

The Uplink: Financial services regulatory news, 7 October 2022

07 October 2022

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FCA Market Watch issue 70: Transaction reporting and financial instrument reference data submissions

In this [Market Watch](#), the FCA seeks to provide firms with information necessary to uphold and improve the quality of their transaction reports and financial instrument reference data submissions. These will be of interest to investment firms, credit institutions, trading venues, systematic internalisers, and approved reporting mechanisms. The FCA has highlighted the following issues, amongst others:

- **Errors in submitted data:** while some firms have shown understanding of their obligation to bring errors and omissions in their transaction reports to the FCA's attention, its data quality alerts suggest many are not conducting sufficient checks on their data.
- **National identifiers:** 1st priority national identifiers must be used wherever available to identify natural persons in transaction reports. Despite warnings, the FCA continues to see firms failing to conduct sufficient due diligence when onboarding clients to obtain these identifiers.
- **Principal firms:** the FCA views an Authorised Representative as its principal firm. This means that when a transaction is executed by an AR providing the investment service of reception and transmission for a principal firm that is subject to transaction reporting obligations, the principal firm should be identified in applicable fields of its transaction report, such as in the executing entity field. The AR should not be identified.
- **Branch reporting:** the FCA has set out a number of steps that UK branches of third country investment firms should take when reporting.

PSR final decision on card - acquiring market remedies: Payment services – card-acquiring

On 6 October 2022, the Payment Systems Regulator (PSR) published a [policy statement \(PS22/2\)](#) setting out its final decision on remedies for the card-acquiring market review.

The PSR's review of the card-acquiring market found that the supply of card-acquiring services does not work well for merchants with annual card turnovers of up to £50 million. These merchants could make savings by shopping around or negotiating with their current

supplier, but many do not. In January 2022 the PSR published proposals to address the features of concern it identified in the market review and help merchants get better deals for card-acquiring services. Following consultation on the PSR's proposals, in June 2022 it published a provisional decision on remedies to address the features of concern. This policy statement sets out the PSR's final decision on remedies.

- Summary boxes containing bespoke key price and non-price information to be sent individually to each merchant and made available in their online account. Merchants will be able to use these with the new online quotation tools, which providers will be required to make available. This will help merchants compare all available offerings.
- Trigger messages to prompt merchants to shop around and/or switch to be sent by providers of card-acquiring services to their merchant customers and shown prominently in their online account. The timing of these messages will be linked to minimum contract term expiry dates or, where contracts are indefinite, required to be provided at least once every 30 calendar days.
- A maximum duration of 18 months for POS terminal lease and rental contracts, and maximum one-month notice after any renewal.

The PSR has also published advice on the format and content of information required. The 14 firms subject to the specific directions must implement the remedy relating to POS terminal contracts from January 2023, and the two remaining remedies from July 2023.

Agreed text of proposed regulation on markets in cryptoassets

The Council of the EU published an [information note \(13198/22\)](#) with an annexed letter to Parliament relating to the proposed Regulation on markets in crypto assets (MICA) (2020/0265(COD)). The letter states that a draft of the legislation has been agreed by the Council's Permanent Representative Committee and that the Counsel will agree if the Parliament adopts this draft.

Agreed text of proposed regulation on information accompanying transfers of funds and certain cryptoassets

The Council of the EU published an [information note \(13215/22\)](#) with an annexed letter to Parliament relating to the proposed Regulation on information accompanying transfers of funds and certain crypto assets (recast revised WTR) (2021/0241(COD)). The letter states that a draft of the legislation has been agreed by the Council's Permanent Representative Committee and that the Counsel will agree if the Parliament adopts this draft.

FCA portfolio letter to high-cost consumer credit lenders: October 2022

The FCA has issued a ['Dear CEO' letter to high-cost lending firms](#). In the face of the rising cost of living, the FCA expects firms to consider how the crisis is likely to impact consumers and take the necessary steps to provide support and mitigate harm. Key points are as follows:

- Struggling customers should be signposted to debt advice charities;
- Action must be taken to ensure financial promotions are clear, fair and not misleading;
- Firms are expected to lend responsibly, which may mean that credit is unavailable to some customers. Responsible lending will be a key focus over the next 3 years;
- Culture and governance is expected to drive good behaviours and produce fair outcomes that are likely to benefit consumers and markets. Individuals are expected to be accountable for their actions.

Firms are reminded of the need to have board-approved high-level implementation plans in place for the new Consumer Duty by the end of the month.

Sigma Broking Limited CFDs and spread-bets: transaction reporting and market abuse

The [FCA has fined Sigma](#) £531,000 for multiple systems and controls failings, noting in particular that:

"... in December 2014, Sigma expanded its business to include, amongst other products, contracts for difference ("CFDs") and Spread-Bets referenced to the share-price of listed companies, by recruiting several brokers and establishing a desk which provided these

products to its customers ...

CFDs and Spread-Bets are high-risk, complex financial products ... they are particularly attractive to those seeking to commit market abuse, including insider trading ... If ... the client has non-public information that a stock will move in a certain direction, there is no risk of loss ...

Sigma's ... Board ... failed to take fundamental steps, such as holding regular board meetings where directors were provided with adequate management information and ensuring the Board's decisions were recorded by written minutes ... [and] failed to establish, oversee and resource an effective compliance function, and failed to identify and address serious and systemic failures in relation to Sigma's market abuse systems and controls and transaction reporting obligations, in respect of the CFD desk ...

Sigma's Compliance Department operated without clear reporting lines, apportionment of responsibilities or appropriately qualified staff and failed to ensure that the firm had adequate policies and procedures in place in relation to the conduct of its CFD desk brokers. Such policies as were in place were not properly communicated to, or adequate steps taken to ensure their observance by, its brokers."

Credit protection insurance (CPI) sold via banks: General insurance distribution and profitability risks

Eiopa has conducted a thematic review into the functioning of the EU market for credit protection insurance (CPI) products sold via banks. Key findings are highly similar to those in respect of PPI by the UK's Financial Services Authority 2005 – 2013 and by the FCA since then:

"While acknowledging the various benefits of CPI products, the thematic review unveiled significant risks for consumer detriment arising from poor underwriting and sales practices as well as insufficient management of conflicts of interest arising in the context of ... sales ... [including:]

... CPI products are a profitable business for both insurers and banks, [with for instance an] ... average claims ratio ... 2018-2020 for ... consumer credit CPI around 18% of GWP ...[remainder] ... of the GWP [is] ... used to cover the costs and profits of insurers and banks ...

The conflict of interests due to remuneration arrangements between insurers and banks if not properly mitigated can lead to consumer detriment. Any misalignment between the interests of the banks and insurers on one side and those of consumers on the other side can result into poor underwriting and sales practices."

If the word 'banks' is replaced with 'intermediaries', the last point above has the potential to have further relevance for insurance distribution more generally, as indicated by recent and ongoing work by the FCA.

Claims handling lessons learned from business interruption insurance: General insurance Consumer Duty

The FCA says that it has: "seen several significant issues through our BI work and where necessary, we will consider using all regulatory tools to rectify these issues. Claims handling is an important part of the insurance lifecycle and is an area of focus in our supervisory strategy for all firms.

We expect Senior Managers to have a clear understanding of our rules and demonstrate that they are putting the customers at the centre of the claims process through robust conduct oversight to ensure fair treatment to customers. We encourage firms to undertake a review of their own claims processes and procedures, and where applicable, outsourcing arrangements (see [SYSC 13.9](#)) to make sure these remain effective in mitigating the risk of customer harm."

"Our New Consumer Duty ([Policy Statement 22/9](#)) ... explains that firms should make sure their customers are adequately supported throughout the lifecycle of a product, including where they need to make a claim. This means that firms should make sure their system and controls processes avoid causing foreseeable harm. Firms should already have considered to what extent our [Guidance](#) for firms on the fair treatment of vulnerable customers applies to their business across different product lines and what they needed to do to make sure they are treating customers in vulnerable circumstances fairly."

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