

E-ALERT | Financial Services and Regulation

February 18, 2014

QUESTION: IS YOUR FIRM CASS COMPLIANT TODAY?

The United Kingdom's Financial Conduct Authority ("FCA") has advised that it will be conducting a range of short notice supervisory CASS visits to firms, including possible requests for information, as part of its general supervisory activities going forward.

Would your firm be prepared for a surprise on-site visit or document request from the FCA's dedicated CASS unit later today?

The FCA has recently given notice that regulated firms' compliance with the rules set out in the Client Money and Assets Sourcebook ("CASS") in the FCA Handbook is an increasing area of supervisory focus for it. CASS has been close to the top of the regulatory agenda ever since the fall out from the Lehman Brothers insolvency raised questions about the regime's efficacy.

The publication last summer of its deeply controversial consultation paper on the review of the client money and assets regime in the United Kingdom investment sector (CP13/5), set out the FCA's thinking on what is likely to be, once finalised, a complete overhaul of the current CASS regime. However, the fact that the new regime is taking time to finalise, and that there is currently a good deal of push-back from the industry on many of the proposals, does not mean that the FCA has dropped the ball in relation to compliance with the regime in place now. It means quite the opposite in fact; if anything, supervision activity and scrutiny of firms in this area has increased and will continue to do so.

WHAT'S IN THE FCA'S CASS SUPERVISORY ARMOURY?

The FCA has a wide and powerful range of tools which it may employ when supervising firms in relation to CASS. These include:

- *One-way communications* to firms identifying issues for the firm to address to which the FCA does not expect a response. These often fall out of FCA desk-based reviews of firm data or information from a firm's Client Money and Assets Return ("CMAR");
- *On-site visits* at the firm which can vary in length and scope. These could last for a day or over a week, and they could involve what the FCA calls a "deep dive" into a particular area of the business or simply be a review of the business and a fact-finding exercise for the Regulator;
- *Individual guidance* from the FCA on a particular matter upon a request for clarification from a firm. The FCA has warned that it does not look to issue this regularly - firms must use their own resources and make their own decisions before seeking guidance;
- *Section 166 visits* which are similar in style to the lengthier on-site visits mentioned above;
- *Private warnings* to firms which are used by the FCA when more serious failings are discovered or reported;
- *Referral to the FCA Enforcement Department* which the FCA will use in relation to the most severe breaches; and
- *Variations of permission* to ensure that firms may not hold client money or assets. The FCA will only require a firm to change its permissions in the worst cases.

HOW WE CAN HELP

We have extensive expertise in advising firms on how to meet their regulatory obligations under CASS, and in particular, how to cope with a more intrusive and aggressive Regulator. Our aim is to ensure your firm never ends up on the wrong side of the FCA's supervisory regime, in enforcement. We can:

- review your systems and controls in place to meet the firm's CASS obligations, including documentation and procedures;
- assist with preparing you for your on-site FCA CASS visit, including reviewing any documentary submissions to the Regulator, providing mock interviews for key staff and senior management and advising on any follow-up from the FCA after the visit;
- provide on-site, behind the scenes assistance, including mock interviews, for key staff and senior management of the firm during a section 166 review by a skilled person;
- review and advise you on the draft report prepared by the skilled person, following a section 166 review, prior to its submission to the FCA;
- offer you bespoke, in-house training on all aspects of the CASS regime; and
- assist with any enforcement action or other supervisory enquiry.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our financial regulation practice group:

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