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BDO FS Advisory – Managed Compliance Services

Regulatory Update

January 2024

BDO FS Advisory contact points

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

Our FS Advisory team supports 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.

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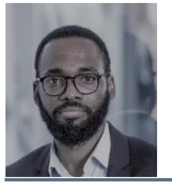

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Contents

01

Wealth Management Update

Wealth Management Update

Statement on communications in relation to PRIIPs and UCITS

In a move welcomed by Investment Trusts, the FCA has proposed "forbearance" in relation to how Investment Trusts are required to disclose their costs. Investment Trusts have been required to disclose costs in PRIIP KIDs but the disclosures include underlying costs whereas the fund price is the total cost without additional charges. The proposals are for short term forbearance whilst longer term legislative change is sought.

The PRIIPs regulations require all direct and indirect costs that are paid by retail investors to be disclosed to show the total costs. For Investment Trusts, this has meant all underlying costs are included in the disclosure even though the Investment Fund share price is the total price paid.

Consumer Duty Update – Regulator Red Lines

The FCA is continuing its focus on embedding the Consumer Duty and identifying particular practices that it considers need to change. Nisha Arora's speech "Not Once and Done" sets the tone of the regulators determination to see the Consumer Duty embedded in firms and effect real change. For the wealth sector, FCA communications have focused on charging practices in particular.

Dear CEO letter: FCA expectations for wealth management & stockbroking firms

This letter is not the first communication from the FCA on the subject of adviser charging. There has been some high-profile press coverage on this topic highlighting certain practices, for example:

- Charging clients for services which are not delivered. Wealth clients will usually pay an 'on going service' charge for the adviser to review their portfolio and investment goals on an annual basis, provide reports, or adjust investments. The FCA's focus is whether the services the client has signed up to are, in fact delivered.
- Over trading on portfolios to drive transaction fees rather than for the benefits of the client and their investment objectives.
- Offering expensive discretionary managed services to low risk clients.

Dear CEO Letter: The retention of interest earned on customers' cash balances

Since our December round up, the FCA has also sent a Dear CEO letter on interest on cash balances. This letter is also focused on fair value for wealth clients and calls out practices such as 'double dipping' or charging clients for client money accounts as well as not passing on interest earned on client money accounts or from stock lending.

Firms need to take a good look at their fair value assessments and check that all benefits accrued, revenue streams and costs incurred are properly accounted for in the assessment. The FCA is specific in pointing out the interest retained by firms should relate to the costs of managing the client money accounts. A fair value assessment is a detailed exercise which should have robust evidence behind it.

Terms of Business may need updating to clearly explain apportionment of interest payments on client money accounts or profit sharing on stock lending. Terms of Business should be clear about charges for ongoing service, in particular, the level of charges applied for the service actually received by the client. Controls should be in place to identify portfolio over trading; that clients are only charged for services they receive; and fair value assessments are thorough and complete.

Compliance monitoring and internal Audit should consider reviewing these areas as part of their monitoring programmes. Firms are now on notice to review their practices in these areas and make appropriate changes. Finance functions and Boards may need to look at the impact changes to the practices identified by the FCA impact revenue.

Solving the Advice Gap again

As part of the FCA's strategy to reform the Consumer Investments market, we consider their recently published Discussion Paper to reform the 'Advice Gap'.

Personal advice and recommendations are an expensive business available to those with sufficient wealth to justify the costs. Reforms implemented as part of the Retail Distribution Review in 2012, and the Financial Advice Market Review in 2016 tried to address this topic. However, FCA surveys found only around 8% of customers received advice in 2022; and that 40% of firms have formal pot size thresholds for new customers, and firms without a formal minimum threshold generally have high average pot sizes among their current customers. The Money and Pensions Service reported in 2021 that 24 million adults in the UK don't feel confident managing their money, roughly half the UK adult population. For mass market consumers, advice largely remains unaffordable.

Previous attempts to come up with a simplified advice regime have foundered on the legal definitions of suitability and protections that affords. Without changes to the law, it is challenging to see how FCA can bridge the gap between advice and guidance. The current discussion paper outlines potential options for debate:

- Clarify boundaries to allow further support without overstepping the personal recommendation boundary.
- Targeted support – new regulatory framework in which consumers could be given extra support. This will be based on limited information and targeted at the target market the consumer is identified as belonging to. The support would not be individualised and therefore not a personal recommendation or advice.
- Simplified advice – updated from the previously proposed solution for simple advice for consumers with less complex needs. This would be a personal recommendation but only in relation to a specific need and based on limited information.

Industry is supportive of reforms although wary. The commercial reality is holistic advice is an expensive and risky proposition. Solutions need to be commercially viable which means inexpensive to deliver (or the ability to offlay costs) and potential risks and liabilities containable.

The longstanding difficulty is the requirement for advice to be suitable, which means recommendations tailored to individual circumstances and needs. Financial planning is a complex area. The alternative is guidance which might involve generic information or options that enable the individual to identify a course of action.

Consumer groups are also wary for different reasons. Simplified or targeted support solutions could drive short term decision making which is not in the longer-term interests of consumers. The current suitability regime offers protections against poor advice which can have devastating consequences for individual consumers. There are also arguments that inefficiencies in the current advice model will only persist with these proposals.

The Consumer Duty has an interesting part to play here. It has reinforced the advice gap by ensuring firms think carefully about their target markets and target customers. The FCA is addressing inefficiencies in the current advice model by shining a light on poor charging practices and forcing firms to deliver fair value. Advice has a role to play in supporting consumers achieve their financial goals. It will be interesting to see how the FCA can balance a tailored or simplified advice, which could priorities short term goals, over longer-term financial planning and consumer outcomes.

02

Summary of Regulatory publications in December 2023

Regulatory round up for January 2024

General

CP23/26 Implementing the Overseas Funds Regime

The Financial Conduct Authority (FCA) has issued a consultation paper setting out how overseas funds (schemes) will be able to be recognised in future, if the UK Government decides to make any equivalence determinations under the Overseas Funds Regime (OFR) in respect of any jurisdiction.

What firms are impacted?

Asset Managers offering overseas schemes to UK investors.

Summary of the regulatory update

Many of the funds offered to investors in the UK are from outside the country. The FCA are consulting now to make changes to their Handbook so that, if any equivalence determinations are made, overseas schemes can be recognised and so firms are aware of this new route to the UK market. The Government is currently considering the equivalence of the European Economic Area (EEA) for UCITS (Undertakings for Collective Investment in Transferable Securities) schemes, some of which continue to be marketed to UK investors under the Temporary Marketing Permissions Regime ("TMPR"). Where such an equivalence decision is reached, UCITS operators will be able to transition to the OFR.

The FCA's proposals cover three main topics:

- The information requirements for schemes seeking recognition in the UK
- The scheme changes that must be notified to the FCA once recognition status has been granted
- New disclosure requirements for operators of recognised schemes to make to investors concerning access to the UK Financial Ombudsman Service and the Financial Services Compensation Scheme.

The proposals do not currently cover overseas Money market funds.

When does it take effect?

Comments should be submitted by 12 February 2024. Final rules are expected to be published in the first half of 2024.

What should firms be thinking about?

Firms offering overseas schemes should consider this potential new route into the UK market and where appropriate, stakeholders should comment on the FCA's proposals by the deadline. UCITS operators in the TMPR should confirm their contact details with the FCA and the list of recognised funds on the FCA register.

Regulatory round up for January 2024

General

CP23/32 Improving transparency for bond and derivatives markets

The Financial Conduct Authority (FCA) has issued a consultation paper on proposals to improve the transparency regime for bond and derivative markets.

What firms are impacted?

Trading venues which admit to trading, or trade, bonds and derivatives; investment firms dealing in bonds and derivatives, and systematic internalisers (SIs) in all types of instruments.

Summary of the regulatory update

The FCA are consulting on proposals to improve the transparency regime for bond and derivative markets. They are also proposing guidance on the definition of a systematic internaliser (SI) for all financial instruments.

This CP is part of the Wholesale Markets Review (WMR), the review of UK wholesale financial markets the FCA have been conducting with the Treasury since 2021. It also supports the FCA's commitment to strengthen the UK's position in wholesale markets, as outlined in their Business Plan.

The WMR previously concluded that the current transparency regime for bond and derivatives markets had not delivered meaningful transparency and had limited impact on price formation while imposing a high cost to industry. It proposed to recalibrate the regime to improve transparency and tailor the requirements to reflect the specific nature of bond and derivative markets. The proposals in this consultation aim to deal with the following issues identified in the WMR: scope, transparency calculations, operational costs, pre-trade transparency, post-trade regime, data reporting and SIs.

The outcome the FCA seek is more proportionate and better calibrated transparency for bond and derivative markets, with requirements tailored to different asset classes and market structures. The key proposals of the paper include:

- A new transparency regime for bonds and derivatives. Two new categories of instruments will be designated- Category 1 (bonds on traded on UK trading venues, certain OTC derivatives subject to the clearing obligation) and Category 2 (derivatives or structured finance products which are not Category 1 instruments or emission allowance derivatives). New streamlined pre- and post-trade transparency obligations will apply to both instrument categories.
- A new framework for waivers and deferrals for pre-trade transparency.
- SI Definition: The FCA is proposing new guidance on the definition of an SI to focus more on qualitative characteristics in assessing whether the execution of orders is 'organised, frequent, systematic and substantial'.

When does it take effect?

Comments should be submitted on 6 March 2024.

What should firms be thinking about?

Impacted firms should consider the consultation paper and send comments to the FCA by the deadline.

Regulatory round up for January 2024

General

CP23/28 Updating the regime for Money Market Funds

The Financial Conduct Authority (FCA) has issued a Consultation Paper setting out proposals to enhance the resilience of Money Market Funds (MMFs) domiciled in the UK, addressing vulnerabilities identified in the 2020 'dash for cash' and other periods of market stress.

What firms are impacted?

MMF managers, MMF users, participants in short-term funding markets (STFM), credit rating agencies.

Summary of the regulatory update

The FCA is proposing a package of measures to strengthen the resilience of MMFs and the financial system in supporting the UK economy, reduce the need for central bank interventions of the sort required in 2020; and support the provision of sustainable and robust cash management financial services that meet the needs of investors including at times of financial stress. The proposals being put forward include:

- A significant increase in the minimum liquid asset requirement for all MMFs, raising daily liquid assets (DLA) and weekly liquid assets (WLA) levels to 15% and 50% of their assets respectively. We also modify the assets eligible for WLA for Variable NAV (VNAV) MMFs
- The removal of the regulatory link between liquidity levels in MMFs that have the ability to offer subscriptions and redemptions at a constant Net Asset Value (NAV) (so-called ‘stable NAV MMFs’) and the need for the manager to consider or impose tools such as liquidity fees or redemption gates
- Enhanced ‘know your customer’ (KYC) requirements on MMF investor concentration
- Enhanced stress testing for stable NAV MMFs; and
- Enhanced operational resilience for stable NAV MMFs.

When does it take effect?

Comments on this Consultation Paper should be submitted by 8 March 2024.

What should firms be thinking about?

Impacted firms should consider the proposals set out by the FCA and provide feedback on the proposals by the deadline date.

Regulatory round up for January 2024

General
CP23/33 Consultation on payments to data providers and DRSP forms including Policy Statement for the framework for UK consolidated tape
The Financial Conduct Authority (FCA) has issued a consultation paper setting out its final policy on the UK consolidated tape (CT) framework for bonds and response to discussion paper questions on a CT for equities.
What firms are impacted? Investment firms who use market data, trading venues which admit to trading or trade bonds, APAs who publish trade reports for bonds on behalf of investment firms, ARMs who send transaction reports to the FCA on behalf of investment firms, firms interested in bidding to be a CTP, and market data vendors.
Summary of the regulatory update In July 2023, as part of the Wholesale Markets Review (WMR), the FCA published a Consultation Paper (CP) 23/15 on their proposed framework for a UK Consolidated Tape (CT) for bond market data. This also included a discussion chapter on a CT for equities. This Policy Statement (PS) summarises the feedback received and sets out the FCA's final position on the rules and guidance to be included in the FCA Handbook on the bond CT. It also provides some feedback on the discussion paper questions on an equities CT. With respect to the CT framework, the following requirements have been defined: • A single bond CTP will be appointed by the FCA following a two-stage tender process • CT Providers (CTPs) will be required to offer a historical data service • CTPs will not be able to offer value-added services; rather, any such services will need to be provided by a separate legal entity • Data providers and users will be able to apply to join the consultative committee set up to scrutinise the CTP's operations. Feedback from the committee will need to be appropriately considered. Committee membership must be refreshed at least once during the tender period. Considering the responses received to CP23/15, the FCA is also consulting on three options for payments to data providers providing data to the CTP. These payments are expected to cover connection costs to the CTP's systems and lost revenues sustained due to the creation of the CT. Options include a fixed sum, an actual amount based on the direct costs incurred, or a percentage of its revenues.
When does it take effect? Comments should be submitted by 9 February 2024.
What should firms be thinking about? Trading venues and APAs should ensure they are familiar with the FCA's rules, to ensure they are able to comply with relevant requirements. Current arrangements should be reviewed to ensure they can share data with a bond CTP, once appointed. Comments on the consultation on payment model to data providers should be submitted by the deadline – 9 February 2024.

Regulatory round up for January 2024

General

Engagement feedback on the new public offers and admissions to trading regime

The Financial Conduct Authority (FCA) has published its engagement feedback on the new public offers and admissions to trading regime.

What firms are impacted?

Issuers, prospective issuers, institutional and individual investors in companies on regulated markets, MTFs or venues that are not public markets, accountancy and advisory firms to issuers.

Summary of the regulatory update

The Government is in the process of finalising a new legislative framework that will replace the UK Prospectus Regulation. The legislation is set out in the Public Offers and Admissions to Trading Regulations 2023 (POATRs) Statutory Instrument which was laid in Parliament on 27 November 2023. This new framework sets out a general prohibition on public offers of securities, which is then subject to a series of exemptions. The FCA has been given powers to make rules in a number of areas relating to those exemptions. The main exemptions and areas where the FCA will make rules include regulated markets, primary multilateral trading facilities (MTFs) and public offer platforms.

In the paper, the FCA provides stakeholder feedback on a number of topics including:

- The need for prospectuses prior to admitting securities to regulated markets
- Whether the content and format requirements for prospectuses should be simplified, including whether ESG disclosures should be included
- Whether the requirements for prospectuses for further issuances should be simplified
- What percentage threshold of existing capital should be set for further issuances before a new prospectus becomes required to be published
- What type of forward-looking statements should be allowed as protected forward-looking statements and how they are included in prospectuses
- The improvements to be made to the regime for the admission of non-equity securities

The FCA makes clear in the publication that the feedback does not indicate its likely approach which will be set out in a future consultation paper.

When does it take effect?

N/A. The FCA will consult on the proposals in summer 2024 and, pending the results of the consultation, it plans to make final rules in 2025.

What should firms be thinking about?

Impacted firms should consider the feedback received as it will provide an indication of likely future rules.

Regulatory round up for January 2024

General
Notification and disclosure of net short positions
The Financial Conduct Authority (FCA) has issued updated guidance regarding the EU Short Selling Regulation (SSR).
What firms are impacted? Firms and individuals holding net short positions.
Summary of the regulatory update The EU Short Selling Regulation (SSR) introduced a private and public notification regime for investors who hold net short positions in certain financial instruments. Following the Treasury's Short Selling Regulation Review: Call for Evidence and its Response, the Government has introduced the Short Selling (Notification Threshold) Regulations 2023 (SI 2023/1258) (SI). This SI increases the notification threshold for the reporting of net short positions in shares to the FCA from 0.1% to 0.2% of total issued share capital of an issuer. These Regulations will come into force on 5 February 2024. The Treasury has also published an accompanying Explanatory Note for the SI. The FCA has confirmed that they will be ready to receive notifications at the 0.2% threshold from Monday 5 February 2024. Firms therefore need to make the necessary changes to their systems and internal processes to allow them to submit notifications at the higher threshold via the FCA's Electronic Submission System (ESS portal). Until the threshold change is implemented on 5 February 2024, firms are required to continue to report positions which are at or above 0.1% and below 0.2%. For those positions, no closing reports will be required from 5 February 2024. For open positions at 0.2% and above reached before, on or after 5 February 2024, closing reports will be required as usual when the position falls below 0.2%. If firms have further questions in relation to the implementation of the 0.2% reporting threshold, they can send an email to PMU@fca.org.uk with the subject 'Net short position threshold change'.
When does it take effect? 5 February 2024
What should firms be thinking about? Impacted firms should review the guidance to establish if they need to submit a short selling notification to the FCA. Where firms are required to submit a notification, they need to complete the registration process, by creating an Electronic Submission System (ESS) account and submitting an SSR registration form.

Regulatory round up for January 2024

General
CP23/31 Primary Markets Effectiveness Review – Detailed Proposals for Listing Rules Reforms
The Financial Conduct Authority (FCA) has published proposals and a corresponding Consultation Paper aimed at making the UK's listing regime more accessible, effective, and competitive.
What firms are impacted? Firms listed or considering listing in the UK; institutional and individual investors in UK listed companies, advisors to issuers.
Summary of the regulatory update Following the FCA's consultation in May 2023, it has published further proposals on what the new listing regime could look like. The changes have been necessitated following industry feedback on the challenges and competitive pressures with the current regime. The proposals seek to create a simplified listing regime with a single listing – Commercial Companies- category (including streamlined eligibility and ongoing requirements), which aim to encourage a greater range of companies to list in the UK. The existing standard and premium listing segments will therefore be removed. Proposals include: • No listing requirements for historical financial information, revenue track record and clean working capital statements, although prospectuses will still require disclosure of financial track record up to 3-years and a working capital statement • Sponsor requirement for new applicants and to provide declarations similar to existing declarations, including that an issuer has met its prospectus obligations and has a reasonable basis for the working capital statement within it • Retaining a requirement for independence from controlling shareholder via written controlling shareholder agreements and maintaining certain related voting controls • Permitting issuers to have dual/multiple class share structures at admission • No prior shareholder vote but enhanced market notifications at ≥25%, removal of the profits test and new guidance on what constitutes 'ordinary course of business' • Enhanced market notifications regime for transactions at ≥25%, intended to provide key information including financial information, but not mandating working capital statements or re-stated historical financial information New rules are also proposed for Shell Companies and Special Purpose Acquisition Companies (SPACs), as well as issuers with a secondary listing in the UK.
When does it take effect? Comments on the Consultation are due on 16 February 2024 for proposals regarding sponsor competence and 22 March 2024 fir proposals to replace the Listing Regime Sourcebook.
What should firms be thinking about? Impacted firms should consider the proposals and respond to the FCA's proposals.

Regulatory round up for January 2024

General

FG23/6 General guidance on the application of ex-post risk adjustment to variable remuneration

The Financial Conduct Authority (FCA) has published finalised guidance on the application of ex-post risk adjustment to variable remuneration.

What firms are impacted?

All regulated firms in scope of the MIFIDPRU Remuneration Code (SYSC 19G).

Summary of the regulatory update

The guidance outlines the FCA's expectations for how companies should adhere to the requirements on ex-post risk adjustment (also known as performance adjustment). There is no significant change from the previous finalised guidance (FG21/5) on the same topic. As with previous guidance, firms have the flexibility of applying different approaches to the performance adjustment against variable remuneration, however, any alternative approach adopted should be consistent with the general requirement to encourage sound and effective risk management. The main provisions are as follows:

- The guidance applies, in principle, to all unvested variable remuneration. This includes Long term Incentive Plans (LTIPs)
- The use of performance adjustment measures should not be limited to employees engaged directly in misconduct but should also apply to those employees whose roles and responsibilities include areas where failures or performance contributed to or failed to prevent crystallised risk
- Firms' remuneration policies should be clear that variable remuneration awards are discretionary and contingent upon a sustainable and risk-adjusted performance
- Ex-post risk adjustment can be applied at a pool level, to groups of employees, or to individuals. The primary focus should however be on individuals
- Up to 100% ex-post risk adjustment should be the starting point for cases with a high degree of personal responsibility. Factors to be considered in determining the level of the adjustment should include impact on customers and counterparties, impact of the failure on the firm's relationships, cost of fines, direct and indirect losses
- Adjustments should be considered once relevant events have been identified and imposed as soon as reasonably possible
- Robust procedures should be maintained for deciding cases that could result in performance adjustments.

When does it take effect?

8 December 2023

What should firms be thinking about?

Impacted firms should consider updating policies and procedures to reflect the guidance.

Regulatory round up for January 2024

General

Primary Market Bulletin 46

The Financial Conduct Authority (FCA) has published the 46th edition of its Primary Market Bulletin (PMB).

What firms are impacted?

Firms in scope of UK MAR and ESG stewardship.

Summary of the regulatory update

In the publication, the FCA addresses a number of queries relating to collective shareholder engagement; strategy and voting intentions, and disclosure of major shareholdings.

In PMB 46, the FCA confirm as follows:

- Regarding collective shareholder engagement, it cross refers to Market Watch 20 and a letter to the Association of British Insurers issued in 2009 which confirm that the regulator is generally supportive collective shareholder engagement with the boards of investee companies. It also confirms the relevance of Market Watch 20 to issues of ESG stewardship. The FCA points out that its approach is unaffected by the unlawful disclosure findings against Sir Christopher Gent, as long as any disclosures do not stray into unlawful disclosure of inside information and are of a general nature.
- It also confirms that it is unlikely to consider that market abuse rules have been breached where a shareholder trades simply on its own intentions and knowledge of its strategy. It may however reach a different conclusion if other market participants also trade based on the knowledge of that party’s voting intentions or stewardship plans.
- When collaborating, shareholders should bear in mind their disclosure obligations under DTR 5.2.1R(a), which may require shareholdings to be aggregated in certain circumstances.
- Sponsors of premium listed issuers have a responsibility to assess whether a prospective issuer has established procedures to comply with the Listing Rules and disclosure rules, including compliance with Task Force on Climate-Related Financial Disclosures (TCFD) - aligned disclosures. The FCA confirm areas of good found as part of its work and encourage sponsors to continue to build the skills needed to adequately support issuers.

When does it take effect?

Immediately.

What should firms be thinking about?

Impacted firms should consider the PMB and consider if any updates should be made to their internal systems and controls. Whilst the FCA do not expect sponsors to become climate experts in the context of assessing whether an issuer has established procedures to enable it to comply with its obligations on an ongoing basis, they encourage sponsors to consider the FCA’s findings and recommendations, including whether changes to their own procedures and policies may be appropriate.

It may be useful to review this PMB in parallel with PMB 42 for additional context on the issues addressed in this bulletin.

Regulatory round up for January 2024

General
DP23/5 Advice Guidance Boundary Review – proposals for closing the advice gap
The Financial Conduct Authority (FCA), in collaboration with the Treasury, has published a discussion paper as part of the Advice Guidance Boundary Review, which seeks to design a regulatory system where commercially viable, high-quality models of support can emerge so consumers can access support through regulated channels.
What firms are impacted? Firms providing financial advice to retail customers, authorised fund managers, pension providers.
Summary of the regulatory update Many consumers still struggle to make critical decisions about saving and investing, or accessing their pensions, without help. Consumers often keep too much of their savings in cash, remain invested in funds selected at the outset without reviewing their arrangements, withdraw their pensions at unsustainable rates, or invest in inappropriate products that do not meet their risk appetite. The overall picture is that consumers can find it difficult identifying that they need support and when they do, their needs are not being fully met. While not everyone will want or need support, many consumers could be missing out on the value support can provide – a situation commonly known as the 'advice gap'. The FCA is proposing three possible approaches to bridging this gap. 1. Further clarifying the boundary. This would take the form of further guidance that provides greater certainty to firms about support they can provide to customers without providing a personal recommendation under the existing framework 2. Targeted support. This would entail the establishment of a new regulatory framework that enables firms to broaden the support they can provide to consumers based on limited information and will allow them to suggest products or courses of action based on a target market the consumer belongs to 3. Simplified advice. A new provision will be defined comprising a simplified form of advice that enables firms to support consumers with simpler needs and smaller sums to invest in a commercially viable way. This would be for those consumers who may require a personal recommendation but form whom holistic advice may not be cost effective. The Review provides an opportunity to rethink the way support is delivered to consumers and take advantage of new and emerging technologies to enhance consumer experiences and outcomes.
When does it take effect? Comments should be submitted on or before 28 February 2024.
What should firms be thinking about? Impacted firms should consider the content of the policy paper and consider potential impact on their business models. It may also be helpful to consider the policy paper alongside the FCA's published clarification for firms who want to support consumers more under the existing framework.

Regulatory round up for January 2024

General
Dear CEO Letter: The retention of interest earned on customers' cash balances
The Financial Conduct Authority (FCA) has written to chief executive officers (CEOs) of investment platforms and SIPP operators regarding the retention of interest earned on customers' cash balances.
What firms are impacted? Investment platforms and SIPP operators.
Summary of the regulatory update According to FCA, the amount of interest earned on customers' cash balances has increased significantly in the last 18 to 24 months because of rises in the Bank of England base rate. Based on the information the FCA received in July 2023 from a sample of 42 investment platforms and SIPP operators, they are concerned that some firms' treatment of the interest earned on their customers' cash balances may not be in line with the Consumer Duty (the Duty). The FCA have set out, in this letter, steps that firms need to take to ensure that firms' actions meet their expectations under the Duty. These steps are particularly important given the current interest rate environment. The FCA expects firms to guarantee that their retention of interest on cash balances gives fair value and is understood by consumers in line with the Duty, in particular the Duty outcomes of price and value and consumer understanding. In addition, the letter includes FCA's review, key messages, expectations, and next steps which apply to all investment platforms and SIPP operators receiving this letter.
When does it take effect? This letter was published on the 12 December 2023.
What should firms be thinking about? Impacted firms which retain interest on cash balances should carefully review the Dear CEO letter and should ensure they are able to demonstrate they are providing fair value to customers. Firms should consider testing customer understanding of interest retained on cash balances. Firms should revisit their consumer duty implementation plan and consider the cross-cutting rules. Firms should review the next steps detailed in the letter and ensure confirmations are provided to the FCA as necessary.

Regulatory round up for January 2024

General
Preparing for the future of Consumer Investments
The Financial Conduct Authority (FCA) has published a communication that outlines its aims for its consumer investments policy initiatives.
What firms are impacted? Firms providing investment services to retail clients.
Summary of the regulatory update The communication elaborates on the FCA's view of the core features of a well-functioning consumer investments sector and sets out the work the FCA will do to ensure its Consumer Investments Strategy ("CIS") is achieved. The FCA links its work in this sub-sector to the Smarter Regulatory Framework under which the FCA will have increased rule-making powers and the Consumer Duty, which underpins all its work in this sector. The key features the FCA seeks to achieve in this sector include: • **Accessible support**: Ensuring consumers get the help they need, when they need it and at an affordable cost. The Advice-Guidance boundary review will explore the options here in more detail (see previous slide). • **Diverse products and services**: Ensuring consumers have access to a broad range of investments across the risk spectrum, with appropriate and proportionate protections. • **Realistic approach to risk**: Ensuring that regulation supports consumers in distinguishing between legitimate investment risk and fraudulent products. • **Useful information**: Ensuring that consumers have access to information to help them make good decisions. The information should be proportionate to the complexity of the investment and the decision to invest. The information should be given at the right point without overloading the consumer with information. This will form a key part of the FCA's work on PRIIPs and MIFID disclosure requirements. • **Appropriate protections**: Whilst consumers are expected to take responsibility for their own decisions, investment products should be made available, marketed and sold in a way that allows informed decision making. This should also include timely resolutions of complaints, use of the Financial Ombudsman Service, and FSCS.
When does it take effect? N/A. The publication sets out the FCA's vision for the sector and does not lay out any specific proposals or rules.
What should firms be thinking about? Impacted firms should consider the FCA's communication and ensure their business strategy is in line with the FCA's desired outcomes.

Regulatory round up for January 2024

General
Notices of Decision
The Financial Conduct Authority (FCA) has issued a number of notices of decisions to regulated firms, in December, where it has been found that regulated activity is not being undertaken: 772242, 770332, 653390, 220591, 755087, 821037
What firms are impacted? All regulated firms should consider these decisions.
Summary of the regulatory update Six decision notices have been issued by the FCA on its decision to cancel the Part 4A permissions of affected firms for, amongst other reasons, failure to use their regulatory permissions. These actions confirm the action being taken by the FCA as part of its use-it-or-lose-it drive.
When does it take effect? Ongoing
What should firms be thinking about? Regulated firms should consider the action the FCA is now taking against firms where it is apparent regulated activity is not being undertaken, or particular regulatory permissions are not being used. The FCA was recently granted new powers to allow it to move faster to remove regulatory permissions that are no longer being used by financial services firms. These decisions are evidence of the FCA utilising these powers. Firms should review their permission profile, to ensure all permissions are required in order to carry out regulated activity. Where it is identified that permissions are no longer being used, firms should consider submitting a Variation of Permission (VoP) to remove any unused permission(s).

Regulatory round up for January 2024

General
Passporting between the UK and Gibraltar
The Financial Conduct Authority (FCA) has updated its information page on passporting between the UK and Gibraltar.
What firms are impacted? Regulated firms passporting between the UK and Gibraltar.
Summary of the regulatory update The transitional period for passporting between the UK and Gibraltar has been extended to 31 December 2024. Arrangements for using the passporting provisions are unchanged.
When does it take effect? Immediately.
What should firms be thinking about? Impacted firms should consider if they need to take any action to ensure they are able to continue offering services. Where firms do not passport between the UK and Gibraltar, they should review their permission profile on the FCA register and where a passport exists, they should cancel the passport via the Connect system.

03

Financial Crime Update

Financial Crime update

General

Memorandum of Understanding between the Office of Financial Sanctions (OFSI) and the Financial Conduct Authority

The Financial Conduct Authority (FCA) has published a Memorandum of Understanding (MoU) between the Office of Financial Sanctions Implementation (OFSI) and the FCA which replaces the MOU between OFSI and FCA dated April 2019.

What firms are impacted?

All regulated firms.

Summary of the regulatory update

The MoU outlines the terms of cooperation and information exchange between the OFSI, which is part of His Majesty's Treasury, and the FCA in carrying out their respective tasks. This MoU is effective from the date of signature by both parties. It sets out the arrangements for co-operation and the exchange of relevant information between the OFSI, which is part of His Majesty's Treasury and the FCA (separately, the "Party", together, the "Parties") in carrying out their respective functions (as set out further in the 'Roles and responsibilities of HM Treasury and the FCA' section of the MoU).

For the purposes of this MoU, relevant information includes, but is not limited to:

(a) information relating to suspected or actual sanctions breaches identified by OFSI, that fall within OFSI's competencies;

(b) information relating to suspected or actual sanctions breaches identified by the FCA that fall within OFSI's competencies;

(c) information relating to suspected or actual breaches of financial sanctions or relevant maritime services sanctions identified by either Party, where there is reason to believe that joint investigations would benefit enforcement of those sanctions;

(d) any information the FCA discloses to OFSI under the provisions of relevant legislation, including, but not limited to, FSMA and The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs");

(e) personal data, which may include information relating to individuals who have been involved in a suspected or actual breach of sanctions that fall within OFSI's competencies;

(f) asset freeze notifications submitted to OFSI and designated persons reports submitted to OFSI in each case which relate to or were submitted by an FCA-supervised firm; and

(g) any information that could be used for intelligence purposes.

When does it take effect?
21 November 2023

What should firms be thinking about?

Firms should review the systems and controls they have in place in respect of sanctions, to identify if there are any weaknesses within their frameworks and report to each regulator as required.

04

Cyber Security Update

Cyber Security update

General
Cyber resilience good practice for firms
The Financial Conduct Authority (FCA), together with the Prudential Regulation Authority (PRA) and Bank of England (BoE), has published the latest annual CBEST thematic report.
What firms are impacted? All regulated firms.
Summary of the regulatory update Cyber resilience is a top priority for the regulators. Over the past few years, the regulators have increased their focus on operational resilience significantly. To improve the resilience of systemically important firms/FMIs and by extension the wider financial system, the BoE run the CBEST programme to assess the cyber resilience of firms/ Financial Market Infrastructures (FMIs) important business services. **CBEST** promotes an intelligence-led penetration testing approach that mimics the actions of cyber attackers intent on compromising an organisation's important business services and disrupting the technology assets, people and processes supporting those services. This approach means that there is a 'golden thread' linking the security testing to threats, to the activities of an organisation and the potential impact to the wider economy. As part of CBEST testing, systemic financial institutions undergo live tests that assess their detection and response capabilities through simulations of the most relevant cyber scenarios. The annual CBEST thematic is intended to inform the sector on the BoE's findings and lessons learned from their CBEST programme. Firms should use the findings to consider threat intelligence observations and identified weaknesses, raise awareness in senior executive teams, and inform the work of risk and internal audit functions. The regulators continue to engage with firms/FMIs, international regulators, and government agencies to develop CBEST. The BoE would welcome any feedback or comments on these thematic findings. Please send them to **CBEST@bankofengland.co.uk**.
When does it take effect? This report was published on 18 December 2023.
What should firms be thinking about? Firms should read the thematic report and consider embedding the findings into their cyber strategies.

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