Insights: FCA Issues Guidelines for Funds in Respect of COVID-19

On 22 April, the FCA published revised guidelines for funds in light of COVID-19. It aims to provide guidance on the challenges firms are facing both operationally and as a result of significantly increased volatility in global markets.

Previous guidelines have already made clear that the FCA expect funds to: (i) provide strong support and service to customers during COVID-19; (ii) be clear and transparent and provide support as consumers and small businesses face challenges at this time; and (iii) manage their financial resilience and actively manage their liquidity.

Most important in the latest guidelines is that, in relation to the 10% value reporting rules under MIFID, the FCA have stated that the 10% rule applies both to firms providing services to retail clients (as per the Dear CEO letter dated 31st March) and to non-retail client business (e.g. UK portfolio managers to funds or other non-retail clients or fund managers with MiFID portfolio management permissions). The 10% value rule requires firms to inform investors where the value of their portfolio or leveraged position falls by 10% or more compared with its value in their last periodic statement, and for each subsequent 10% in value.

The FCA has expressed its understanding of the operational burden in a volatile market and confirmed that until 1 October 2020 no enforcement action will be taken if a firm:

- has issued at least one notification to a retail client within a current reporting period, indicating their portfolio has decreased in value by at least 10%; and
- subsequently provides general updates (on market conditions, how clients can check their portfolio value and contact the firm) through its website, other public channels (such as social media) and/or generic, non-personalised client communications; or
- chooses to cease providing 10% depreciation reports for any professional clients.

Other areas included in the guidance are:

Annual and half yearly reports - Although funds are encouraged to publish on time, the FCA has granted temporary relief allowing UCITS and NURS authorised fund managers ("AFMs") to delay publication of fund annual reports by two months and half-yearly annual reports by one month. If funds wish to use this relief, managers should:

- promptly inform the fund's depositary and auditors;
- email the FCA with details of the funds to which this will apply and the intended new date of publication;
- publish a prominent statement on their website, no later than the original publishing date of the annual or half-yearly report, explaining the reasons for their decision and giving the revised publication date;
- consider what other steps they could take to bring the deferred publication date to the attention of investors.

Virtual meetings - The FCA confirmed that they do not have any supervisory concerns about general meetings of fund investors being held virtually. However, the FCA rightly flagged that managers will need to consider fund rules and the terms of their fund documentation when making arrangements for meetings during this time.

Ensuring compliance with limits on value at risk ("VaR") - The FCA noted that some AFMs have experienced issues ensuring compliance with limits on VaR. Rather than providing any concession, the FCA has confirmed that risk controls play an important role in protecting investors' interests and ensuring the fund is managed appropriately and reminded firms that they should already have plans in place to deal with such events and to take appropriate remediation action, considering market conditions and what is in the best interests of their customers. If a firm has issues managing risk limits, they should contact the FCA.

Electronic signatures - The FCA has confirmed that during the coronavirus crisis, it is willing to accept electronic signatures on applications to authorise or approve changes to funds. Where possible, applicants should validate accompanying documentation as the FCA needs to be assured that the signatory has seen and agreed with all the information in the form.

Repo use for liquidity management - The FCA has confirmed that repo transactions within UCITS schemes and non-UCITS retail schemes should only be used for efficient portfolio management (COLL 5.4) and that it is unlikely that transactions entered into for the sole purpose of liquidity management will meet the requirements under applicable rules.

Client assets - The FCA stated that it received several queries on client assets (CASS) compliance related to the current disruption caused by COVID-19 and refers to earlier guidance. The FCA requires firms to continue to apply rules existing prior to COVID-19.

Paper-based and manual processes - The FCA reminds AFMs of the requirement to treat customers fairly and to consider whether they can provide alternative means for unit-holders to deal in units rather than by paper-based means (such as post, fax or other physical means). In case dealing by one or all of those physical means ceases to be possible because of the pandemic.

Finally, for all of the above issues, firms are advised to report to the FCA "*immediately*" if they believe they will be in difficulty.

Resources:

FCA expectations regarding funds in light of coronavirus (Covid-19)
Dear CEO Letter to firms providing services to retail investors about coronavirus (Covid-19)
Extending deadlines to publishing fund reports and accounts
Client assets and coronavirus (Covid-19)
Changes to regulatory reporting during COVID-19

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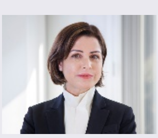
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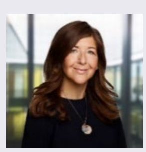
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