

Conflicts of Interest: Recent UK Action

October 10, 2024



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The UK's Financial Conduct Authority ("FCA") has recently successfully applied to the Court of Appeal to uphold an earlier decision to impose requirements for redress in relation to conflicts of interest. This decision serves as a timely reminder to firms to review, and if necessary refresh, conflicts of interest policies and procedures.

Regulatory Background

Principle 8 of the FCA's Principles for Business requires that a firm must manage conflicts of interest fairly, between itself and its customers and between a customer and another client. Firms are obliged to take all reasonable steps to identify conflicts and have effective organisational arrangements that are aimed at preventing conflicts from constituting or giving rise to a material risk of damage to the interests of clients. When those arrangements are not sufficient to ensure, with a reasonable degree of confidence, that the risks can be prevented, firms must give sufficient disclosure to their clients.

Key Points Coming Out from the FCA's Decision:

- merely identifying risks is inadequate as a conflicts' mitigation measure unless the primary controls put in place to actually effect mitigation are sufficient and robust;
- those primary controls should take account of which senior staff are charged with making decisions about management and mitigation measures and how that impacts on allocation, etc.;
- similarly, once a conflict has been identified, disclosures to clients must give "*sufficient information to allow them to scrutinise the substance of the conflict*" as well as how the conflict is being managed;
- that information must be specific to the particular conflict; and
- asset managers conducting side-by-side management of separate investment funds simultaneously are in a particularly sensitive position when it comes to conflicts of interest given the Principle 8 obligation to manage conflicts between clients, as well as between the firm and clients.

Takeaways

Conflicts of interest are a perennial item of interest for regulators of the asset management industry. While this FCA decision turns on its particular facts, it is always useful to go back to systems and controls procedures to make sure that they remain focused on the risks that naturally arise in this sector and within the context of each individual firm's business model.