

Investment Management Alert

February 23, 2015

An Update on Dealing Commissions and Market Abuse

Last week the Financial Conduct Authority (FCA) published two papers likely to have a significant impact on the day-to-day operation of investment fund managers in the immediate and medium term.

In *FS15/1: Feedback Statement on DP14/3 — Discussion on the Use of Dealing Commission*, the FCA confirms its support of the European Securities and Markets Authority's (ESMA) recommendation to the European Commission requiring portfolio managers to separate the purchase of research from execution arrangements and costs. The new rules will be set out in secondary legislation to Markets in Financial Instruments Directive (MiFID) II, which are still to be drafted by the European Commission. The FCA believes ESMA's proposals will lead to direct accountability over the expenditure on third-party research by portfolio managers and how these costs are passed on to their customers, and, ultimately, will lead to better outcomes for investors across the European Union. MiFID II and, specifically, the new rules on the use of dealing commissions set out in MiFID II's secondary legislation, will not come into effect until the beginning of 2017; however, the FCA has expressly stated that it expects firms to start considering now how they may need to change their controls to demonstrate they are meeting their existing obligations to act in the best interest of customers and to ensure a smooth transition into the new MiFID II regime.

Additionally, firms should be mindful of the FCA's findings from its recent thematic review of how asset management firms control the risk of committing market abuse — *TR15/1: Asset Management Firms and the Risk of Market Abuse*. The thematic review considered how firms control the risks of insider dealing, improper disclosure and market manipulation, with a primary focus on equities and insider dealing. Whilst the FCA had generally found that most firms had put in place some practices and procedures to control the risk of market abuse, the FCA considered such practices and procedures to be comprehensive in only a small number of firms. The FCA has therefore reminded firms to ensure that they are covering all material risks. In particular, the FCA requires firms to pay more attention to the possibility of receiving inside information through all aspects of the investment process as well as to improve the effectiveness of post-trade surveillance. The FCA has additionally set out numerous good and poor examples of market abuse control practices, which firms should be mindful of so as to ensure that their own practices and procedures are robust.

Contact Information

We would be happy to answer any questions firms may have in relation to these recent FCA publications as well as to assist firms in updating their practices and procedures to meet the high expectations of the FCA. If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or

Helen Marshallhelen.marshall@akingump.com

+44 20.7661.5378

London

Christopher Leonardchristopher.leonard@akingump.com

+44 20.7661.5384

London

Ian Patrick Meadeimeade@akingump.com

+44 20.7012.9664

London

Tim Pearcetpearce@akingump.com

+44 20.7012.9663

London