



[View this email in your browser](#)

Adaptation to the FCA's regulatory approach in response to the COVID-19 crisis

Of particular interest to: Portfolio managers and firms running short strategies

This is an **update** to our Alerts on 16th and 19th March 2020 which highlighted:

- The European Securities and Markets Authority ("ESMA") decision to temporarily lower the minimum threshold of short selling notification to 0.1% of issued share capital
- The requirement to publish the RTS 28 disclosures by 30th April for firms that execute orders and for firms that place orders with other firms to execute
- The 10% depreciation rule arising from MiFID applicable to firms involved in portfolio management activities

Please refer to our previous Alerts for further information on the above (see '**Useful Links**').

In addition, we have become aware of the FCA contacting firms by telephone in relation to the current COVID-19 situation – please see below for further information.

FCA statement on short selling bans and reporting

- The FCA released a statement on 31st March 2020 confirming that appropriate changes have been made to its systems in order to receive short selling notifications at the lower threshold temporarily introduced by ESMA
- Firms will be required to report on the lower threshold from **6th April 2020**
- Firms will **not** be required to amend and resubmit notifications submitted between 16th March and 3rd April

FCA Dear CEO Letter – 31 March 2020

The FCA released a **Dear CEO** letter on 31st March 2020 addressing adaptations to its regulatory approach.

While the Dear CEO letter is addressed to retail firms, the content is also relevant to firms without retail clients.

Key points in the Dear CEO letter are:

Supervisory flexibility over the publication of RTS 27 & 28 Best Execution Reports until 30th June 2020

- Firms are expected to take current market conditions into consideration when determining the importance of other best execution factors
- Firms must continue to meet their best execution obligations
- The FCA supports ESMA's recommendation to effectively extend the deadline for the submission of the RTS 28 (and, for execution venues, the RTS 27) quality of execution reports to the **30th June 2020**

Supervisory flexibility over 10% depreciation notifications until 1st October 2020

The rules in COBS 16A.4.3 require firms providing portfolio management services (or holding retail client accounts that include leveraged investments) to notify clients where the overall value of the portfolio or leveraged position as evaluated at the beginning of each reporting period depreciates by 10% and for each subsequent 10% fall in value. Where a 10% depreciation occurs, firms are required to notify the client by the end of the business day on which the threshold was exceeded.

The FCA recognises the challenges posed by this reporting requirement under current market conditions – as such, enforcement action will not be taken against a firm which:

- Issues a **retail client** at least one notification within a reporting period indicating that their portfolio has depreciated by at least 10%; and
- Provides general updates to clients through its website or other suitable public channels; or
- Chooses to **cease** providing 10% reports for **professional clients**.

The FCA has indicated that this approach will be adopted till **1st October 2020**.

FCA Telephone Surveys with Investment Managers

Some of our clients have made us aware that the FCA has been reaching out to them by telephone in order to discuss how they are reacting to the COVID-19 pandemic. The interactions have lasted between thirty minutes to an hour and the FCA's questions have centred on key considerations, such as how the firm is dealing with the difficult trading conditions and how telephone recording obligations are continuing to be met. Additionally, the FCA is enquiring whether there has been pressure from investors and specifically in relation to increased redemption requests. Finally, the FCA has been seeking clarity on firms' business continuity plans and any issues firms may have been facing in that regard.

Useful Links

[FCA Dear CEO Letter](#)

[FCA statement on short selling bans and reporting](#)

[Client and Market Notifications Alert](#)

[Short Selling Notifications: Temporary Bans, Submitting Notifications and Other Considerations Alert](#)

If you have any comments on this article, or any questions in general, then please speak to your usual Optima consultant or contact us at info@optimapartners.com

To stop all marketing communications from us, please click unsubscribe below.
[unsubscribe from this list](#)

Copyright © 2020 Optima Partners, All rights reserved.

Our mailing address is:

Terminal House, 1st Floor, 52 Grosvenor Gardens, Belgravia, London SW1W 0AU