

## Financial Conduct Authority (FCA) looks for fairer treatment of corporate customers

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07 May 2020

**Please note: the information contained in this legal update is correct as of the original date of publication**

For many corporates, cash flow has been the most difficult issue to manage in the wake of the Government restrictions around Covid-19. Many have urgently sought to raise funds via new or renegotiated lending arrangements, or through the equity markets. In the wake of this increased activity, the Financial Conduct Authority (FCA) recently reported that “a small number of banks” are exploiting the position and failing to treat their corporate customers fairly. This was the subject of the most recent FCA “Dear CEO” letter to financial services firms, sent on 28 April 2020. The warning shot advises that unfair practice around equity finance must “cease immediately”.

The FCA points to credible reports of a small number of banks using their lending relationship to exert pressure on corporate clients to secure roles on equity mandates that the client may not have otherwise appointed them to. These roles may be “name only”, with few or no additional services provided. This practice of tying clients to take additional services or demanding fees for services not provided is, the FCA states, not in the best interests of those clients, distorts competition and undermines confidence.

The FCA stresses that firms need to fulfil their obligations under the Market Abuse Regulation (MAR) around the identification, handling and disclosure of ‘inside information’ received in connection with the renegotiation of a corporate clients’ existing facilities. Sharing information relating to a potential equity capital markets transaction within a lending bank may be inconsistent with the lender’s obligations under MAR.

All corporates who are seeking to renegotiate funding arrangements should carefully consider the terms that they are offered and challenge where the treatment that they receive from lenders is unfair. Lenders must take note that the FCA’s spotlight is shining brightly on the unfair practices used by a small number of their peers, and may wish to take the opportunity to review their current systems to be satisfied that they are compliant, particularly in relation to the treatment of inside information.

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