

# Regulatory Update

ISSUED 11<sup>th</sup> November 2019

## UK Edition

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## 1.0 FCA UPDATES & DEVELOPMENTS

### 1.1 SM&CR Form K Guidance

The FCA has [updated guidance](#) on the use and submission of Form K under the Senior Managers and Certification Regime (SM&CR). Form K enables firms to notify the FCA which approved individuals firms want to be converted from the Approved Persons Regime (APR) to corresponding Senior Management Functions (SMFs) under the regime.

Core firms with a non-executive chair (CF2) who is to perform the chair function under the SM&CR will need to submit a Form K to the FCA. Firms with CF2s who will not be performing the chair function will not be required to submit a Form K.

The form can be submitted via the Connect system.

For guidance and support with your transition to the SM&CR, please [contact us](#).

### 1.2 FCA Feedback on Gabriel

The FCA has [published the feedback](#) received from an online survey completed by Gabriel users. The feedback will help shape the development of a new platform.

The 3 key areas for improvement are:

- Access to Gabriel
- Reporting schedule view
- Submitting data

The FCA will continue to use feedback and make further improvements to the system.

For support with your Gabriel Returns, please [contact us](#) to see how we can advise or complete the returns on your behalf.

### 1.3 FCA Letter on Expectations for SARs and STORs

The FCA has written a [letter to UK Finance](#) providing information on the application of the Suspicious Activity Reports (SARs) and Suspicious Transaction and Order Reports (STORs) to firms. The letter sets out the FCA's expectations with regards to the regime.

The letter is set out as per the following:

- Responsible authorities for STORs and SARs
- Relevant offences
- Reporting requirements
- FCA guidance

To further discuss the requirements of the SARs and STORs regime and to understand the correct approach to manage these requirements, please [contact us](#).

### 1.4 Treasury Committee on IT Failures in the Financial Services Sector

The Treasury Committee has [published a report on IT failures in the financial services sector](#). The document outlines the current level of IT failures within the sector as unacceptable and notes that regulators must act to improve operational resilience in the industry.

The report outlines the committee's conclusions and recommendations to overcome and improve operational resilience and ensure accountability to individuals and firms. The document urges regulators to intervene by hiring experienced staff, utilising its enforcement powers to punish failures and ensure firms resolve customer complaints and award compensation expeditiously.

## 2.0 PRA UPDATES & DEVELOPMENTS

### 2.1 Bank of England Stress Testing Results

The Bank of England has set out the [timetable for its publication of the annual stress test results](#) which will be published on 10<sup>th</sup> December 2019. The test assesses the resilience of the UK banking system to recessions, large falls in asset prices and a separate stress of misconduct costs.

## 3.0 EU REGULATORY UPDATES

### 3.1 ESMA Launches a Call for Evidence on the Effects of Product Intervention on CFDs and Binary Options

The European Securities and Markets Authority (ESMA) has [launched a call for evidence](#) on the effects of product intervention measures regarding Contract for Differences (CFDs) and binary options on market participants and clients.

As part of ESMA's review and process of temporary measures regarding CFDs and binary options, ESMA has collected substantial information on the impact of product intervention powers. The European Commission has therefore asked ESMA to report on its experience and any practical effects resulting from the measures.

The call for evidence invites market participants, consumers and associations to share information on the effects of the intervention measures. The deadline closed on 4<sup>th</sup> November 2019.

### 3.2 ESMA Updates MiFID II Q&As

ESMA has updated the following Q&As:

- [Transparency and market structures issues under MiFID II and MiFIR](#). The document clarifies Exchange Traded Funds (ETFs) in relation to the average daily turnover band.
- [Data reporting issues as a result of the European Markets Infrastructure Regulation](#) (EMIR).
- [Implementation of investor protection and intermediaries under MiFID II](#) in relation to best execution and understanding certain terms.

### 3.3 ESMA Consults on MAR Review

ESMA has [published a consultation paper](#) on the provisions of Market Abuse Regulation (MAR) as requested by the European Commission. The paper addresses a wide range of issues including the following:

- Possible inclusion of spot FX contracts within the scope of the regulation
- Definition and delayed disclosure of inside information
- Appropriateness of the trading prohibition and insider lists for persons discharging managerial responsibilities

The document is relevant for issuers of financial instruments admitted to trading or traded on a trading venue and their management, investment firms and asset management companies.

The deadline for feedback is on 29<sup>th</sup> November 2019. ESMA intends to submit the report to the Commission by spring 2020.

## 4.0 FINANCIAL CRIME

### 4.1 HM Treasury Approves Changes to JMLSG – Syndicated Loans

HM Treasury has [approved changes to chapter 17](#) of the Joint Money Laundering Steering Group's (JMLSG) guidance on preventing money laundering and financing of terrorism in the UK. The chapter is in relation to syndicated loans.

#### **4.2 HM Treasury Publishes Advisory Notice on AML High-Risk Countries**

HM Treasury has [published an updated advisory notice](#) documenting the requirements in the Money Laundering Regulations (MLRs).

The notice references statements from the Financial Action Task Force (FATF) who have identified countries with deficiencies in their AML/CTF regimes. As a result of these statements, the Treasury has advised firms to:

- Consider the following country as high risk and apply counter measures and enhanced due diligence measures:
  - Democratic People's Republic of Korea
- Consider the following country as high risk and apply enhanced due diligence measures and any other measures as specified by FATF:
  - Iran
- Take appropriate actions for the following countries to minimise the associated risks which may include enhanced due diligence:
  - The Bahamas
  - Botswana
  - Cambodia
  - Ghana
  - Iceland
  - Mongolia
  - Pakistan
  - Panama
  - Syria
  - Trinidad and Tobago
  - Yemen
  - Zimbabwe

#### **4.3 FATF Report on Best Practices on Beneficial Ownership for Legal Persons**

FATF has [published a report on best practices on beneficial ownership for legal persons](#) due to its Mutual Evaluations indicating that jurisdictions are finding it challenging to achieve a satisfactory level of transparency regarding the topic.

The report notes that a single approach is less effective in obtaining accurate and up-to-date information in a timely manner when compared to a multi-pronged approach using several sources of information.

For support with your AML programme, including advice and guidance on updating your policies and procedures, please [contact us](#).

#### **4.4 FCA Becomes AML/CTF Supervisor for Cryptoasset Businesses**

The FCA has [updated an article on its website](#) regarding its new role as the AML/CTF supervisor of UK cryptoasset businesses under the MLRs from 10<sup>th</sup> January 2020.

All UK cryptoasset businesses carrying on in scope activities will need to register with the FCA from 10<sup>th</sup> January 2020 and ensure customers are not misled as to either their status with the FCA or what protections apply.

The webpage includes guidance for relevant businesses to consider. The FCA is awaiting the Treasury to publish its response to the consultation on the fifth Money Laundering Directive (5MLD) and will update its information accordingly.

CCL can help you prepare for the implementation of 5MLD in terms of advice, support and provision of policies and procedures. Please [contact us](#) for more information.

## 5.0 ENFORCEMENT ACTION

### 5.1 FCA Fines Tullett Prebon £15.4 million

The FCA has [fined Tullett Prebon \(Europe\) Limited](#) for failing to conduct its business with due skill, care and diligence, failing to have adequate risk management systems and for failing to be open and cooperative with the FCA.

An FCA investigation found that Tullett Prebon had ineffective controls around broker conduct. The firm had lavish entertainment and a lack of controls that allowed for improper trading to take place resulting in unwarranted and unusually high amounts of brokerage for the firm.

- Senior management had incorrectly believed the systems and controls in place were sufficient when in fact they were used ineffectively or not used at all. Additionally, the firm also breaches Principle 11 for 'failing to be open and cooperative with the FCA' by failing to produce audio tapes as well as disclosing an incorrect account as to how the audio had been discovered.

They were fined £15.4 million after agreeing to resolve the matter and qualified for a 30% discount. If not for the discount, the fine would have been £22 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 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.