

13 December 2017

EU Global Distribution Update: Distribution and Registration Regulations, Exemptions and Market Practice



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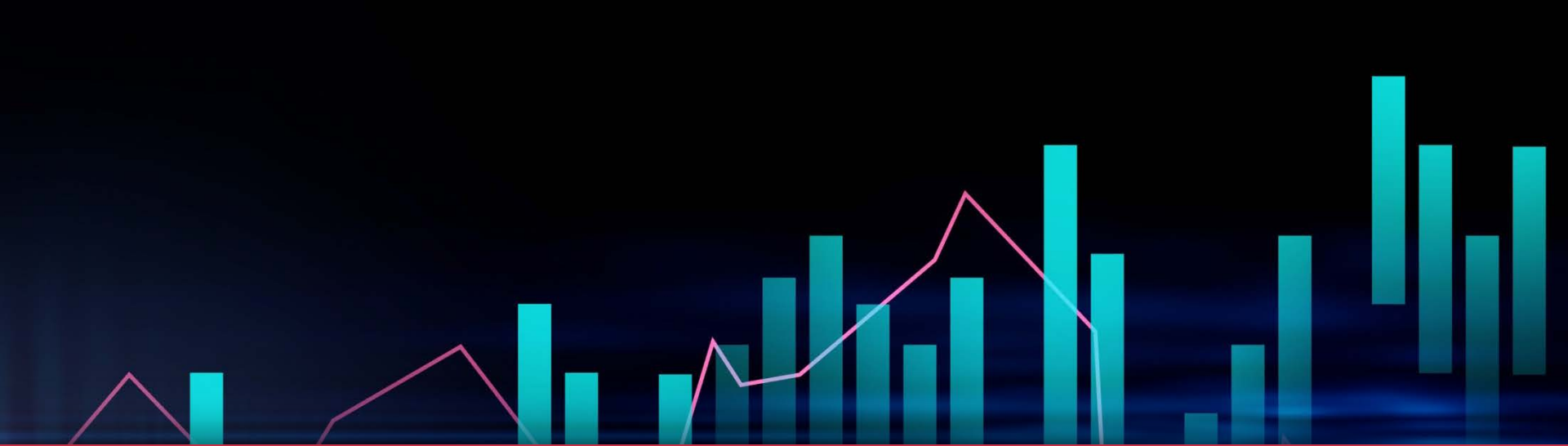
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AGENDA

- PRIIPs Regulation
- MiFID II - Product governance and investor protection
- Third country issues
- FCA market studies





PRIIPS REGULATION





WHAT IS A PRIIP?

PRIIPs	
Packaged Retail Investment Products	Insurance Based Investment Products
Investments where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor	Insurance products which offer a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations



PRINCIPAL OBLIGATIONS

- For the PRIIP Manufacturer
 - Publication of a Key Information Document (KID) on the website of the PRIIP Manufacturer before the PRIIP is made available to Retail Investors
 - Regular review and revision of the KID
- For the entity selling or advising on PRIIPs
 - Provision of KID in good time before investor is bound in relation to the PRIIP (i.e. execution of subscription agreements)





IMPACT ON FUNDS

- Products with an exposure to assets that are not directly purchased by the retail investor
 - Funds under the UCITS Directive
 - Funds under the AIFM Directive
 - Open-ended
 - Closed-Ended
 - Made available to an EEA retail investor
 - Any form of offer
 - To retail clients in terms of MiFID II
 - New or additional subscriptions





FORM OF THE KID

- The KID shall be
 - A stand-alone document (i.e. separate from marketing materials)
 - Accurate, fair, clear and not misleading
 - Short with a maximum of three sides (A4)
 - Written in the official or other accepted language of the Member State where the PRIIP is offered or sold
 - Translated into all official languages in which marketing documents are used



CONTENT OF THE KID

- The KID shall contain
 - Information on the PRIIP (such as type, purpose, target market)
 - Information on the PRIIP Manufacturer
 - Summary Risk Indicator, Performance Scenarios
 - Information on costs
 - Indication of the Recommended Holding Period (RHP) and termination rights
 - Information on possibilities to complain
 - Other relevant information
 - Specific rules for “multi-option PRIIPs”





APPLICATION

- From **1 January 2018** to all kinds of investment funds sold or offered in the EEA
- Grandfathering rules for investment funds until **31 December 2019**
 - UCITS
 - AIFs where national legislation applies the rules regarding UCITS KIIDs



ACTION POINTS FOR FUND MANAGERS

- Ensure compliance with PRIIPs Regulation
 - Preparation of KIDs is costly
 - Breaches may be sanctioned with substantial administrative fines
- Prevent subscriptions from EEA retail investors after 1 January 2018
 - Prior “opt-up” (HNWIs, municipalities)
 - Arrangements with distributors and placement agents
 - Amendment of marketing legend
 - Use of “intermediate vehicles”?



... AND WHAT THEY DO NOT HAVE TO DO

- Compulsory redemption of EEA retail investors
 - No further marketing activity after 1 January 2018
 - No “top-up” of the investment amount





Key Information Document

Purpose

This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.

Product

[Name of Product] **[Name of PRIIP manufacturer]** [where applicable ISIN or UPI] [website for PRIIP manufacturer] Call [telephone number] for more information [Competent Authority of the PRIIP Manufacturer in relation the KID] [date of production of the KID]

[Alert (where applicable) **You are about to purchase a product that is not simple and may be difficult to understand**]

What is this product?

Type

Objectives

Intended retail investor

[Insurance benefits and costs]

What are the risks and what could I get in return?

Risk Indicator

Description of the risk-reward profile
Summary Risk Indicator
SRI template and narratives as set out in Annex III, including on possible maximum loss: can I lose all invested capital? Do I bear the risk of incurring additional financial commitments or obligations? Is there capital protection against market risk?

Performance Scenarios

Performance Scenario templates and narratives as set out in Annex V including where applicable information on conditions for returns to retail investors or built-in performance caps, and statement that the tax legislation of the retail investor's home Member State may have an impact on actual payout

What happens if [PRIIP Manufacturer] is unable to pay out?

Information on whether there is a guarantee scheme, the name of the guarantor or investor compensation scheme operator, including the risks covered and those not covered.

What are the costs?

Costs over Time

Template and narratives according to Annex VII

Composition of Costs

Template and narratives according to Annex VII

Narratives on information to be included on other distribution costs

How long should I hold it and can I take money out early?

Recommended [required minimum] holding period: [x]

Information on whether one can disinvest before maturity, the conditions on this, and applicable fees and penalties if any. Information on the consequences of cashing-in before the end of the term or before the end of the recommended holding period

How can I complain?

Other relevant information



MIFID II – PRODUCT GOVERNANCE AND INVESTOR PROTECTION





MIFID II INVESTOR PROTECTION - SCOPE

Applicable

Indirectly relevant (maybe)

Not applicable

	Manufacturer <u>MiFID</u> licensed	Manufacturer <u>Non-MiFID</u> licensed	Distributor <u>MiFID</u> licensed
Product governance – manufacturer obligations		(But applies as guidance to UK UCITS ManCo & AIFM)	Ensure compliance by MiFID manufacturers
Product governance – distributor obligations	Provide information needed by MiFID distributors	Provide information needed by MiFID distributors	
Disclosure – nature of advice (if provided)			
Disclosure – costs and charges	Provide information needed by MiFID distributors	Provide information needed by MiFID distributors	
Inducements		Facilitate compliance by MiFID distributors	
Appropriateness / suitability	Provide information needed by MiFID distributors	Provide information needed by MiFID distributors	
Remuneration of sales personnel	Ensure MiFID distributors manage conflicts of interest	(May depend on type of non-MiFID firm)	
Product intervention powers			



PRODUCT GOVERNANCE

- Manufacturers
 - Product design
 - Testing
 - Reviews
- Distributors
 - Design of distribution strategy
 - Periodic reviews
 - Feedback to manufacturers
 - Remuneration requirements for sales staff / advisers





INDUCEMENT

- Inducements
 - For independent advisors & portfolio managers
 - Prohibition on acceptance and retention
 - Must not accept non-monetary benefits unless minor
 - For other MiFID firms
 - Quality enhancement test
 - Maintain internal record
 - Disclosure to client

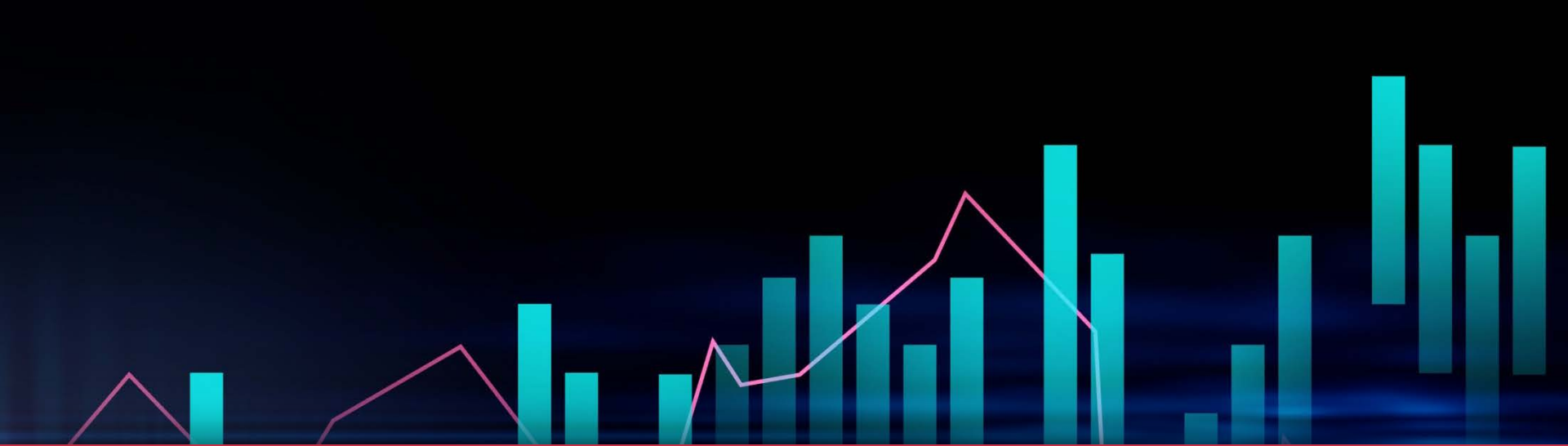




DISCLOSURE

- Costs and charges disclosure
 - Aggregate amount
 - Costs and charges of investment firm or other parties
 - Costs and charges of manufacturer / manager
 - Itemisations
 - To be provided in good time and annually
- Portfolio management – 10% notification





THIRD COUNTRY ISSUES





ISSUES FOR NON-EU FIRMS

- Access to the European Union
 - provision of MiFID II investment services to investors, e.g.
 - portfolio management
 - investment advice
 - distribution of funds
 - provision of MiFID II investment services to fund managers (outsourcing)
- Rules of Conduct
- Investment Research





ACCESS TO THE EU UNDER ART. 46 MIFIR

3 January 2018

Cross-Border

Client Categories:

- per se professional clients
- eligible counterparties

Registration with ESMA

- equivalence decision by EC
- TCF is licensed and effectively supervised
- cooperation agreement

Transitional period of 3 years

"Reverse Solicitation"



A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third country firms kept by ESMA in accordance with Article 47.



ACCESS TO THE EU UNDER ART. 39 MIFID II

3 January 2018

Branch

- Discretion of Member State

Client Categories:

- retail clients
- professional clients (section II to annex 2 of MiFID II)

Authorisation

- 6 months

Transitional period of 3 years

"Reverse Solicitation"



A Member State may require that a third-country firm intending to provide investment services or perform investment activities with or without any ancillary services to retail clients or to professional clients within the meaning of Section II of Annex II in its territory establish a branch in that Member State.



ACCESS TO GERMANY



Authorisation Requirements

- Market Approach under Banking Act
 - Not applicable in case of Art. 46 MiFIR
- Exemption by BaFin acc. § 2 (5) KWG
 - third country firm is sufficiently supervised in home state and no additional supervision is required in Germany
 - reasonable discretion by BaFin
- "Reverse Solicitation" Art. 46 (5.3) MiFIR
 - prohibition to market new products or services

Rules of Conduct

- Applicable to third country firms
- Exemption § 91 WpHG-2018
 - Not applicable in case of Art. 46 MiFIR
 - Requires exemption acc. § 2 (5) KWG-2018
 - Only covers exemptions applicable to branches of EU investment firms, i.e. other obligations under MiFID II will be applicable
- Applicability in case of "reverse solicitation"?



ISSUES FOR NON-EU FIRMS

- Status of AIFMD third-country passport
 - EU Commission maintaining that there's no direct link with Brexit; it is not 'off the table' but the EU Commission is soft-peddalling as they do not currently see a pressing need to pursue it. (Source: Ugo Bassi, Director, DG Financial Stability, EU Commission at EFAMA Conference 16 November 2017)

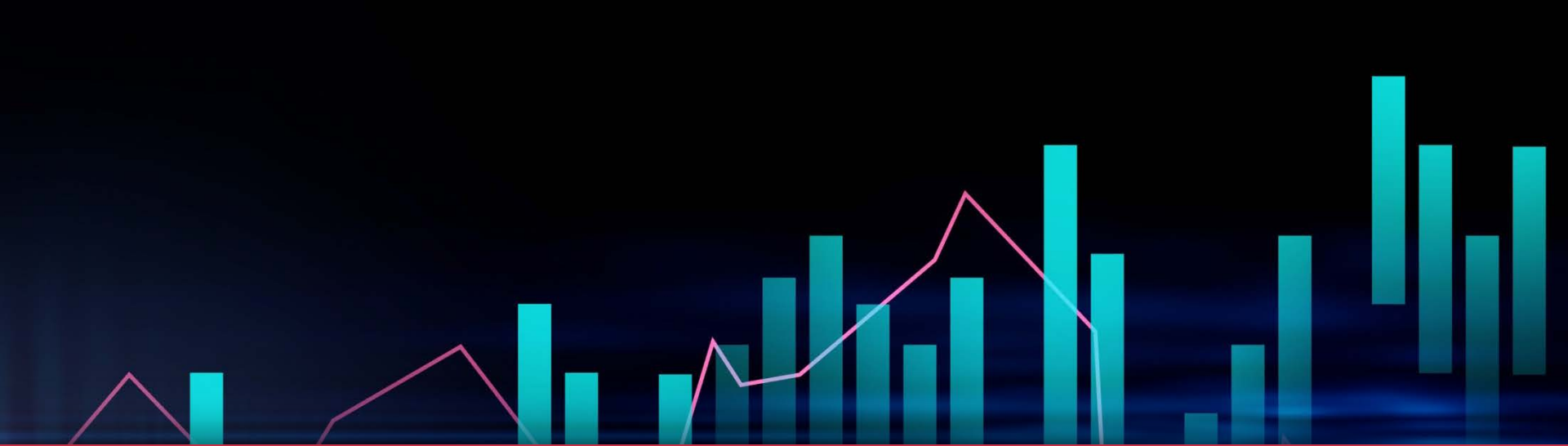




ESMA OPINIONS ON RELOCATION FROM UK TO EU (JULY 2017)

- no 'fast track' authorisation process
- 'meaningful presence' in EU including senior management proportionate to the complexity of the entity
- outsourced functions should not exceed EU functions by a "substantial margin"
- non-EU outsourced provider to perform functions 'in compliance with MiFID Framework'
- careful monitoring of potential misuse of reverse solicitation exemptions
- outsourcing arrangements to be 'appropriate' and 'objectively justified' and need to consider whether there are alternative providers in the EU



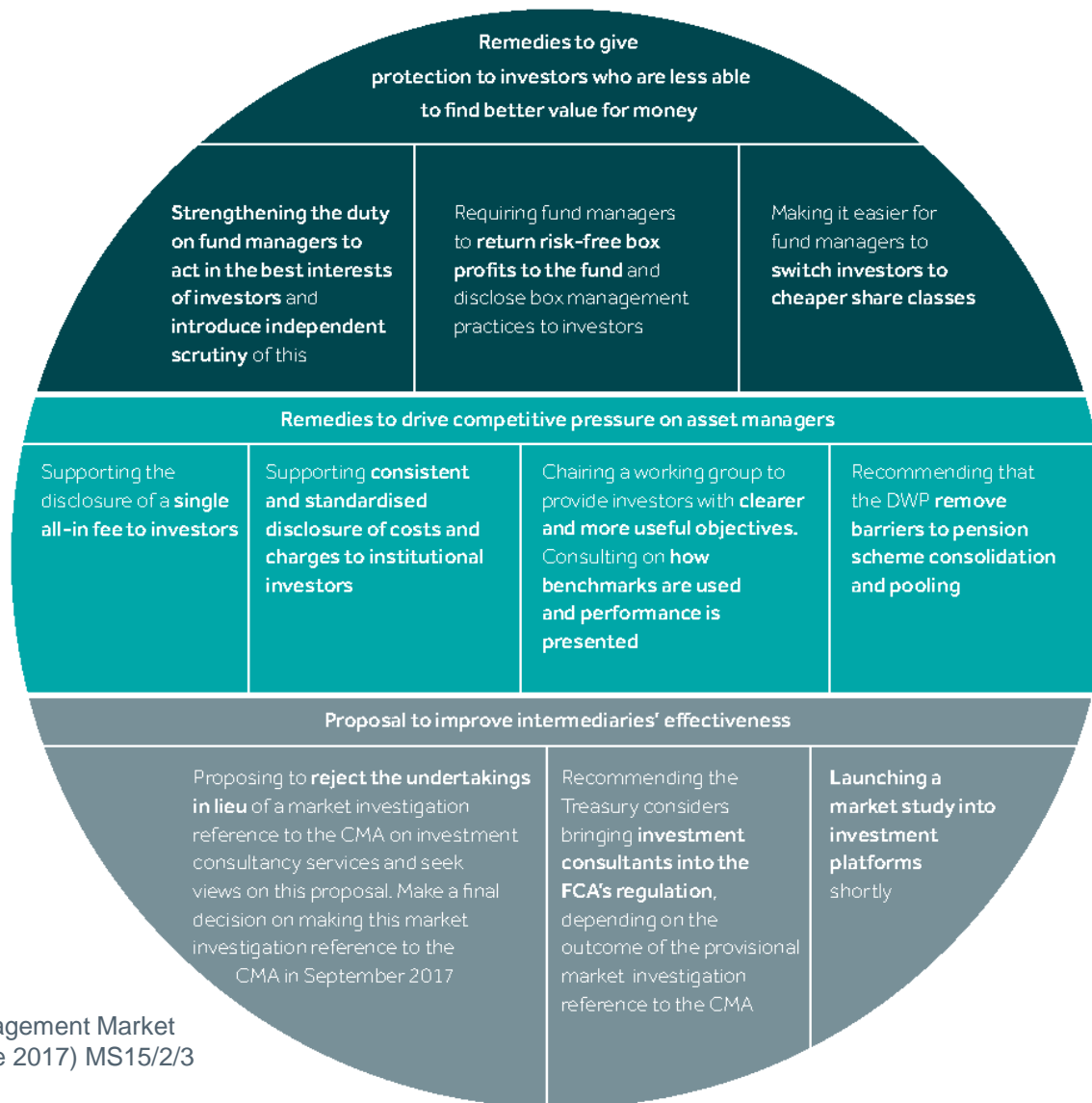


FCA MARKET STUDIES





FCA ASSET MANAGEMENT STUDY – REMEDIES (1)



Source: FCA Asset Management Market Study, Final Report (June 2017) MS15/2/3 (page 10)



FCA ASSET MANAGEMENT MARKET STUDY – REMEDIES (2)

- Remedies that may require fee changes:
 - Value for money obligation
 - Governance changes (CP17/18)
- Improved disclosure
 - Working group being convened
 - All-in-fee
- Switching retail investors to better value share classes (CP17/18)





FCA INVESTMENT PLATFORM MARKET STUDY - TIMELINE



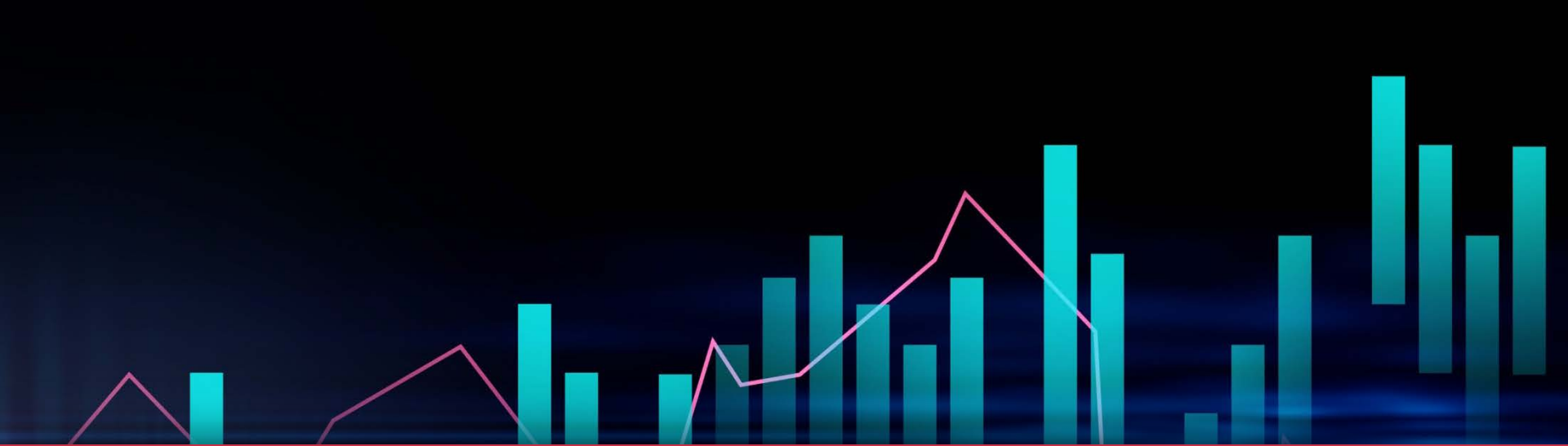
Source: FCA Investment Platforms Market Study,
Terms of Reference (July 2017) MS17/1/1



FCA INVESTMENT PLATFORM STUDY - TOPICS



Source: FCA Investment Platforms Market Study, Terms of Reference (July 2017) MS17/1/1 (page 6)



THANK YOU

