

FCA and Financial Services Newsletter – Spring 2015



Asset Encumbrance and COREP

CASS Rules

Big fines in the news

Fees and Levies

Investment Funds and AIFMs

FATCA

MiFID II

Competition Concurrency Powers

Dealing commission

Benchmarks

Disclosure transparency rules

Remuneration Reporting

In this update we look at some important CASS rule changes, and give an update on fees and levies as well as COREP and Asset Encumbrance.

Asset Encumbrance and COREP

Reporting under COREP for Own Fund Requirements and Asset Encumbrance is now well under way and firms should have just completed their second Asset Encumbrance Report. Most small to medium size firms are unlikely to have much to include on this return.

We understand that there are no further XBRL forms on the horizon for smaller firms, but the FCA and EBA may surprise us!

Please get in touch if you require assistance with Own Fund Requirements, Asset Encumbrance or Large Exposure COREP returns filing as we have the necessary software to prepare them.

CASS Rules

There are some important CASS rule changes coming into effect on **1 June 2015** and firms should be well on the way to ensuring they have procedures in place to meet them.

For managers of Collective Investment Schemes, the shrinking of the Delivery vs Payment (DvP) window from three days down to one day will be important. Many are

choosing to cease to use the DvP window completely and have all monies relating to the buying and selling of units running directly through a client money account. This will require intra-day monitoring to ensure that someone is not being paid with someone else's money. If everyone pays on time then there should be no problem, but firms may find they need to top up the account to temporarily fund late payers.

The FCA have also released a consultation paper (CP15/8) which proposes to clarify some of the new CASS rules.

Where Authorised Fund Managers (AFMs) are required to segregate client money under the client money rules because they hold it for longer than one day, the FCA have been asked whether the AFM is required to make any payments to third parties directly from the client bank account or whether such monies can be transferred through a corporate account.

The rules are that you can transfer money from a client account (except cheques) into an office account in order to pay it over to a third party.

Firms which hold client money should be getting new acknowledgement letters from their banks and these are in a standard format set by the FCA which cannot be changed. We understand that many banks are slow in responding to these requests.

FCA and Financial Services Newsletter – Spring 2015

Big fines in the news

Clydesdale bank have been fined £20,678,300 for inappropriate handling of PPI complaints. This is the largest ever fine relating to PPI. The Bank of New York were fined £126m for failing to comply with the CASS sourcebooks. This serves to prove how seriously the FCA are taking client money regulation.

Fees and Levies

Unfortunately these large fines aren't used to offset annual FCA fees. The FCA have announced their overall funding requirements for 2015/16 at £441m. This is up 8.3% on the prior year £407m. See CP15/14 for more detail.

The additional cost is proposed to be spread relatively evenly over all types of firm, with a few fee blocks set to experience slightly higher increases than others. Block A.13 which includes broker dealers are set to have fees increase by 10.2%. Collective investment schemes will be charged 8.4% but managers of investment funds will see a fall of 2.6%.

The FCA collects money for the Financial Services Compensation Scheme yearly from all authorised firms. The amount for collection is called the Management Expenses Levy Limit (MELL). In consultation paper CP15/2 the FCA have reduced this slightly from £80m for 2014/15 to £74m for 2014/15. Firms should

receive an invoice for this around June 2015.

Investment Funds and AIFMs

In consultation paper CP15/8 the FCA propose minor changes to Alternative Investment Fund Managers Directive (AIFMD) legislation. This is to clarify that the Alternative Investment Fund Manager (AIFM) is responsible for valuation of assets even if they obtain the data from a third party source.

The FCA also propose to clarify the scope of Assets Under Management (AUM). Currently firms are required to hold additional capital or PII to cover their risks. AIFMD regulation takes the value of portfolios managed by the AIFM as the basis for calculating this risk. There was some ambiguity of whether portfolios of Alternative Investment Funds (AIFs) managed by the AIFM under a delegated mandate should be accounted for in determining AUM. This would be the case if a third party investment manager was used. The FCA propose to clarify that these should be included as well, so it essentially captures all funds.

FATCA

The Foreign Accounts Tax Compliance Act (FATCA) has been on the radar for some time and HMRC have recently amended a few requirements before the first filing due on 31 May 2015. There are two key changes:

HMRC has removed the requirement for nil returns from UK financial institutions. However, where a UK financial institution is in a nil return position through applying the de minimis \$50,000 or \$250,000 threshold on pre-existing accounts, it will still be necessary to submit a return in order to make the election.

Another change is holding companies and relevant treasury companies are no longer defined as Financial Institutions under FATCA. They are now Non-Financial foreign entities and either active or passive depending on the activities carried out.

FATCA returns need submitting by **31 May 2015**.

MiFID II

Markets in Financial Instruments Directive (MiFID) II has been on the horizon for a while now. The FCA are consulting on it at the moment and focusing on investor protection measures, provisions to insurance-based investment products, and how costs and charges disclosure could be implemented. It will come into effect on 3 January 2017.

Competition Concurrency Powers

As of 1 April 2015 the FCA have new concurrent competition powers. This gives them the ability to enforce against fringes in competition law and refer markets to the Competition

FCA and Financial Services Newsletter – Spring 2015

Market Authority (CMA) if required.

Dealing commission

The FCA have confirmed their support for ESMA's final advice which proposes restrictions on inducements for portfolio managers. This prevents them from receiving research linked to their execution arrangements with brokers and transaction costs passed to customers.

Benchmarks

There are going to be seven benchmarks which are brought under regulatory scope. These are in addition to benchmarks such as LIBOR for example, which is already within scope.

- Sterling Overnight Index Average (SONIA)
- Repurchase Overnight Index Average (RONIA)
- ISDAFIX
- WM/Reuters (WMR) Spot FX Rate
- London Gold Fixing (Soon to be replaced by the LBMA Gold Price)
- LBMA Silver Price
- ICE Brent Index

Disclosure transparency rules

These affect certain listed entities and are implemented by the FCA. In consultation paper CP15/11, the FCA propose additional disclosures including:

- Disclosing voting rights from holdings in financial instruments that have a similar economic effect to holding shares.
- They also propose an extension of the deadline to publish half yearly reports from 2 months to three months. Year end reporting will remain the same. Reports should also be available publically for ten years rather than five.

Remuneration Reporting

Remuneration reporting will now be done through GABRIEL rather than a manual submission to the FCA on a spreadsheet. This doesn't capture all firms but look out for it on GABRIEL if you currently complete these manually.

Specific advice should be obtained before taking action, or refraining from taking action, in relation to the above.

London

10 Orange Street
Haymarket
London
WC2H 7DQ

T +44 (0)20 7312 0000

F +44 (0)20 7312 0022

E advice@shipleys.com

Godalming

3 Godalming Business Centre
Woolsack Way
Godalming
Surrey
GU7 1XW

T +44 (0)1483 423607

F +44 (0)1483 426079

E godalming@shipleys.com

www.shipleys.com



Shipleys is a member of AGN International, a worldwide association of separate and independent accounting and consulting firms.

Registered to carry on audit work in the UK and Ireland, and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales.

© Shipleys LLP 2015 05 RW