

Assessment on FCA Authorisation Requirement



**COMPLIANCE
CONSULTANT**

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“To be (FCA Authorised) or not to be (FCA Authorised), that is the question”

Often for new firm it is a difficult and confusing time to understand if their business activity needs to be authorised by the FCA or not. The wording used in the legislation is somewhat confusing and in some places seems to be talking at cross purposes.

So how are you supposed to know what is the right, and legal, thing to do?

That's where we can help.

Compliance Consultant is a leading UK Compliance Consultancy. Our staff are all qualified and have years of experience with the FCA and in business.

Check out <http://www.complianceconsultant.org> for more details.

We can help identify if you need authorisation or not and we present it to you as a document that you can email to your business parties or anyone else who thinks that you should be authorised.

If it turns out that you need authorisation, then we will discount the fee directly off the authorisation quote, 'in full', and show you how to get authorised with our popular fixed price packages, that include the necessary policies and procedures.

So, in what format does the report come in?

The report comes in a letter format with appendices and can often consist of between 6 to 12 pages.

Read on....

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17th June 2019

**Letter format for the
report with a precis of
the business
activities**

Dear [REDACTED]

You have informed us that [REDACTED] researches potential investors for clients for their property development projects and offers to its clients introductions only on their property development projects to investors.

You have confirmed that your company does not offer advice or provide personal recommendations of any sort and that the research you conduct is paid for with no contingent, requirement or expectation of the end client investing. You do not deal, influence or operate directly with any investor, nor do you only deal with one investor.

[REDACTED] clients are property developers who come to you for introductions to potential investors. These investors are institutional and other investors. It is our understanding that you have

General Prohibition

Under section 19 of Financial Services and Markets Act 2000 (FSMA), a person must not carry on a regulated activity in the UK, or attempt to do so, or support to do so, or attempt to do so. Carrying on a regulated activity in breach of this is a criminal offence under the General Prohibition.

In addition, and alongside this, Section 21 of FSMA provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity if no prior promotion has been made or approved by an authorised person or if it is in breach of the Financial Promotion Restriction.

Accordingly, the scope of this note is to provide you with the requirements for authorisation under FSMA. In preparing this note, we have read and reviewed your Fact-Find, Asset Liability Statement and

**We explain the actual legislation
requiring firms to be authorised
or exempt.**

activity or arranging deals in investments.

A Word of Caution

Please be advised that the FCA Handbook, especially *PERG*, gives specific meanings in the FCA Handbook or in legislation that differ from their usual dictionary meanings.

We will draw your attention to any anomalies, such as specific language use

Analysis

Arranging deals in investments

In order to understand whether [REDACTED] requires authorisation or not, we need to determine whether in the course of providing introductions of potential property investments to its clients, could be 'Arranging deals in investments' as defined in Chapter IV article 25 of the Regulated Activities Order. Below, we analyse the [REDACTED] to determine whether the nature of [REDACTED]

1. Does it relate to a relevant investment?

[REDACTED] activity is focused on [REDACTED] that the properties covered by [REDACTED] security in whole or part, we must consider [REDACTED].

We examine and comment on the actual permissions that would normally be required

2. Does it relate to a particular investment?

The research produced by [REDACTED] developments, which could be stand-alone listed companies. In our view it is appropriate to consider this could be interpreted as a reference to a particular investment.

3. Does the person provide advice on the merits of dealing in, or exercising any right to deal conferred by, an investment?

regulations and how they apply to your situation.

Account Information Services: Under PSD2 an 'account information service' is an online service which provides consolidated information to a payment service user on one or more payment accounts held by that payment service user with other payment service providers.

Payment Initiation Service: Under PSD2, a 'payment initiation service' is an online service to initiate a payment order at the request of a payment service user to a payment service provider.

Payment Account: (in accordance with regulation 2(1) of, and Schedule 1 to, the Payment Services Regulations) an account held in the name of a payment service user for the purpose of payment transactions.

Payment Framework: (in accordance with regulation 2(1) of, and Schedule 1 to, the Payment Services Regulations) a contract for payment services covering payment transactions and payment accounts.

Cash-to-cash currency exchange: (in accordance with regulation 2(1) of, and Schedule 1 to, the Payment Services Regulations) Cash withdrawal services provided by a payment service provider.

- is acting on behalf of a payment service user;
- is not party to the financial transaction with the customer maintaining the payment account; and
- does not conduct any other payment service.

Depending on your type of business, we show all of the potential requirements before discounting them

A payment service: defined as (in accordance with regulation 2(1) of, and Schedule 1 to, the Payment Services Regulations):

(a) Subject to (b), any of the following activities when carried out as a regular occupation or business

The FCA Perimeter Guidance Handbook (PERG)

The purpose of this part of the handbook is to provide guidance about the circumstances in which authorisation is required, or exempt person status is available, including guidance on the activities which are regulated under the Act.

This handbook section applies to:

- (1) a person who is considered to be acting within the scope of the Act as an authorised person;
- (2) a person who seeks to be authorised, considering, applying for or holding an authorisation in the United Kingdom;
- (3) a person who is seeking to be authorised to make or cause to be made a transaction in relation to section 21 of the Act; and

We explain what the FCA Handbook says and show the definitions it uses for the various elements of business covered

We conclude that there is nothing within the activities outlined by [redacted] that would suggest that the firm might be involved in arranging deals in investments.

The most pertinent Exclusion is;

Introducing

Article 33. There are excluded from article 25(2) arrangements where—

- a. they are arrangements under which persons (“clients”) will be introduced to another person;
- b. the person to whom introductions are to be made is—

We will examine and explain the relevant exclusion or exemption that applies to your firm

- c. [redacted] activity in the United Kingdom and relevant from [redacted] to any class of investments to which the arrangements relate.

Should [redacted] activities widen, it is essential to reconsider the application of the exemption.

Conclusion

In our view, based on the information made available, [redacted] authorisation under FSMA in order to conduct its current business, as we understand it. Specifically,

We will provide any relevant warnings

Annex 1: Definitions

Investment Research

The FSA Handbook defines "investment research" by reference to MiFID. In this context, "investment research" means:

"research or other information recommending or suggesting an investment strategy, explicitly or implicitly concerning one or several financial instruments or the issuers of financial instruments, including any opinion on the merits or demerits of such instruments, or on the distribution channels for such instruments, or on the recommendation to buy or sell such instruments."

Investment Professional

"Investment professional"

- Authorised person
- Exempt person (including representatives) where the communication is made in relation to which the person is acting as an investment professional
- Any other person to which the communication is made in relation to which it is reasonable to expect that the person is acting as an investment professional
- A government or other body (that is, any body the members of which comprise EEA states (including the UK)).
- A person (A) who is a director, officer or employee of a person (B) falling within any of the above categories where the communication is made to A in that capacity and where A's responsibilities when acting in that capacity involve him in the carrying on by B of controlled activities.

As some of the people you may come up against may not be fully versed in the FCA terminology or procedures, we provide a breakdown and definition of the terms used.

Annex 2: Designated Investments

Designated Investments as defined under The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

(1) a security or a contractually based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the Regulated Activities Order (Specified Investments):

(a) life policy (subset of article 75 (Contracts of insurance));

(b) share (article 76);

(c) debenture (article 77);

(ca) alternative debt instrument (article 77A);

(d) government asset (article 78);

(e) warrant (article 79);

(f) certificate representing a security (article 80);

(g) unit (article 81);

(h) stakeholder pension (article 82(1));

(ha) personal pension scheme (article 82(2));

(hab) pension scheme which provides safeguarded benefits (article 82(3)) (but only in relation to advising on conversion or transfer of pension benefits);

(hb) emissions auction product (article 82A) where it is a financial instrument;

We provide a list of the Designated Investments or Regulated Activities that may occur in the report, in the context of others

Annex 3: Exclusions

Arrangements not causing a deal

26. There are excluded from article 25(1) arrangements which do not or would not bring about the transaction to which the arrangements relate.

Enabling parties to communicate

27. A person does not carry on an activity of the kind specified by article 25(2) merely by providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties.

Arranging transactions to which t

28.—

1. There are excluded from a person making the arrangement person.
2. There are excluded from a person to transactions into which person.

Arranging deals with or through a

29.—

1. There are excluded from a not an authorised person by a person ("the client") with or through an authorised person if—
 - a. the transaction is or is to be entered into on advice to the client by an authorised person; or
 - b. it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from A as to the merits of the client's entering into

We also explain the specific exclusions that apply to your firm's business

This example document shows sections from various client's reports and is not indicative of only one report type. This is intended to be a generic indication only and may change over time, as the FCA handbook is developed