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FCA Publishes 'Dear CEO' Letter to Ensure Fair Treatment of Corporate Customers

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On April 28, 2020, the Financial Conduct Authority (FCA) published a "Dear CEO" letter on ensuring the fair treatment of corporate customers preparing to raise equity finance.

The FCA expects financial services firms to continue to provide strong support and services to customers during this period of disruption caused by the COVID-19 pandemic. However, the FCA has heard credible reports of a small number of banks failing to treat corporate clients fairly when negotiating new or existing debt facilities. In particular, it has received reports that banks may have used their lending relationship to exert pressure on corporate clients to secure roles on equity mandates to which they would not otherwise have been appointed. In some cases, these roles may be "in name only", with few or no additional services being provided in exchange for a share of the fee pool. The FCA will look into this further, but wants any practice of this kind to cease immediately.

The FCA's concern is that tying clients to take additional services, or demanding fees for services not provided is not in the best interests of those clients, distorts competition, undermines market confidence and calls into question firms' and individuals' integrity. The FCA is also concerned that this conduct is likely to increase overall transaction costs for corporates trying to raise money.

Such conduct could breach FCA rules and the Principles for Businesses. Firms must observe proper standards of market conduct (PRIN 5), act with integrity (PRIN 1) and in the best interests of clients (COBS 2.1), and prevent or manage conflicts of interest (SYSC 10.1). Firms and relevant individuals must also consider the senior managers and certification regime (SM&CR), including the individual conduct rules. Clauses in agreements restricting clients' choice of providers for future business could breach COBS 11A.2 (prohibition of future service restrictions).

In addition, firms must meet their Market Abuse Regulation (*596/2014*) (MAR) obligations concerning the identification, handling and disclosure of inside information received in connection with renegotiating a corporate client's existing facilities. This includes details of a potential equity capital markets transaction. Depending on the circumstances, sharing such information within a lending bank may be inconsistent with that bank's MAR obligations.

If the FCA finds further evidence to support these concerns, it will not hesitate to take action. Firms active in both equity and lending markets must review their current systems and controls to satisfy themselves that they are appropriate for ensuring the proper treatment of clients, the identification and mitigation of conflicts of interest, and the handling of inside information. This review should be conducted having regard both to the increased volumes the FCA expects to see in equity capital markets and the concerns that have been raised with the FCA to date.

The FCA will separately contact firms that have both a lending relationship and equity role with any issuers that have recently raised significant equity capital. It will seek to understand how those firms ensured clients were treated fairly and inside information was handled appropriately.

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