

# Regulation Round Up

**November 2017**

## **3 November**

The Financial Conduct Authority (FCA) published an [alert](#) setting out key considerations for principals who have appointed representatives or introducer appointed representatives. Among other things, the alert emphasised the importance of initial due diligence and monitoring by principals of their appointed representatives.

## **7 November**

The Payment Systems Regulator published a [consultation paper](#) (CP17/2) containing a report and consultation on authorised push payment (APP) scams. It explained what work the PSR has done in the past year to reduce the harm to consumers from APP scams. Specifically, the paper highlighted the progress that has been made in developing industry best practice standards on how payment service providers should respond when a victim reports an APP scam.

## **8 November**

The FCA issued a [press release](#) announcing a market study to assess how competition is working in the wholesale insurance broker sector. The FCA wants to ensure that the sector is working well and fosters innovation and competition in the interests of its diverse range of clients. As part of the announcement, the FCA published the Terms of Reference detailing the topics to be explored and welcomes responses by 19 January 2018. The FCA aims to publish an interim report in Autumn 2018 which will set out its analysis, preliminary conclusions and any potential solutions to address concerns.

The FCA updated its [website](#) on the Senior Managers & Certification Regime (SM&CR) for solo-regulated firms, confirming that it will publish a consultation paper on how firms transition to the new regime before the end of 2017.

The FCA published its MarketWatch [Newsletter](#) on market conduct and transaction reporting issues. This included a reminder for: relevant firms to have a Legal Entity Identifier (LEI) by 3 January 2018; MiFID II issues relating to market data obligations; and authorisations and the variation of permissions.

The UK Competition and Markets Authority (CMA) published its [response](#) to the UK Government's consultation on how best to ensure that investments and takeovers do not raise national security concerns.

## **10 November**

The EU [Regulation](#) to amend EuVECA Regulation and EuSEF Regulation published in the Official Journal of the EU. The Regulation will apply from 1 March 2018 and seeks to liberalise the requirements of the EuVECA Regulation and EuSEF Regulation to encourage more managers to register their funds under these Regulations.

ESMA published an updated version of its [Q&As](#) on investor protection topics under the MiFID II Directive and the Markets in Financial Instruments Regulation. In this updated edition, ESMA has added new Q&As covering: record keeping; post-sale reporting; and inducements.

## **13 November**

ESMA published a [press release](#) on the risks associated with Initial Coin Offerings (ICOs), as well as two statements on the topic.

One [statement](#) alerted firms involved in ICOs of the need to meet relevant regulatory requirements and the second [statement](#) alerted investors to the high risks of ICOs.

## **14 November 2017**

ESMA published an updated version of its [Q&As](#) on commodity derivatives topics under the MiFID II Directive and the Markets in Financial Instruments Regulation. The new questions covered: position limits, position reporting and ancillary activities.

## **20 November 2017**

The Joint Committee of the European Supervisory Authorities published updated [Q&As](#) on the EU Packaged Retail and Insurance-based Investment Products Regulation (PRIIPS). These included a new question asking: *"Is a KID always required when an investment product is listed on a regulated market?"* The answer provided states that *"A manufacturer is not required to draw up a KID for a product listed on a regulated market when they have defined the product as meant only for non-retail investors."* Although no further details on what "defined the product" entails, the answer is helpful in supporting an argument that manufacturers of listed financial instruments would not automatically be required to produce a key information document where it is clearly stated that the product is not meant for retail investors.

## **24 November 2017**

The Joint Committee of the European Supervisory Authorities (the ESAs) published a [press release](#) announcing a review of variation margin requirements for physically settled FX forwards. The ESAs acknowledged that certain counterparties are facing challenges relating to the requirement to exchange variation margin for physically settled FX forwards by 3 January 2018. The challenges identified mainly relate to transactions with certain end-users (such as alternative investment funds).

Since any changes to the application of the EU rules would need to be implemented through EU legislation, the ESAs are undertaking a review of the regulatory technical standards. In particular, they are considering amendments to the scope of the rules so that they would cover transactions between institutions (credit institutions and investment firms). They also advised that for some institution-to-non-institution transactions, competent authorities should consider the actual risk that the exchange of variation margin would mitigate and whether non-institutions might face additional risks related to the daily exchange of variation margin.

Once the ESAs have finalised their review, they plan to submit the draft amendments to the European Commission within one month from their press release. As for the difficulties that certain end-users are facing, the ESAs stated that they expect competent authorities to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner.

## **30 November**

The CMA published its [final report](#) following its market study into the UK care homes market.

#### Related Professionals

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- **Andrew Wingfield**

Partner

- **John Verwey**

Partner