerter

UK developments

### FCA and PRA policy statements- consequential changes to the Senior Managers Regime

On 02 March 2016, the Financial Conduct Authority (FCA) published a [policy statement](#) (PS 16/6) on consequential changes to the Senior Managers' Regime. In January 2016, the FCA [consulted](#) (CP 16/1) on proposed consequential amendments to the Senior Managers and Certification Regime (SM&CR). These changes reflect HM Treasury's removal of the requirement for firms to report known and suspected breaches of FCA conduct rules to the FCA, as set out under section 64B(5) of the Financial Services and Markets Act 2000 (FSMA). PS 16/6 summarises the feedback received to CP 16/1 and confirms the final policy and forms. Following **07 March 2016**, firms should only use the versions of the forms attached to PS 16/6. The PRA also published [policy statement](#) (PS 9/16), which provides feedback on responses to [consultation paper](#) (CP 1/16), "Strengthening individual accountability in banking". PS 9/16 makes amendments to notification rules and forms and sets out the amended definition of the term 'significant risk taker' in the PRA's certification rules as proposed in [consultation paper](#) (CP 29/15).

### New accountability regime for banks and insurers comes into force

On 07 March 2016, the Senior Managers Regime for the banking sector and the Senior Insurance Managers Regime both came into force. The new regimes will hold individuals working at all levels within relevant firms to appropriate standards of conduct and ensure that senior managers are held to account for misconduct that falls within their area of responsibility. The internal application of the Senior Managers Regime reflects the Prudential Regulation Authority's (PRA) and the FCA's functions as public authorities and regulators. As a subsidiary of the FCA, the Payment Systems Regulator (PSR) has also applied the Senior Managers Regime. Each authority has issued documents on how it will apply the principles of the SMR internally: (i) [FCA](#); (ii) [PRA](#); and (iii) [PSR](#).

### FCA publishes a discussion paper on the client money distribution rules and the Special Administration Regime

On 09 March 2016, the FCA published a [discussion paper](#) (DP 16/2) (DP), which seeks feedback on the FCA Client Assets sourcebook (CASS), specifically the client money distribution rules (CASS 7A), and how these work with the Special Administration Regime (SAR). Following the failure of Lehman Brothers in 2008, the Treasury created the SAR specific insolvency regime for investment firms holding client assets. This works with the CASS rules to create the mechanism under which client assets are dealt with in a failed investment firm. HM Treasury commissioned Peter Bloxham to undertake an independent review of the SAR. His [final report](#) was published in January 2014 and contained a number of recommendations relating to the SAR regulations, the CASS rules and the procedures administrators follow in the event of an investment firm failure. The DP sets out the FCA's response to the Bloxham recommendations and seeks industry views on the discussion points raised. The recommendations aim to improve the speed of return of client assets to an investment firm's

clients in the event of its failure and minimise the market impact of its entry into special administration. The consultation closes on **09 May 2016**.

## **FAMR reforms will make financial advice and guidance work better for consumers**

On 14 March 2016, the Financial Advice Market Review (FAMR) made 28 recommendations in a [final report](#) to help address current concerns about the affordability and accessibility of financial advice and guidance, particularly regarding the 'advice gap'. FAMR builds on improvements made to the financial advice industry brought about by the Retail Distribution Review (RDR), which raised the standards of professionalism across the financial advice market. FAMR outlines practical ways to enable consumers to access advice and guidance, urges changes to how financial advice is defined and suggests a new advice framework to help firms best meet the needs of consumers. The report makes a range of recommendations aimed at ensuring firms are able to provide more affordable advice for more consumers.

On 16 March 2016, the FCA [published](#) the responses it received to the [call for input](#) it issued jointly with HM Treasury on issues to be considered as part of FAMR.

## **Amendments to PRA rules on the contractual recognition of bail-in**

On 15 March 2016, the PRA published a [consultation paper](#) (CP 8/16) on amendments to its rules on the contractual recognition of bail-in rules. The consultation proposes an amendment to the PRA rules to the same effect as the modification by consent of contractual recognition of [bail-in rules](#) published in November 2015. The modification disapplies the rules for a subset of liabilities where compliance is impracticable and where Bank Recovery and Resolution Directive firms have notified the PRA that they consent to the modification. The modification expires on **30 June 2016**, and the PRA proposes that the amended rules would apply from **01 July 2016**.

## **FCA MiFID2 Roundtable minutes published**

On 15 March 2016, the [minutes](#) of the FCA MiFID2 Trade Association Roundtable held on 22 February 2016 were published. The main points of interest include: (i) data reporting service providers; (ii) PERG guidance on a multilateral system; (iii) regulated markets, multilateral trading facilities and organised trading facilities; (iv) transparency; (v) market data; (vi) algorithmic and high-frequency trading requirements; and (vii) principles for business. The next roundtables are scheduled for 25 April, 26 May and 06 July 2016.

## **FCA policy statement on the segregation of client money on loan-based crowdfunding platforms, the Innovative Finance ISA, and the regulated activity of advising P2P agreements**

On 21 March 2016, the FCA published a [policy statement](#) (PS 16/8) on Handbook changes regarding the segregation of client money on loan-based crowdfunding platforms, the Innovative Finance ISA (IFISA), and the regulated activity of advising on peer-to-peer agreements. The new and amended rules and guidance came into force on **21 March 2016** in relation to the proposals under [CP 16/4](#) and **06 April 2016** in relation to the proposals under [CP 16/5](#) to coincide with the introduction of the IFISA.

## **FCA speech on Investment Funds, Markets Liquidity and the Investor**

On 24 March 2016, the FCA, published a [speech](#) by David Lawton, Director of Markets Policy and International, FCA, delivered at The 9th Financial Risk International Forum in Paris on 21 March 2016. In his speech Mr Lawton states that it is possible to imagine a set of scenarios in which a trigger event (for example a sudden, unexpected increase in central bank rates) or losses at one fund could cause knock on effects for other firms and broader falling asset prices. There could even be self-reinforcing factors that exacerbate this. A key vulnerability being discussed by the FCA is the ability to manage fund redemptions in an orderly way, particularly in the context of post-crisis market conditions, including liquidity. FCA evidence shows that funds have demonstrated some good practice at understanding and managing both the liquidity of their assets and expected demand for redemption. And the case is far from proven that market liquidity is now at low enough levels to be a dangerous exacerbating factor. The picture of the systemic risks is still being drawn through the work

of the FSB, IOSCO and others. Banks, insurers, infrastructures, asset managers and investors all interact, and can both exacerbate and mitigate risks and processes within the financial system.

### **HM Treasury response to proposal on using Legislative Reform Order to change partnership legislation for private equity investments**

On 24 March 2016, HM Treasury published a [summary of responses](#) to its [consultation](#), “proposal on using Legislative Reform Order to change partnership legislation for private equity investments” (July 2015). The government intends to put forward draft legislative amendments in a Legislative Reform Order to be laid before Parliament in due course and that the changes will be fully operational within a year.

### **PRA consultation on implementation of MiFID2**

On 24 March 2016, PRA published a [consultation paper](#) (CP 9/16) which sets out its proposals for rules to transpose MiFID2 and MiFIR. MiFID2 is currently due to apply from **03 January 2017** and Member States must transpose its provisions in national legislation and regulations by **03 July 2016**, although the European Commission has now proposed to delay the application date to 03 January 2018. HM Treasury consulted on changes required to UK legislation in March 2015 and the FCA consulted on some of the necessary changes to its Handbook in December 2015. The policy proposals included in CP 9/16 are: (i) the extension of scope and harmonisation of the passporting regime; and (ii) systems and controls for firms who undertake algorithmic trading and provide direct electronic access to trade venues. The PRA intends to publish a further consultation paper in due course to cover other areas of MiFID2 for which PRA Rulebook amendments are required. This consultation closes on **27 May 2016**.

### **FCA response to European Commission Green Paper on retail financial services**

On 31 March 2016, the FCA published [its response](#) to the December 2015 European Commission [Green Paper](#) on retail financial services, “Better products, more choice, and greater opportunities for consumer and business” which is aimed towards improved choice, transparency and competition in retail financial services to the benefit of European consumers. The FCA’s response supports the Commission in taking proportionate, well-advised and effective next steps which will genuinely benefit consumers.

## **lexica and other client items**

- 02 March 2016 [Seward & Kissel briefing: NFA publishes notice regarding member obligations under NFA Bylaw 1101](#)
- 02 March 2016 [Seward & Kissel briefing: Annual regulatory reminders](#)
- 02 March 2016 [Seward & Kissel briefing: Annual obligation to update Form ADV](#)
- 02 March 2016 [Legally binding and irreversible](#)
- 02 March 2016 [Volkswagen diesel emissions scandal: Damage recovery options for investors](#)
- 03 March 2016 [Brave new world: MiFID and MiFIR - The changes facing the financial markets](#)
- 03 March 2016 [Episode 0520: Brexit - the exit mechanism](#)
- 08 March 2016 [Hong Kong regulatory enforcement newsflash](#)
- 09 March 2016 [US regulatory updates - how they affect non-US funds and managers](#)
- 09 March 2016 [Index hugging: is this the next line of investor claims?](#)
- 09 March 2016 [EMIR Newsflash: ESAs publish final draft of EU margin rules for uncleared OTC derivatives](#)
- 10 March 2016 [Oversight March 2016 - SFC Consultation Conclusions on the Expansion of the Weekly Short Position Reporting Regime in Hong Kong](#)
- 11 March 2016 [Guidance on the interpretation of the inducement ban for investment firms](#)
- 11 March 2016 [SFTR Newsflash: ESMA publishes Discussion Paper in respect of proposed RTS and ITS](#)
- 15 March 2016 [EMIR Newsflash: European Commission adopts equivalence decision for US rules on CCPs](#)
- 16 March 2016 [UK Budget 16 March 2016 - Overview](#)
- 16 March 2016 [UK Budget 16 March 2016 - Resources](#)
- 16 March 2016 [UK Budget 16 March 2016 - Simmons & Simmons' expert commentary](#)
- 18 March 2016 [Brexit - a discussion of the consequences for UK asset managers](#)
- 23 March 2016 [Update on recent developments in Luxembourg funds](#)
- 24 March 2016 [Episode 0529: Inverse and leveraged ETFs in Hong Kong](#)
- 20 March 2016 [German Regulatory Update: Transparency Directive 2](#)
- 30 March 2016 [MiFID2 Newsflash: PRA consults on the implementation of MiFID2](#)
- 31 March 2016 [Episode 0532: Mutual recognition of funds between Hong Kong and China](#)
- 31 March 2016 [OECD BEPS consultation on treaty entitlement of funds](#)