

Regulatory Update

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UK Edition

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1.0 FCA UPDATES & DEVELOPMENTS

1.1 FCA Further Extends and Amends Temporary Measures for Depreciation Notification

The FCA has [released a statement](#) outlining a 6 month extension and amendments to its temporary coronavirus measures issued in March in relation to COBS 16A. 4. 3 EU (10% depreciation notification). The FCA will not take action for a breach of the COBS obligation from 1 October 2020 provided that the firm has:

- issued at least one notification in the current reporting period to retail clients that their portfolio or position has decreased in value by at least 10%
- informed these clients that they may not receive similar notifications should their portfolio or position values further decrease by 10% in the current reporting period
- referred these clients to non-personalised communications, perhaps made available on public channels, that outline general updates on market conditions
- reminded clients how to check their portfolio value, and how to get in touch with the firm

Firms must pay due regard to the interest of their customers and treat them fairly, ensuring information sent to clients is clear, fair and not misleading. This approach will be adopted for 6 months (until 30 March 2021).

1.2 FCA Updates Statement on Handling Complaints During COVID-19

The FCA has [updated its statement](#) with [minor additions](#) on how firms should handle complaints during the pandemic.

The statement includes a new section applicable for PPI complaints and reinforces the general message of the importance of continuing to comply with complaint handling requirements.

The FCA has considered that firms have now had enough time to embed new ways of working, and a failure to comply with DISP 1.6 or any other complaint requirements should only arise in exceptional circumstances connected to the impact of COVID-19.

To find out how our compliance software, CCL CORE, can help you manage complaints during lockdown and beyond, [please contact us](#).

1.3 FCA Policy Statement on Extending the Certification Regime and Conduct Rules

The FCA has published a policy statement [PS20-12](#) extending the implementation deadlines for the certification regime and conduct rules.

Solo regulated firms will now have until 31 March 2021:

- to undertake the first assessment of the fitness and propriety of their certified employees
- for the conduct rules to come into force, for staff who are not senior managers, certified employees or board directors
- to ensure relevant employees have received training on the conduct rule
- to submit directory persons to the register

Firms are encouraged to meet the original deadline (9 December 2020) where possible.

[Please contact us](#) for a no obligation demo of our compliance software, CCL CORE, which can help you comply with the requirements of the Certification Regime and Senior Managers and Certification Regime (“SM&CR”) in general.

2.0 EU REGULATORY UPDATES

2.1 ESMA Updates Statements on the Impact of Brexit on MiFID II/MiFIR

The European Securities and Markets Authority (“ESMA”) has updated a statement on its approach to the application of key provisions of the Market in Financial Instruments Directive/Regulation (“MiFID II/MiFIR”).

The statement provides an update to reflect ESMA’s approach to the UK should it leave the European Union under a no-deal Brexit. ESMA intends to revisit the statement in the future for any updates.

3.0 ENFORCEMENT ACTIONS

3.1 FCA Fines ARCM for Breaches of Short Selling Disclosure Rules

The FCA has fined Asia Research and Capital Management Ltd (“ARCM”) for failing to notify the FCA and disclose to the public its net short position in Premier Oil Plc. This is the first time the FCA has taken action for a breach of the short selling regulation.

The Short Selling Regulation 2012 sets out thresholds for when a firm is required to notify the FCA and disclose to the public its net short positions. Failure to report damages the integrity and efficiency of the financial markets. The firm has agreed to resolve the matter and qualified for a 30% discount of its penalty. The firm was fined £873,118.

3.2 FCA and PRA Fines Goldman Sachs International for Risk Management Failures

The FCA and PRA have fined Goldman Sachs International (“GSI”) for risk management failures and its role in three fund raising transactions in connection with 1Malaysia Development Berhad (1MDB). GSI underwrote, purchased and arranged three bond transactions for 1MDB raising a total of US\$6.5 billion. The transactions involved clients and counterparties in jurisdictions with higher financial crime risk. The firm failed to assess and manage risk to the standard that was required of a high-risk profile and failed to assess risk on a sufficiently holistic basis.

The investigation found that the firm breached a number of FCA and PRA principles and rules. Specifically, GSI failed to:

- assess with due skill, care and diligence the risk factors
- assess and manage the risk of the involvement in the 1MDB bond transactions of a third party that GSI had serious concerns about
- exercise due skill, care and diligence when managing allegations of bribery and misconduct
- record in sufficient detail the assessment and management of risk associated with the 1MDB bond transactions

The firm has agreed to resolve the case with the FCA and PRA, which qualified them for a 30% discount in the overall penalty imposed by both regulators. The firm was fined a total of £96.6 million.

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 CORE
- 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
 - COVID-19
 - 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.