BDO FS ADVISORY - MANAGED COMPLIANCE SERVICES

REGULATORY UPDATE

OCTOBER 2023

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BDO MANAGED COMPLIANCE SERVICES CONTACT POINTS

BDO's Managed Compliance Services Regulatory Update summarises the key regulatory developments.

Our FS Advisory Services team support hundreds of clients with various regulatory and non-regulatory matters. Our breadth and depth of expertise gives us a broad perspective on the issues facing the financial services sector. We have aggregated insights from our in-house research, client base, the Regulators and professional bodies to support your regulatory considerations and activities.

We hope this pack provides value to you and your colleagues; please do share with us any feedback you may have for our future editions.

RICHARD BARNWELL
PARTNER

+44 (0)7717214818
Richard.barnwell@bdo.co.uk

OSITA EGBUBINE
ASSOCIATE DIRECTOR

+44 (0)78 23898762
Osita.egbubine@bdo.co.uk

LYNNE COOPER
MANAGER

+44 (0)78 31973556
Lynne.cooper@bdo.co.uk

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ECONOMIC CRIME UPDATE

Sanctions systems and controls: firms' response to increased sanctions due to Russia's invasion of Ukraine

On 06 September the Financial Conduct Authority ("FCA") set out key findings from its assessments of sanctions systems and controls in financial services firms. This included examples of good practice and areas for improvement, to help firms deliver even greater compliance with sanctions.

The unprecedented size, scale, and complexity of sanctions imposed by the UK Government and international partners since Russia's invasion of Ukraine, has further increased the FCA's focus on firms' sanctions systems and controls.

The FCA assessed sanctions controls for over 90 firms across a range of sectors including retail banking, wholesale banking, wealth management, insurance, electronic money, and payments, to ensure firms' financial sanctions systems and controls are:

- adequate and effective at addressing sanctions risk and
- appropriate to respond swiftly to changes in UK sanctions regimes.

This is relevant to all regulated firms and their Money Laundering Reporting Officers, Nominated Officers and teams working in financial crime compliance roles.

The FCA identified areas of good practice and where firms need to make improvements in, notable in the following areas:

- Governance and oversight
- Skills and resources
- Screening capabilities
- Customer Due Diligence (CDD) and Know Your Customer (KYC) procedures
- Reporting breaches to the FCA

Where the FCA identifies issues with firms' systems and controls in the above areas, feedback is being provided and, in some circumstances, regulatory tools used to remedy issues. Tools may include, but are not limited to, the use of independent skilled persons and interventions such as imposing business restrictions on firms or enforcement action where serious misconduct is identified.

What does this mean for Regulated Firms ?

Firms should continue to evaluate their approach to identifying and assessing the sanctions risks they are exposed to and actively strengthen their measures to prevent sanctions breaches and evasion, adapting to the evolving sanctions landscape and changing risk exposures.

The FCA identified a number of findings under five key themes, therefore focus should be given to the following elements of firms' Financial Crime frameworks:

- Governance and oversight
  - Ensuring there is regular monitoring and review of the effectiveness of sanctions through sufficient management information
  - Sanction reporting and policies are calibrated and aligned to the UK regime
- Skills and Resources
  - Ensuring proper resourcing of sanctions teams to avoid backlogs in dealing with sanction alerts and enable quick reactions to sanctions risks
- Screening Capabilities
  - Ensuring screening tools are appropriate for the UK sanctions regime and calibrated to the specific risks the firm faces.
- Customer Due Diligence (CDD) and Know Your Customer (KYC) procedures
  - Maintaining effective and high-quality CDD and KYC assessments and backlogs are addressed in a timely manner
- Reporting breaches to the FCA
  - Ensure that any identified breaches are reported in a timely manner and with accuracy to the FCA on potential sanction breaches

The FCA expects firms to consider its findings, evaluate their approach to sanctions risk and take actions where appropriate. As well as this, firms should engage with the FCA in testing and report any significant deficiencies identified.

FCA launches review into how firms are handling Politically Exposed Persons

On 05 September the FCA set out its approach on its review of the treatment of domestic Politically Exposed Persons (PEPs) by financial services firms following recent complaints of unfair treatment by a high-profile figure over the summer.

The FCA's review will look carefully at firms' arrangements for dealing with PEPs based in the UK. While the FCA cannot change the law in place for the PEPs regime, it will take prompt action if any significant deficiencies are identified in the arrangements of any of the firms assessed. The FCA has already requested policies and procedures from a number of firms and have reached out to UK politicians such as senior civil servants and MPs on their treatment by the financial services industry.

ECONOMIC CRIME UPDATE

The review will be completed and reported on by the end of June 2024.

What does this mean for Regulated Firms ?

Firms should be prepared for a possible review by the FCA on the following:

- Their approach to applying the definition of PEPs to individuals
- Whether there is proportionate risk assessments of UK PEPs, their family members and known close associates
- The application of enhanced due diligence and ongoing monitoring is proportionate and in line with the risk appetite
- Clear documentation of decisions to reject or close accounts for PEPs, their family members and known close associates
- Clear documentation of pertinent communications with PEP customers
- Keeping PEP controls under review to ensure they remain risk based and proportionate

HM Treasury: Frozen assets reporting – OFSI publishes 2023 reporting notice

On the 07 September, the Office of Financial Sanctions Implementation (OFSI) published its frozen assets reporting notice, which requests, firms that hold, or control funds or economic resources belonging to, owned, held, or controlled by a designated person, to provide a report to them with the details of these assets.

Most UK financial sanctions regimes are implemented through the Sanctions and Anti-Money Laundering Act 2018 (SAMLA). The SAMLA provides OFSI with the powers to request data as part of its remit for monitoring compliance with the legislation. As part of its monitoring oversight, OFSI undertakes this review to update its records to reflect any changes to frozen assets held by firms during the reporting period.

What does this mean for Regulated Firms?

Firms should ensure that:

- They identify all reportable assets, data held on individuals and entities with funds or economic resources frozen in the UK as well as those overseas (if they are subject to UK financial sanctions legislation) is up to date and easily accessible.
- They have a dedicated individual responsible for collating and sending in the return to avoid duplication of information.
- Data is accurate as at 29 September 2023 and is submitted by the 10 November 2023

The obligation to report as part of OFSIs annual review is separate to the mandatory obligation for firms to report to the OFSI on any sanction hits and breaches that they identify. All newly frozen funds or economic resources must be reported immediately.

For further detail, please refer to the Financial Sanctions notice.

WIND DOWN PLANNING

Overview

The Financial Conduct Authority (FCA) expects all regulated firms to have sound wind-down plans in place and prescribes a specific structure and content in line with the Wind-down Planning Guide (WDPG) added to the FCA Handbook in December 2016.

Firms must maintain processes and adequate financial resources to enable an orderly wind-down without causing undue economic harm to consumers or to the market. This requirement was already in place under previous prudential regimes but has become even more prominent with the introduction of the Investment Firms Prudential Regime (IFPR) since 1 January 2022 for MIFIDPRU investment firms in the UK, which includes wind-down planning as an essential component of the Internal Capital Adequacy and Risk Assessment (ICARA).

The requirement to establish a comprehensive and effective wind-down plan (WDP) now applies formally to all MIFIDPRU firms including smaller or new firms in scope of IFPR. While this process may be easier for firms transitioning from the ICAAP framework to the ICARA, the requirement still brings in some new considerations for all investment firms around embedding their wind-down plan into the new ICARA process.

Recent Regulatory Developments

The FCA has undertaken significant supervisory work in the last two years on wind-down planning in the form of:

- a thematic review focusing on Wind-down planning and liquidity across the industry, with results and feedback published in TR22/1;
- a Multi-firm review of the implementation of IFPR across the industry, which featured dedicated feedback on wind-down planning among other aspects of IFPR implementation;
- a Fast-Growing Firms review providing individual feedback to participating firms and requesting assurance over key elements including the adequacy of wind-down planning processes;
- targeted reviews of individual firms under the existing Supervisory Review and Evaluation Process (SREP) on various aspects of the implementation of the IFPR framework including recurring findings and recommendations on wind-down planning.

In addition, the FCA has participated in a number of forums with industry representatives, firms, and advisors to highlight the importance of these themes emerging from its reviews, with the outcome that wind-down planning is often inadequate and increases risk of harm in the event of failure

Purpose of WDP and Integration into the ICARA process

Wind-down planning stems from the broader concepts of risk management and financial resilience.

An orderly WDP is now an essential part of the ICARA process and wind-down costs are a key component for the calculation of the own funds threshold requirements (OFTR) and liquid assets threshold requirements (LATR) – which constitute regulatory threshold conditions that MIFIDPRU firms must meet at all times.

In some firms, wind-down costs may become the figure that determines the final OFTR/LATR. It is important for firms to be clear about the parallel capital and liquidity requirement, and the integration of wind-down planning into both calculations.

Within the ICARA process it is also important to understand the connection, logical flow and differences between recovery planning, reverse stress testing and wind-down planning.

- Recovery options – viable solutions to counter operational and financial strain and prevent/rectify a breach/deficit and bring the firm back in business
- Reverse stress testing – failure scenario showing key weaknesses based on multiple assumptions and events that could bring the firm to default
- Wind-down plan – planning all actions and resources needed from the decision to wind-down to completion after all recovery options have been exhausted

As a result, the WDP should not be an isolated process and must be joined up with all of the other constituent parts of the ICARA.

WDP Structure and documentation

The FCA articulates a recommended structure to a wind-down plan in WDPG. The following sections are essential:

- Governance – clear decision-making arrangements. These not only include the process underpinning a decision to wind-down, but also managing relevant processes such as setting an Early Warning Indicator (EWI), an internally-assessed wind-down trigger, as well as internally prescribed solutions such as ring-fencing an amount of cash to cover the additional cost to commence wind-down.

WIND DOWN PLANNING

- Scenarios - multiple assumptions leading to failure and a WD decision (e.g., critical financial strain, external events, group-wide causes)
- Operational analysis – step by step action plan including a list of the persons responsible and a realistic timeframe. A WDP must show an effective plan with clear tasks in a logical order for all staff responsible to execute their actions.
- Impact assessment – impact of wind-down on clients, counterparties, stakeholders, and the wider group. The assessment must be linked to the risk management framework and be consistent with the philosophy of assessing harms to clients, market and the firm.
- Assessment of risks posed to the wind-down - identify what could go wrong in the process and affect the timeline or prevent an orderly completion
- Resource assessment - identify essential human and financial resources needed.
- Cost analysis – a detailed breakdown of initial and total wind down costs. It is important to prepare a granular cashflow analysis and have a clear view of cash inflows and outflows during wind-down, exceptional costs, reduced revenue streams, actual balance of liquid assets available at any point.
- Communications plan – list of actions to inform staff, clients, counterparties and notify the FCA

Practical considerations for Investment Firms

- Every MIFIDPRU firm must fully document a solo wind-down plan with all supporting information and workings. The WDP must be included in the ICARA document (even within a group ICARA)
- The WDP must be 'operable' – it should feature realistic actions and timeframes, while key decisions must not be deferred to an ad hoc assessment in the future.
- Firms must develop wind-down triggers based on financial and operational metrics with a clear rationale using the analysis in reverse stress test scenarios.
- Firms must assume that WD starts at the point of breaching LATR or even the WD trigger, (i.e., a starting point of severe stress). While more conservative business models such as asset/wealth management may take a proportionately prudent approach, high-risk businesses should also consider 'unprecedented' or 'unforeseeable' events and greater complexity of their WD process.
- Firms must develop an operational plan including step-by-step actions that are detailed, practical and credible. There should be a clear allocation of actions and responsibilities to individuals involved in the process. This must consider the Senior management needed to completion (authorised signatories) but also key professionals (Finance, Risk, Legal) who need to remain employed to facilitate all wind-down actions.
- The timeline must take account of exceptional circumstances and required activities that may cause delays such as:
    - conversion/liquidation of assets
    - business transfer
    - CASS resolution
    - funding gaps and unexpected outflows
    - practical challenges
    - cancellation of permissions by the FCA.
- For firms in a Group, there are significant considerations to be made around operational and financial dependencies, intra-group loans/liabilities, outsourcing arrangements and shared governance processes between entities where one is winding down.

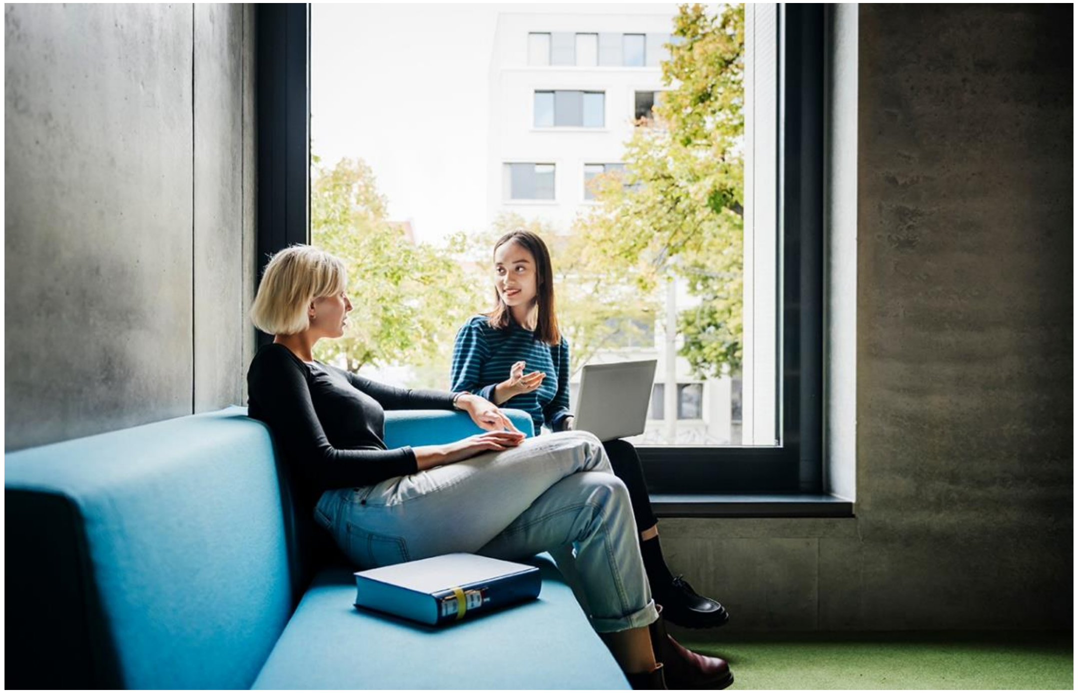
  Scenarios must consider:

    - Firm failure – assess impact on group and survival of other group members
    - Group/parent failure – assess impact/repercussions on the MIFIDPRU firm.

  Limited access to group/parent information often poses a challenge to modelling a credible wind-down scenario and a clear assessment of group-wide implications.
- Firms must be able to demonstrate adequacy of financial resources during a wind-down. This means re-assessing compliance with OFTR and LATR by, e.g., recalculating FOR and K-factors based on refreshed financials, and diminishing volumes of business throughout the WD period.

WIND DOWN PLANNING

- Firms may want to consider testing their wind-down plans by undertaking simulated exercises and seeking assurance via internal audit or external consultants



WHAT SHOULD COMPLIANCE TEAMS THINK ABOUT?

The increasing regulatory scrutiny over wind-down planning is apparent from the FCA's thematic work and their recommendations to firms undergoing a SREP review. Firms are often required to produce evidence of assurance reports, to demonstrate that the wind-down planning processes are effective to execute an orderly exit.

Compliance teams should consider the following:

1. Plan regular reviews of the ICARA to ensure that the new prudential framework is fully embedded, including the integration of wind-down planning, to ensure that regulatory standards and FCA expectations are met;
2. Schedule standalone bespoke reviews of the firm's WDP considering the recent regulatory focus in this area, to provide assurance that the detail and rigour applied matches the suggested structure and content in the WDPG sourcebook;
3. Where group relationships are significant, assess how a MIFIDPRU firm manages the intra-group dependencies in a wind-down scenario in terms of financial, operational, and governance arrangements;
4. Assess the completeness and effectiveness of controls in a firm's prudential and risk management environment, to validate the capital and liquidity calculations, including under a wind-down analysis;
5. Review the wind-down specific governance arrangements and senior management involvement in the design, planning and decision-making process;
6. Assess the awareness, technical knowledge and interpretation of key processes such as risk management, stress testing, recovery actions and wind-down planning as integral parts of the ICARA framework; and
7. Test the credibility, effectiveness, proportionality and operability of wind-down plans.

TNFD RECOMMENDATIONS – WHAT DOES IT MEAN FOR THE FINANCIAL SERVICES SECTOR?

The publication of the Taskforce on Nature-related Financial Disclosures ("TNFD") Final Guidance for financial institutions on how to implement the TNFD recommendations will require that banks, assets managers and owners, insurers and other financial services providers, consider the extent to which they will adhere to this initiative and when.

What is the TNFD Framework?

The TNFD is a framework of 14 recommendations for how to report on nature-related risks and opportunities. The objective behind TNFD reporting is to build data and information that can be used for decision making and supporting financial flows towards biodiversity friendly projects.

Firms will find a familiar format in the TNFD recommendations as they were designed to be consistent with the language, structure, and approach of the Task Force on Climate related Financial Disclosures (TCFD) recommendations and around the four disclosure pillars: Governance, Strategy, Risk Management and Metrics and Targets. This structure will be useful as firms may wish to consolidate both the TNFD and the TCFD within one comprehensive report.

In terms of metrics, however, there is an additional level of complexity as firms will need to consider assessment and disclosure metrics. Types of disclosure metrics include core global, core sector and additional metrics and should be reported on a 'comply or explain basis for those choosing to engage with the Framework voluntarily.

What are the implications for the financial services sector?

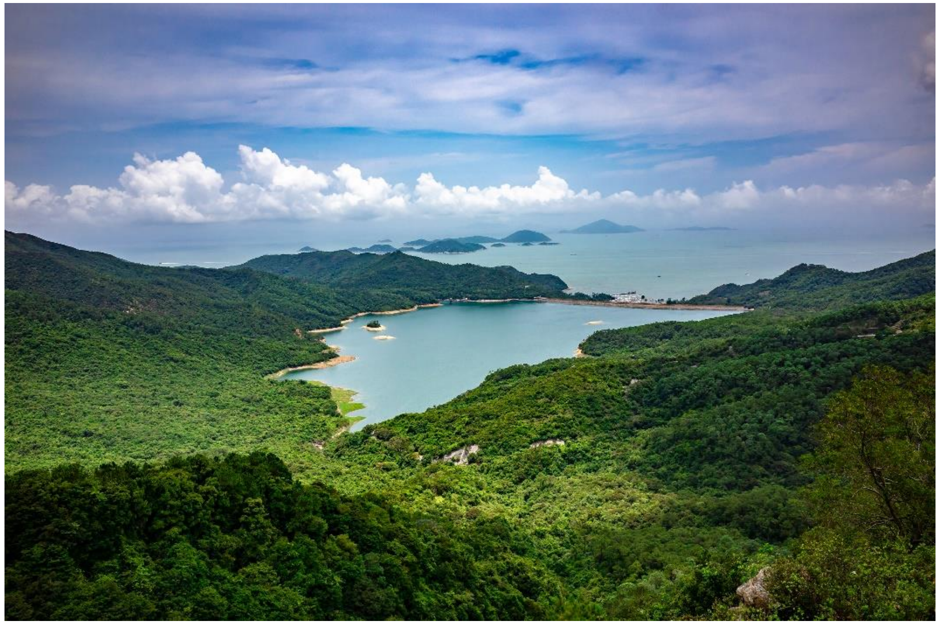
ESG expectations continue to evolve. Whether you decide to engage with TNFD now, or later, will be a business decision. In this context, early consideration may give firms a competitive advantage relative to peers. However, some firms may face challenges engaging with the framework in terms of resources, capacity, and costs.

Firms engaging early will need to review and update their ESG strategies and plans to be TNFD aligned. Other actions that firms should consider include:

- Developing an implementation framework
- Identifying what reporting is going to look like
- Assessing the resources, roles and skills that will be required within the second and third lines of defence assurance that will be required
- Including an assurance review of the design of the implementation framework in the Internal Audit Plan

What should compliance teams think about?

TNFD is currently a voluntary framework. However, firms can expect to be required to report on nature and biodiversity once the UK ratifies and incorporates the International Sustainability Standards Board (ISSB) Standards in UK regulations as it had been announced that TNFD Recommendations will inform the ISSB standards as they continue to develop. Compliance will, therefore, need to check that the audit plan sufficiently covers the firm's data and reporting capabilities to support incoming disclosure expectations ahead of them becoming requirements.



CYBER RISK

Cyber Risk continues to be high on the agenda of Audit Committees and has, again, been reported as the top risk in the latest CIIA annual Risk in Focus survey. The consequences of a cyber-attack for organisations could be highly significant in terms of disruption to operations, inflicting reputational damage, theft or destruction of valuable or sensitive data, as well as the cost of fines by data regulators (and potentially ransoms paid to the hackers holding your data as hostage).

Weaponised cyber attacks

In 2022, the UK National Cyber Security Centre (NCSC) urged organisations to "bolster their cyber security resilience in response to the malicious cyber incidents in and around Ukraine" and published updated guidance. Reference was made to the destructive wiper malware which is being deployed against organisations in Ukraine and highlighting the risk that further attacks are likely to continue and may inadvertently spill over into organisations in other countries.

Emerging technologies & regulation

In the latest Risk in Focus, CAEs state that digital disruption, new technology and artificial intelligence (AI) will be their 4th biggest risk by 2027. AI offers organisations many new opportunities, but it can add complexity and new risk exposures. There are instances of AI being used to aid cyber-attacks. Combined with the broader "attack surfaces" created by cloud and mobile technologies, and increasing integration with business partners and suppliers, organisations will need to continue investing in their security capabilities.

New mandatory requirements are being set in EU legislation such as the Digital Operational Resilience Act (DORA), the NIS2 Directive, Data Act and Cyber Resilience Act.

Protect your organisation

The NCSC guidance highlights the following good practices:

- **Patching is an essential protection and needs to be kept up to date**. Where attackers are seeking to exploit a known security vulnerability they move fast, and it is organisations with ineffective patching programmes that are most vulnerable.
- **The organisation needs to understand its Internet-facing footprint**. Vulnerability scans / penetration testing of the whole internet footprint need to be performed regularly to ensure that everything that needs to be patched has been covered. Know your "attack surface".
- **Access controls need to be checked carefully**. Extra focus should be applied to privileged or administrator access rights. Where possible multi-factor authentication (MFA) should be used and checked to confirm it is configured correctly. Third party access needs to be checked thoroughly, controlled and unnecessary access removed.
- **Anti-virus software and firewalls are important defences**. Antivirus should be active on all systems and updated correctly. Firewall rules must operate effectively.
- **Access to its backups is vital for an organisation to be able to recover its systems.** Backup routines must be running correctly and any backup failures addressed. The ability to restore from backups should be regularly tested.
- **Mandatory training in cyber security needs to be provided regularly**. Unless reminded, individuals can forget the level of threat, the importance of staying alert and reporting phishing or other suspected attempts at intrusion promptly.
- **Logs must be configured and monitored**, leveraging Intrusion Detection (IDS), Intrusion Prevention (IPS) and Security Information Event Management (SIEM) systems to examine and monitor the events taking place in the network, including detection of potential threats and security policy violations.
- **Assume systems will be affected by a cyber-attack at some point**. Incident response plans need to be checked and tested so that the organisation can deal with an incident effectively. Playbooks should be established detailing the response to specific incident types.
- **The incident response team** also needs to be considered carefully so that individuals with the appropriate skills and authority to take meaningful decisions are available at very short notice, including third party dependencies and on-call arrangements with specialist suppliers.

► What should Compliance teams be thinking about?

Critical information assets ("crown jewels") need to be well protected with defensive, monitoring and recovery controls strengthened as far as possible. Compliance should be looking at its audit and monitoring plan once again to determine whether the assurance scheduled will be sufficient to meet the needs of the organisation during this period of heightened risk, rapidly emerging technologies and new regulations.

Compliance should also invest further in developing its skills and understanding of this important risk area so that it can engage across the three lines, including with its colleagues in Risk and IT security, and better explain the issues to the Compliance Committee. Technical expertise on cyber is often sought from a co-source partner. Where this is the case, the compliance team should look to work more closely with the partner team to build skills and maximise opportunities for knowledge sharing.

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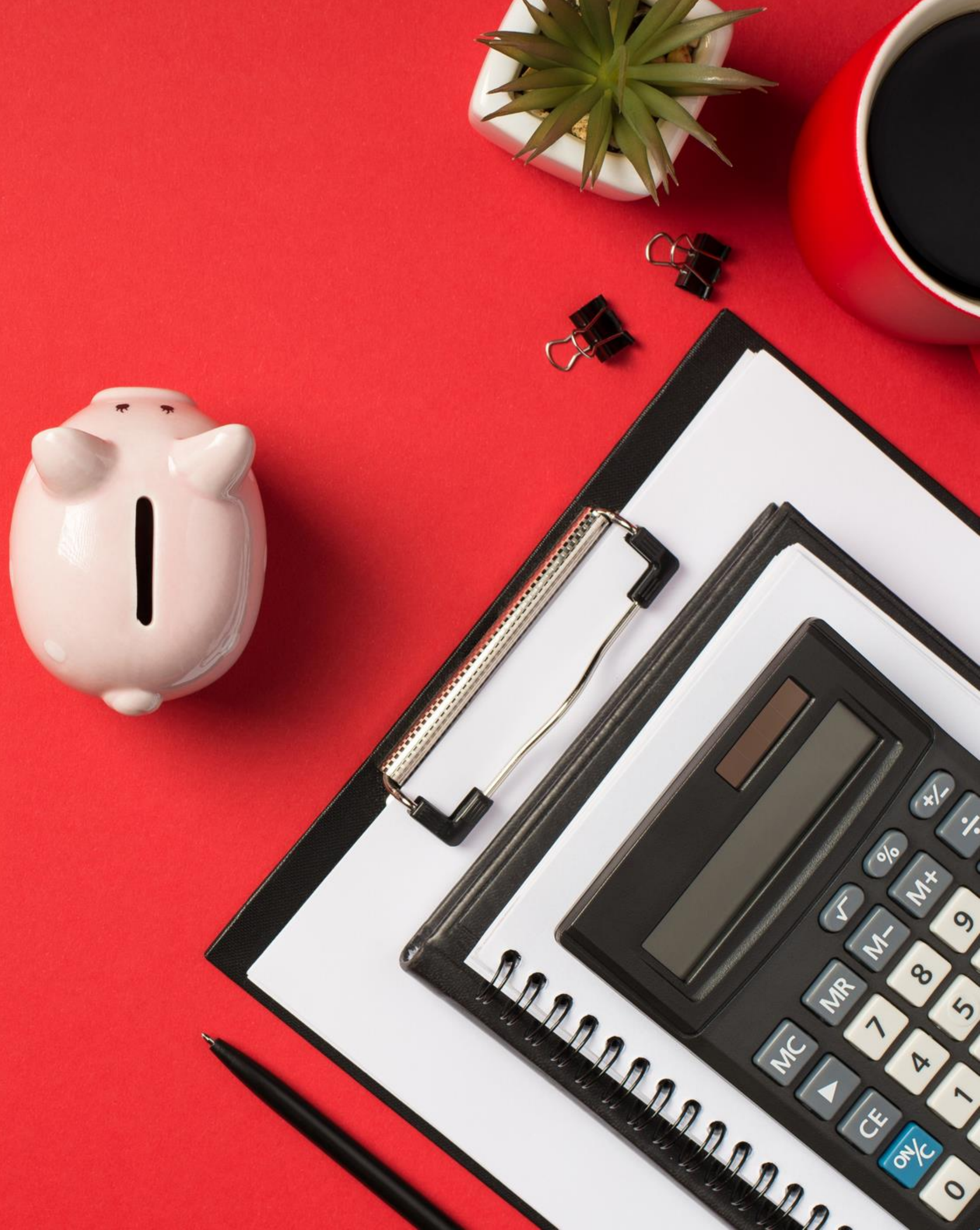
SUMMARY OF REGULATORY PUBLICATIONS



REGULATORY ROUND UP FOR OCTOBER 2023

General

Diversity and inclusion in the financial sector

On 25 September 2023, the FCA published their Consultation Paper (CP23/20) on 'diversity and inclusion in the financial sector – working together to drive change'.

What firms are impacted?
This CP will be of interest to all firms authorised by the FCA with Part 4A permissions.

Summary of the regulatory update

The FCA considers that greater levels of diversity and inclusion can improve outcomes for markets and consumers. The FCA has been clear that diversity and inclusion are regulatory concerns, however, despite progress, research shows that there is more to be done to improve diversity and inclusion in the financial sector.

In the consultation, the FCA sets out proposals to:
- Better integrate non-financial misconduct (NFM) considerations into staff fitness and propriety assessments, Conduct Rules and the suitability criteria for firms to operate in the financial sector (Threshold Conditions).

The FCA also propose to require certain firms to:
- Report their average number of employees to the FCA on an annual basis
- Collect, report and disclose certain D&I data
- Establish, implement and maintain a D&I strategy
- Determine and set appropriate diversity targets
- Recognise a lack of D&I as a non-financial risk

When does it take effect?
The FCA expects to finalise its proposals in a policy statement (PS) in 2024. The rules will then take effect 12 months from the publication of the PS.

What should firms be thinking about?

Firms should be thinking about how the proposed changes will affect their business and, where appropriate, should provide a response to the CP.
To help firms think more about how they should consider D&I within their businesses, and to explain the proposed changes outlined in this CP, BDO will be holding a webinar on 19 October with ex FCA Senior Adviser Georgina Philippou. Please register for the event HERE. Additionally, the FCA will hold a webinar on 30 October, which you can register for HERE.

A full summary of the Consultation Paper will be available from BDO, following the webinar.

REGULATORY ROUND UP FOR OCTOBER 2023

General
Portfolio Letter - Corporate Finance
On 28 September 2023 the FCA issued a Dear CEO letter to Corporate Finance Firms setting out their supervision strategy.
What firms are impacted? Corporate Finance Firms (CFFs)
Summary of the regulatory update The Dear CEO letter outlines the harms to consumers and markets the FCA thinks are most likely to arise from the business models of CFFs. It also sets out the FCA's strategy to address these harms and their expectations of CFFs. Taking the various types of business models into consideration, the FCA has set out the following supervisory priorities for CFFs: 1. Client categorisation - CFFs must have effective systems and controls to ensure clients and corporate finance contacts are appropriately categorised to ensure the right level of protection is provided. The FCA is particularly concerned about the opt-up process for elective professionals. 2. The Consumer Duty - firms should carefully consider if the Duty is applicable to the firm's activities and ensure it is correctly applied, particularly where there is a distribution chain. 3. Regulatory Permissions - the FCA expect CFFs to use their regulatory permissions to advance a legitimate business purpose. Firms should not hold permissions for no clear business purpose or in order to favourably influence public perceptions of their unregulated business. 4. Market Abuse - Firms must ensure market abuse controls are tailored to their individual business models. CFFs must have robust prevention cultures and systems and controls to discharge their obligations under UK MAR.
When does it take effect? Immediately. The letter sets out the FCA's areas of supervisory focus. Impacted firms should review these areas in detail and make necessary changes.
What should firms be thinking about? 1. CFFs should consider the Dear CEO letter and should inform the FCA if they consider the firm does not meet the FCA's requirements. 2. As per FCA expectations, Firms need to have discussed with directors and the Board the contents of the letter and to have agreed appropriate actions and next steps.

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General
Portfolio Letter - Platforms
On 28 September 2023 the FCA issued a Dear CEO letter to Platform Service Providers setting out their supervision strategy.
What firms are impacted? Platform Service Providers (PSPs)
Summary of the regulatory update The Dear CEO letter outlines the FCA's view of the key harms in this sector, its expectations of PSPs and a summary of the work it intends to do to mitigate the harms it sees arising from this sector. Key harms identified in the sector include: 1. Fees and charges: The FCA wants to see firms ensure that these provide fair value and are clear to customers. This also includes how firms treat the interests accrued on customers' cash balances 2. Cyber-risks: Firms in the sector do not have sufficiently robust systems and controls to protect customers from loss or personal data breaches 3. Customer transfer: The FCA is concerned about the length of time it still takes some customers to transfer their investments and savings between platforms 4. Asset Due Diligence: the FCA is still concerned about the failure of some PSPs to conduct proper due diligence on non-standard assets. This has led to customers holding unsuitable high-risk investments 5. Operational resilience: Some PSPs still do not have robust operational resilience systems and controls to prevent customers losing access to platform services
When does it take effect? Immediately. The letter sets out the FCA's areas of supervisory focus. Impacted firms should review these areas in detail and make necessary changes.
What should firms be thinking about? PSPs should consider the Dear CEO letter, ensure these are discussed at Board level and make necessary changes to ensure the identified harms are mitigated in their operations.

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Portfolio Letter – Funeral Plans

The FCA has issued a Dear CEO letter to firms operating in the funeral plans sector, to set out their priorities for 2023 – 2025.

What firms are impacted?

Firms operating in the funeral plans sector.

Summary of the regulatory update

Putting consumer' needs first: Embedding the Consumer Duty
The FCA is concerned that Boards are not taking enough action to ensure the positive outcomes for consumers which are essential for full delivery of the Consumer Duty are met. The FCA plans to organise Roundtables for the industry over the coming months to help firms understand their expectations.

Putting customers' needs first: Consumer Support
Complaints data is a good indicator of whether or not consumers get the support they need from firms. Trends across this market show an emerging risk of harm from the impact of the wider economic environment on firm's profitability. A lack of customer support could occur where firms focus on making profits and cutting costs at the expense of maintaining good customer outcomes.

Putting consumers' needs first: Supporting consumers in financial difficulty
Many plan-holders are vulnerable and so are more likely to be affected by the rising cost of living. Firms should support customers where their circumstances change e.g., by supporting customers making instalment payments by considering flexibility and ensuring any cancellation charges are proportionate.

Improving Oversight of Appointed Representatives (ARs)
Where firms have ARs and IARs, they should ensure they are operating according to the new rules regarding the oversight of ARs and also provide the relevant data to the FCA on their ARs and IARs.

Minimising the impact of operational disruption: Operational Resilience
FCA data shows incidences across the market of a lack of operational resilience within firms, to the harm of customers and the wider market. A particular area of concern is the level of oversight and contingency planning on outsourced services. Firms should ensure they have credible plans in place to mitigate and recover from risks and take remedial action where necessary.

Preparing financial services for the future: Regulatory Reporting
Firms should ensure the data submitted is of good quality, to ensure accurate information is provided to the FCA. The FCA will hold Roundtable sessions over the coming months to help firms understand their expectations, best practices and measures to take to improve data accuracy and quality.

Dealing with problem firms: Unauthorised Business
There have been cases of ARs holding undeclared legacy funeral plan books without appropriate permissions and therefore conducting unauthorised business. This poses significant harm to consumers who are not covered by the regulations. Principal firms should therefore ensure they have adequate oversight of their ARs, to be able to identify unauthorised activity taking place.

What should firms be thinking about?
Firms should ensure they take all necessary actions to ensure they are able to meet FCA requirements, including the obligations and expectations set out in the Dear CEO letter.

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General
Financial Promotions for high-risk investments
The FCA has outlined the findings from its review of how firms offering restricted mass market investments (RMMIs) have complied with new rules on the customer journey.
What firms are impacted? Firms promoting RMMIs or non-mass market investments (NMMIs) to retail customers; firms intending to promote relevant cryptoassets to UK retail consumers when the financial promotion rules for cryptoassets come into force.
Summary of the regulatory update In August 2022, the FCA published their rules for strengthening financial promotions (PS22/10) which outlined new requirements for firms promoting high-risk investments (HRIs) to retail clients. The initial rules, requiring risk warnings on financial promotions, went live on 1 December 2022 and the remaining rules on 1 February 2023. Following a review of the risk warnings within the P2P and Investment Based Crowdfunding firms in December 2022, the FCA found the level of competence was far below the standard expected. As a result, the FCA has looked more deeply at how firms had implemented the remaining rules from 1 February 2023. The review looked at the following: • Incentives to invest • Cooling-off period • Risk warnings • Categorisation • Appropriateness Overall, there were examples of both good and poor practice. The review provides an overview of the findings of each core area of the onboarding journey and provides examples of good and poor practice. As a result of the findings, the FCA has given individual feedback to all the firms involved in the review about the areas they need to improve.
When does it take effect? ***N/A***
What should firms be thinking about? Firms should carry out a full financial promotions review to ensure they are meeting the FCA's expectations and consider any changes they may need to make to improve customer outcomes. Firms should review their onboarding process, to ensure they are meeting the rules and should consider the examples of good practice highlighted in this review.

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General
New screening checks required to approve financial adverts
To help people to make informed decisions to save, invest and borrow with confidence, the FCA is introducing new screening checks for firms that approve financial adverts.
What firms are impacted? Firms approving financial marketing for unregulated firms.
Summary of the regulatory update All authorised persons wanting to approve financial promotions will need to apply to the FCA for permission to do so, subject to certain exemptions. Firms approving financial marketing for unregulated firms will have to demonstrate they have the necessary skills and expertise to approve adverts. Those signing them off must understand the product, to ensure the promotion is accurate and fairly balances risk and reward. Previously, any firm authorised by the FCA could approve promotions on behalf of firms unregulated by the FCA. This has caused harm, with firms approving adverts for products they don't understand, as well as adverts that are unclear, unfair or misleading. Changes are driven by FCA and UK government concerns that financial promotions were being approved that did not sufficiently protect consumers in this area. The FCA said the new gateway will enable consumers to make informed investment decisions. Firms approving financial promotions will be required to report regularly on what they sign off and on any concerning adverts they cancel approval for, which should help the FCA to move faster to crack down on rogue adverts.
When does it take effect? Firms able to submit applications for permission from 6 November 2023 until 6 February 2024. Legislation will come fully into force on 7 February 2024.
What should firms be thinking about? 1. Any firms seeking to approve financial promotions for unregulated firms should prepare their application to the FCA and ensure it is submitted within the timeframe allocated, to allow them to continue approving adverts. 2. Firms applying after the February deadline need to consider that they will be unable to approve adverts before their application is determined. 3. Any firms looking to enter the market will be able to apply as part of the normal application process for authorisation.

REGULATORY ROUND UP FOR OCTOBER 2023

General

Multi-occupancy leasehold insurance

On September 29, 2023, the FCA published its Policy Statement setting out the rule changes to address harms identified in the multi-occupancy building insurance market.

What firms are impacted?
Insurers and insurance brokers operating in the multi-occupancy buildings insurance market. This Policy Statement will also be of interest to industry groups and trade bodies, unregulated firms involved with multi-occupancy buildings, such as property managing agents, freeholder owners who are landlords of multi-occupancy buildings and leaseholder representative groups and individual leaseholders.

Summary of the regulatory update
The FCA is introducing new rights and protections for leaseholders to improve the transparency of the multi-occupancy leasehold buildings insurance market.

The rule changes will explicitly require insurance firms to act in leaseholders' best interests and bar firms from recommending a policy based on commission or remuneration levels. Insurers and brokers will also need to provide more information about insurance policies to leaseholders, including details of any commission paid.

In September 2022, the FCA's report on multi-occupancy buildings insurance found that leasehold buildings insurance premiums had risen significantly since the Grenfell tragedy, with leaseholders facing substantially higher costs. The report and multi firm review found significant issues in the multi-occupancy building insurance market, which were leading to poor outcomes for leaseholders. The FCA's new rules have been driven by the policy proposals set out in its previous report and the consultation paper which was published in April 2023 (CP 23/8) to address issues with transparency, product design and remuneration practices.

The new rules will:
- Increase transparency for leaseholders. This will make it easier for them to identify and challenge poor practices, which will incentivise firms to deliver better outcomes.
- Require firms to make sure their:
    - Products are consistent with the needs and interests of leaseholders and other policy stakeholders
    - Products are priced in a way that provides fair value
    - Remuneration practices do not lead to poor outcomes.

When does it take effect?
The new rules will come into force on 31 December 2023.

What should firms be thinking about?
1. Impacted firms should review the final rules and consider the changes they will need to implement ahead of the 31st December.
2. Firms should consider any documentation which needs to be updated to include the new requirements, including how information will be provided to leaseholders regarding any commission paid.

REGULATORY ROUND UP FOR OCTOBER 2023

General

Value in General Insurance

The FCA has published its first full year of general insurance value measures data, for January to December 2022.

What firms are impacted?
Insurers and Insurance Brokers operating in the General Insurance market.

Summary of the regulatory update

General insurance is an important product for consumers and provides essential protection to consumers. The FCA's previous publication justified concerns from the regulator in this sector as the data showed individual firms, or products, were not providing fair value. Despite previous concerns being raised, the new data suggests that there are still several examples where individual firms, or products do not appear to be providing fair value. As a result of this, the FCA has written to GAP insurers informing them that they do not think they are likely to be meeting the PROD rules or providing fair value to customers. These firms have been given a month to propose how they will address the position.

While this action is on GAP insurance, many of the other concerns observed by the FCA are related to wider issues and so firms' Boards should take note of this action and make sure they are meeting their product governance requirements across all retail products.

The publication covers the following areas:
1. The FCA's concerns
2. What the data shows
3. Explaining the data and data quality
4. Why the FCA are publishing
5. What the data includes
6. Data tables

When does it take effect?
N/A

What should firms be thinking about?
1. Firms should revisit the PROD rules and should consider updating their product governance framework to ensure they are meeting the rules.
2. Firms should consider price and fair value in light of the recent implementation of the Consumer Duty.
3. Now that firms are beginning to fully embed the Consumer Duty, they should review the MI gathered since the implementation date, to ensure they are delivering fair value.
4. Where concerns are identified, firms should revisit their price and fair value assessments.

REGULATORY ROUND UP FOR OCTOBER 2023

General
Insurance Distribution Directive (IDD)
The FCA is bringing retained EU law into the Handbook to maintain the existing regulatory requirements. As such, the FCA is seeking feedback on its proposals for transferring part of the regulatory requirements on insurance firms from current legislation into the FCA's rules. On 5 September 2023, the FCA published its Consultation Paper CP23/19 – Future Regulatory Framework – The Insurance Distribution Directive.
What firms are impacted? All firms involved in insurance activities.
Summary of the regulatory update The Treasury have announced their plan to repeal Insurance Distribution Directive (IDD) delegation. As part of HM Treasury's (HMT) Future Regulatory Framework (FRF) Review, now called the Smarter Regulatory Framework, HMT have announced a plan to repeal IDD delegated acts, with an intention that the requirements of the IDD Insurance-Based Investment Products (IBIPs) Regulation, IDD Product Oversight and Governance (POG) Regulation and Insurance Product Information Document (IPID) Regulation should instead be included within the FCA Handbook. The delegated acts are: 1. Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information document ('IPID Regulation') 2. Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017, with regard to product oversight and governance requirements for insurance undertakings and insurance distributors ('IDD POG Regulation') 3. Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products ('IDD IBIPs Regulation') 4. Commission delegated regulation (EU) 2019/1935 of 13 May 2019 amending Directive (EU) 2016/97 of the European Parliament and of the Council with regard to regulatory technical standards adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance and reinsurance intermediaries ('IDD PII Regulation') The FCA are consulting on changes to various sourcebooks intended to replace the provisions of the retained EU law being repealed. The FCA want feedback on their proposals for transferring part of the regulatory requirements on insurance firms from current legislation into their rules.
When does it take effect? The consultation closes 09 October 2023. Final rules are expected to be published in 2024.
What should firms be thinking about? Impacted firms should consider the proposed changes and provide feedback on the proposals by 9 October 2023.

REGULATORY ROUND UP FOR OCTOBER 2023

General

Appointed Representatives (AR) reporting requirements reminder

The FCA has issued a reminder to principal firms regarding the data that must be reported about their appointed representatives (ARs)

What firms are impacted?
Principal Firms and firms considering becoming a principal firm.

Summary of the regulatory update

The FCA's rules require principal firms to send regular data about their ARs, which the FCA use to inform where they target their efforts and to ensure they focus on the highest risk principals, ARs and Introducer Appointed Representatives (IARs).

Principal firms need to send the following:

- AR complaints and revenue: annual report using RegData REP025 form. Principal firms will see this return appear on their RegData reporting schedule by 1 December 2023. The data must be submitted within 60 days of the Principal firm's Accounting Reference Date (ARD).
- Firm Details Attestation: Principal firms must check, amend and confirm their own details and the details of any ARs and IARs within 60 days of their ARD.
- New ARs: the FCA must be informed if the principal firm recruits a new AR at least 30 days before the appointment starts. The FCA must also be informed of any changes to the AR's activities at least 10 days before they take effect.

When does it take effect?
Already in effect.

What should firms be thinking about?

1. Principal firms should ensure they regularly check their RegData reporting schedule. If the REP025 form does not appear on your schedule by 1 December 2023, you should contact the FCA.
2. Prior to appointing an AR, principal firms must ensure all required information- such as the reason for appointing the AR, the nature of the regulated activities to be conducted, whether the AR will provide services to retail clients, etc.- is available before sending the notification to the FCA.

REGULATORY ROUND UP FOR OCTOBER 2023

General

Improving the Appointed Representatives Regime through greater use of data

The FCA have published data in respect of data requests sent to principal firms and authorisation information collected from firms. It also outlines how the FCA is improving the Appointed Representatives' (AR) regime.

What firms are impacted?
Principal firms and firms considering becoming a principal firm.

Summary of the regulatory update

As part of its commitment to improve the AR regime, in December 2022, the FCA introduced new rules and guidance to improve how principal firms oversee their ARs. As part of the new rules, principals must give the FCA more information about their ARs.

The purpose of the publication is to allow the FCA to:

- Share analysis of the data they have collected on the AR regime
- Share how this data has improved the FCA's understanding of the regime, its risks and benefits
- Explain how the data is informing greater scrutiny of authorisation applications and the FCA's more assertive supervisory approach (including examples)
- Remind principals of the FCA's enhanced expectations

Areas of concern highlighted by the FCA include:

- Principals ensuring that their IARs are strictly limited in the range of activities they can perform in line with the rules
- Principals having insufficient PII cover for their activities and the activities of their ARs
- Insufficient resources at principal firms to oversee their AR's activities. The FCA also provided data on the typical ratio of FTE personnel to ARs monitored.

When does it take effect?
N/A

What should firms be thinking about?
1. Principal firms should review the data and think about how they are complying with the new rules.
2. Any improvements that can be made to the monitoring of ARs and IARs
3. Any additional reporting requirements

REGULATORY ROUND UP FOR OCTOBER 2023

General
ESMA Report on Trends, Risks and Vulnerabilities
The European Securities and Markets Authority (ESMA) has published a report on trends, risks and vulnerabilities in the European Union's securities markets.
What firms are impacted? Investment firms with European exposures.
Summary of the regulatory update The main objective of the report is to identify the main trends and vulnerabilities of the EU's securities market and to assess the extent to which they are likely to change in the coming years. The report looks at trends and risks overall and across particular themes including Securities Markets, Asset Management, Infrastructure, Market Based finance, sustainable finance and crypto-assets. Overall, ESMA’s view is that public and private indebtedness remains a growing driver of risk. ESMA’s overall risk remit remains high owing to high-risk profiles for liquidity, market, contagion and operational risks.
When does it take effect? N/A
What should firms be thinking about? Firms may consider the matters highlighted in the report and make changes to their risk management strategies as appropriate.

REGULATORY ROUND UP FOR OCTOBER 2023

General
Marketing of Cryptoasset Products
The FCA has announced that they will offer authorised or registered cryptoasset firms more time to implement certain changes required by the new marketing rules due to come into effect on October 8.
What firms are impacted? Authorised/registered cryptoasset firms
Summary of the regulatory update Eligible cryptoasset firms must apply for the extension that would give them until 8 January 2024 to introduce features requiring greater technical development, like the 24-hour cooling-off period. Cryptoasset firms must still be ready to comply with all other requirements of the rules by the October deadline. Anyone who continues promoting cryptoassets to UK customers past the October deadline without complying with the rules, may be committing a criminal offence punishable by an unlimited fine and/or up to 2 years imprisonment. To further support cryptoasset firms the FCA also published examples of good and poor practice on firms' preparations for the new marketing rules. They produced the following general findings: • Most firms have faced significant challenges preparing for the financial promotions' regime, particularly concentrated in preparing for the 'back end' financial promotion rules. • Firms in global group structures are having to make significant changes to their business models to comply with the regime. • Firms have under-appreciated the broad scope and nature of the financial promotion regime. • Firms were not sufficiently considering how certain rules apply to the specifics of the cryptoasset services they provide, in particular, how their risk summaries and appropriateness assessments should be tailored to the specific cryptoassets being promoted.
When does it take effect? 8 January 2023
What should firms do now? Firms must ensure they can comply with the financial promotion rules when they come into force or apply for the extension. All firms intending to communicate or approve cryptoasset financial promotions should carefully consider the FCA's findings as part of their implementation plans. Firms should also review the FCA's guidance consultations GC23/1 'Guidance on cryptoasset financial promotions' and GC23/2 'Financial promotions on social media'.

REGULATORY ROUND UP FOR OCTOBER 2023

General

Post-Brexit Handbook

FCA Co-Director of Cross-Cutting Policy and Strategy comments on the post-Brexit Handbook

What firms are impacted?

N/A

Summary of the regulatory update

The FCA has released a blog post written by Greg Sachrajda, Co-Director of Cross-Cutting Policy and Strategy in the Supervision, Policy and Competition Division on 13 September 2023. Mr Sachrajda explained that, following the passage of the Financial Services and Markets Act 2023 (FSMA 2023), the FCA is reviewing its rules. As part of this process, the FCA is considering retained EU legislation (REUL), its new secondary competitiveness and growth objective, and new accountability and scrutiny arrangements.

Mr Sachradja added that the FCA will be applying the following principles to achieve its aim of having clear rules, reducing regulatory burdens where appropriate, and enhancing accessibility:

- bringing together regulatory provisions so that the Handbook becomes a 'one-stop shop';
- using the existing structures in the Handbook where possible, and only creating new sourcebooks where necessary;
- relying on existing requirements as much as possible;
- considering outcomes-based regulation, where appropriate; and
- seeking to reduce complexity by drafting in the current Handbook format and style and aiming to align standards addressing similar issues across files where possible.

He also advised that the FCA is working closely with HM Treasury (HMT) and the PRA to deliver a government statute book, a PRA Rulebook and a FCA Handbook that support and interface well with each other.

When does it take effect?

N/A

What should firms do now?

N/A

FOR MORE INFORMATION:

RICHRD BARNWELL

+44 (0)77 1721 4818
richard.barnwell@bdo.co.uk

OSITA EGBUBINE

+44 (0)78 2389 8762
osita.egbubine@bdo.co.uk

LYNNE COOPER

+44 (0)78 3197 3356
lynne.cooper@bdo.co.uk

www.bdo.co.uk