Breaches Policy

In accordance with SUP 15.3 [Name of firm] must notify the FCA immediately when it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

1. The firm is failing to satisfy one or more of the threshold conditions or,
2. Any matter which could have a significant adverse impact on the firm’s reputation or
3. Any matter which could affect the firm’s ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm or
4. Any matter in respect of the firm which could result in serious financial consequences to the UK financial system or to other firms.

The circumstances which may give rise to any of the events above are wide ranging and the probability of the outcome, may be difficult to determine.

[Name of firm] has completed a risk analysis document which goes some way to determining the threats to the firm, likelihood and severity.

In determining whether the FCA should be notified of an event that may occur in the foreseeable future, the firm will consider both the probability of the event happening and the severity of the outcome should it happen.

Breaches of Rules and other requirements in or under the Act or the Consumer Credit Act

[Name of firm] must notify the FCA of: -

1. A significant breach of a rule including a principle or a Conduct Rule under COCON.
2. A breach of any requirement imposed by the Act or by regulations or an order made under the Act by the Treasury
3. A significant breach of any requirement imposed by the Consumer Credit Act or by regulations or an order made under the Consumer Credit Act
4. The bringing of a prosecution for or a conviction of any offence under the Act or the Consumer Credit Act against the firm, its directors, employees, approved persons or appointed representatives.

In respect of (1) and (3) above, significance should be determined having regard to potential financial losses to customers or to the firm, frequency of the breach, implications for the firm’s systems controls and if there were delays in identifying or rectifying the breach.

Breaches of Conduct Rules and disciplinary action

[Name of Firm] must notify the FCA if it takes disciplinary action against any of its *conduct rules staff* in respect of a breach of the Conduct Rules.

Disciplinary action includes issuing a formal written warning, the suspension or dismissal of that person or the reduction or recovery of remuneration (clawback).

Disciplinary action for conduct rule breaches by senior managers must be reported on the Connect System using form D or form C (where the individual no longer performs a senior management function).

Disciplinary action for conduct rule breaches for all other conduct rule staff must be included in REP008.

Civil, criminal or disciplinary proceedings against a firm

[Name of firm] must notify the FCA immediately if: -

1. Civil proceedings are brought against the firm and the amount of the claim is significant in relation to the firm’s financial resources or its reputation or
2. Any action is brought against the firm for damages.
3. Disciplinary measures or sanctions have been imposed on the firm by any statutory or regulatory authority, competition authority, professional organisation or trade body (other than the FCA) or the firm becomes aware that one of those bodies has started an investigation into its affairs or
4. The firm is prosecuted for or convicted of any offence involving fraud or dishonesty or any penalties are imposed on it for tax evasion.

Notification of the above should include details of the matter and an estimate of the likely financial consequences if any.

Fraud, errors and other irregularities

[Name of firm] must notify the FCA immediately if one of the following events arises and the event is significant: -

1. It becomes aware that any employee may have committed a fraud against one of its customers
2. It becomes aware that a person, whether or not employed by the firm may have committed a fraud against the firm or is acting with intent to commit a fraud against the firm.
3. It considers that any person, whether or not employed by it, is acting with intent to commit a fraud against the firm.
4. It identifies irregularities in its accounting or other records whether or not there is evidence of fraud or
5. It suspects that one of its employees may be guilty of serious misconduct concerning their honesty or integrity and which is connected with the firm’s regulated activities or ancillary activities.

In determining whether a matter is significant [Name of Firm] should have regard to: -

1. The size of any monetary loss or potential monetary loss to itself or its customers
2. The risk of reputational loss to the firm and
3. Whether the incident or a pattern of incidents reflects weaknesses in the firm’s internal controls.

[Name of firm] recognises that the above notifications make the FCA aware of the types of fraudulent and irregular activities which are being attempted or undertaken and prompts the FCA to act if necessary to prevent adverse effects on consumers or other firms.

Insolvency, bankruptcy and winding up

[Name of firm] must notify the FCA immediately of any of the following events:-

1. The calling of a meeting to consider a resolution for winding up the firm or
2. An application to dissolve the firm or to strike it off the Register of Companies or
3. The presentation of a petition for the winding up of the firm
4. The making of or any proposals for the making of a composition or arrangement with any one or more of its creditors or
5. An application for the appointment of an administrator or trustee in bankruptcy to the firm or
6. The appointment of a receiver to the firm
7. An application for an interim order against the firm under section 252 of the insolvency Act 1986
8. If the firm is a sole trader:
   1. An application for a sequestration order on the firm or
   2. The presentation of a petition for bankruptcy

Competition law infringements

[Name of Firm] must notify the FCA if it has or may have committed a significant infringement of any applicable competition law.

[Name of Firm] must make the notification as soon as it becomes aware or has information which reasonably suggests that a significant infringement has or may have occurred.

[Name of Firm] must make the notification in writing unless it has made or will make an oral application for leniency or immunity covering the same subject matter to any competition authority in which case [Name of Firm] may make the notification orally.

It should be noted that a lack of response, objection or enforcement activity by the FCA or other competition authority does no infer that the agreement or conduct does not infringe competition law or will be immune from enforcement. Notification is not sufficient to constitute an application for leniency or immunity from penalty in any subsequent investigation.

In determining whether a matter is significant, [Name of Firm] should have regard to the actual or potential effect on competition, any customer detriment, and the duration of any infringement and implications for the firm’s systema and controls.

Form and method of notification

Principle 11 requires [Name of firm] to deal with its regulators in an open and cooperative way and to disclose to the FCA appropriately anything relating to [Name of firm] of which the FCA would reasonably expect notice.

Under the Consumer Duty [Name of firm] as a distributor, must also notify the FCA if it becomes aware that any other firm in the distribution chain is not or may not be complying with the Consumer Duty principle or the obligations imposed under is by the rules in PRIN 2A.

Notification of a breach must be in writing and must contain:

[Name of firm]’s FCA firm reference number

Information about any circumstances relevant to the breach or offence

Identification of the rule, requirement or offence and

Information about any steps which [Name of firm] or other person has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.

Where appropriate a Breaches Notification Form should be used. If the matter is urgent or significant it is noted that [Name of firm] should also consider contacting the FCA by telephone. Oral notifications should be given directly to the firm’s usual supervisory contact at the FCA (FCA Contact Centre) and followed up in writing.

All breach notifications to the FCA must be made by [name of individual].

When dealing with rule breaches the FCA consider how open and honest a firm has been. The FCA would prefer to hear about the breach directly from [Name of firm] rather than a third party such as the firm’s accountants.