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BDO FS ADVISORY - Managed Compliance Services

Regulatory Update

April 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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01

FCA Business Plan



FCA Business Plan: What should Risk & Compliance teams think about?

The Financial Conduct Authority (FCA) published its annual business plan on 19 March. This is the third year of its three-year strategy to achieve better outcomes for consumers and markets. Having a three-year strategy has enabled the regulator to take a longer-term approach and deliver substantial policy initiatives and its own transformation agenda. This year's Business Plan is therefore a continuation of that strategy with an emphasis on assessing those outcomes.

The Consumer Duty continues to be the focus for delivering a step change in consumer protection. The regulator is committed to embedding the Duty in its supervisory agenda as well as completing the implementation for Closed Books in July this year. We can expect to see supervisory assessments continuing to focus on price and value. The FCA has already announced a review of the outcomes for vulnerable consumers.

The next significant areas are the retirement income agenda and the value for money proposals for Defined Contribution pensions. These are also a continuation of initiatives and involve working closely with the PRA and The Pensions Regulator. Ensuring consumers receive good quality retirement income advice and that pensions deliver value for money are essential steps to improve consumer outcomes in retirement. Linked to this are the challenges in resolving what is commonly called the 'Advice Gap'. The Ambition is to introduce new ways to provide more tailored information to aid investment decision making and support to consumers priced out of receiving full financial advice.

FCA's role in preventing fraud and scams also continues with the FCA playing its part in the UK's Economic Crime Plan and Fraud Strategy, both published in 2023. The FCA is shifting its operating model to being more proactive in using data and intelligence to disrupt, pursue and sanction those engaging in financial crime. The FCA will also continue its role market surveillance and taking tough action on market abuse.

Wide ranging reforms to the UK's capital markets also continue as well as fostering growth and competition through the Sandbox initiatives. This will include finalising the review and proposals on a new Listing Regime and consulting on options for paid for research and commodities position limits.

The secondary objective on international growth and competitiveness is new and only published in July this year. It has set in train actions for the regulator to review how it will implement this although a focus on the speed and ease of authorisation will be key.

Along with the Business Plan, the FCA also published four documents that explain how it operates. These 'Our Approach' publications are short summaries about the FCA's approach to Consumers, International Firms, Supervision and Competition. They update the previous (much longer) Our Approach documents published in 2018.

The new publications set out FCA expectations and how it works at a high level as well as updating to include the Consumer Duty as its core approach to outcomes.

The explanation of FCA's Approach to Competition sets out how this operates alongside other objectives and the philosophy of the role of competition in well-functioning markets. It provides a simple explanation of the FCA's focus on price and value in consumer markets. It shows that competition is now well integrated into FCA's policy, supervisory and authorisations thinking.

The Approach to Consumers brings together several strands of potentially tricky territory: consumer responsibility, consumer vulnerability, asymmetries of information and financial inclusion. The publication sets out that FCA is responsible for addressing imbalances in information or consumer vulnerability, as well as helping consumers to make informed choices. However, it has no specific responsibility to ensure all consumers have access to financial services, only to have regard to how easy it is for consumers to access and that markets work well for consumers.

The Approach to Supervision integrates the Consumer Duty and Competition perspectives as well as articulating the FCA's more data led approach. Many firms will have experienced this over the last year with an increasing use of surveys and outlier analysis. The publication emphasises expectations of firms to focus on good consumer and market outcomes, the standards expected of firms and individuals across consumer, market, and prudential requirements.

The Approach to International Firms is aimed at those firms seeking to be authorised in the UK and provides a useful explanation of what to expect through the authorisation process. It starts with a list of firm types excluded from the Approach (Payment Services and E-money firms and AIFs, UK Authorised funds' managers, trustees and Depositaries, and Benchmark Administrators).

FCA Business Plan: What should Compliance & Risk teams think About?

Investment and Wealth Management Sector - Deep Dive

The investment and wealth management sector remains under FCA scrutiny on several fronts.

FCA's more intensive and intrusive approach to supervision was outlined in its Portfolio letter to wealth advisers and stockbrokers published on 8 November 2023. The overall message was that firms needed to think more carefully about consumer outcomes and whether they were providing the services consumers really need at a fair value.

A second detailed annual survey was sent to firms in December 2023 for completion by early March 2024. This survey posed a range of questions about the business model and internal operations of respondents, including revenue, products, remuneration, and staff turnover.

The FCA survey regarding charges for Ongoing Service was published on 15 February. On 15 March, the FCA announced a review of firms' treatment of consumers in vulnerable circumstances which will report by the end of this year. The FCA has been critical of the wealth advisory sector's engagement in vulnerable consumer guidance.

On 19 March, the FCA has published its Business Plan. This is the final year of its three-year strategy, and with a focus on how the Consumer Duty is embedding.

This has been quickly followed by the publication of the FCA's thematic review about retirement income advice on 21 March, accompanied by a Dear CEO letter requesting firms to review how they provide this advice. The concurrent publication of a file assessment guide and cash modelling tool review help to give deeper insights into common issues the FCA has identified.

[FCA asks Financial Advisers to review their processes in retirement income support](#)

The message follows up on previous communications from the FCA about the need to improve retirement income advice to consumers, identify and support vulnerable consumers, and think about the complexity and value of products and services.

What should Compliance & Risk teams think about?

Complete a risk and control assessment against the points identified by FCA's various communications and plan further analysis or actions to mitigate risks.

In responding to requests for information from the FCA, take time to ensure responses are accurate and complete. Identify potential areas for follow-up questions and identify actions that could be taken.

For example:

- ▶ Consider whether existing MI or monitoring can identify where clients are misaligned to target markets or portfolios misaligned to clients' objectives, needs and risk appetite.
- ▶ Review the framework for Fair Value assessments. The FCA has issued several communications highlighting good practice and areas for improvement. A detailed level of analysis should look at costs of doing business, cost of future investment in, for example technology, price, and quantifiable consumer benefits, such as return.
- ▶ For retirement income advice, review cash modelling tools against the FCA's findings, as well as the standards of advice against the FCA's file assessment guide. Significant changes may require a plan to reassess existing client portfolios to check these remain on track to deliver retirement goals.
- ▶ Review how vulnerable consumers are identified and supported. Look to other sectors and FCA's good practice guides for different approaches to identification, support, and measurement.

A photograph of three business professionals in an office setting. A woman with long dark hair, wearing a light-colored blazer, is seated on the left, looking towards a laptop. A man with glasses and a dark suit jacket is leaning over her from behind, looking at the laptop screen. Another man with grey hair, wearing a light blue shirt and a red tie, is seated on the right, also looking at the laptop. The background is a blurred office interior with large windows.

02

Treatment of Vulnerable Customers

The FCA's upcoming review of firms' treatment of vulnerable customers

The FCA has [recently published its Business Plan for 2024/25](#). In it the FCA set out its areas of focus for the next 12 months. As this is the last year of its three-year strategy and an election year it was not full of surprises.

One area that will be in focus is 'protecting customers' and the embedding of the Consumer Duty regulation, the FCA has announced that [it will be conducting a review of firms' treatment of vulnerable customers](#) as one of its key activities this year and intends to share its findings by the end of 2024.

This review was foreshadowed in the FCA's 2021 guidance for firms on the fair treatment of vulnerable customers and, particularly with the implementation of the Consumer Duty, it will expect firms to have taken sufficient and appropriate action to: (1) understand their vulnerable customer population; and (2) enhance the outcomes vulnerable customers receive.

This review will look at the areas initially highlighted within the 2021 fair treatment of vulnerable customers guidance, namely:

- ▶ Firms' understanding of customer needs;
- ▶ The skills and capability of staff;
- ▶ Product and service design; and
- ▶ Communications and customer service.

It will also look at the outcomes vulnerable customers receive and how these compare to the outcomes experienced by other customers - a key subject area within the Consumer Duty regulation.

What should Compliance & Risk teams think about?

Many firms will have recently completed a significant programme of work to implement the Consumer Duty for existing products and services and will feel comfortable with the actions taken to embed the fair treatment of vulnerable customers within their ways of working. We have seen the FCA take a tough stance on subjects it has previously cautioned firms need to take action. FCA has an increased willingness to use all the supervisory tools, including skilled person reviews, to ensure firms are clear about their expectations.

There are a set of proportionate and pragmatic steps Compliance & Risk teams should think about to ensure they are aligned with the FCA's current expectations and to prepare themselves for potential future regulatory scrutiny of treatment of vulnerable customers:

Firms' understanding of customer needs

The Consumer Duty requires firms to act to deliver good outcomes for all its customers, including vulnerable customers. To support delivering good outcomes to specifically vulnerable customers firms will need to understand the needs of those customers and the drivers of vulnerability, which are likely to vary between products and target markets.

- ▶ Review the makeup of the vulnerable customer population that hold your products or are within your product target markets - is this sufficiently detailed to see them as more than 'just a vulnerable customer'; and
- ▶ Consider the impact that different vulnerabilities and different drivers of vulnerability have on the outcomes vulnerable customers may experience and where the risks of poor outcomes may arise.

The skills and capability of staff

Staff at all levels within a firm play a role in influencing the outcomes that vulnerable customers experience. This is particularly true for customer-facing staff, who need to have a clear understanding of how their interactions with customers can materially change the overall outcome a customer can experience and be equipped with the right tools to support good outcomes.

- ▶ Ensure your customer-facing staff have received appropriate and proportionate training, based on your products and target market, on identifying and engaging with vulnerable customers and having potentially challenging conversations; and
- ▶ Encourage staff to take the time to understand customers' circumstances, for example, where they are in financial difficulty so that staff can identify the right forbearance solution appropriate to their needs and are directed to other relevant sources of help.

Product and service design

Products and services may have features that result in unintended harm and poorer outcomes for vulnerable customers. As such, firms should ensure that appropriate care and attention is given to vulnerable customers within the target market and as part of product design or review.

- ▶ Consider whether your product review processes, and the template or other tools used to complete these reviews, support you in understanding the outcomes experienced by vulnerable customers at every stage of the customer journey and product lifecycle;

The FCA's upcoming review of firms' treatment of vulnerable customers

- ▶ Revisit completed product reviews to understand if these are clear on the impact of customer vulnerability on the utilisation, benefits and limitations of the products and the differences in outcomes that may be experienced as a result.

Communications and customer service

Vulnerable customers are more likely to have different needs when interacting with firms and are at greater risk of experiencing materially poor outcomes when these needs are not met. Firms should understand what the needs of vulnerable customers within their target markets are and set themselves up to meet those needs.

- ▶ Review whether your customer engagement pathways support you in engaging with your customers flexibly and empathetically in view of their differing needs (e.g. multiple communications channels and using proactive communication to check understanding); and
- ▶ Ensure communications are appropriate to the target market and signpost where additional support may be available (e.g. third-party debt support, where the FCA [has recently published a letter](#)).

Effective outcomes monitoring

As part of acting to deliver good outcomes for customers, [firms need to have a clear understanding of what 'good' looks like](#). Firms' monitoring should enable it to pinpoint where poor outcomes are being experienced and the root causes for those poor outcomes.

- ▶ Ensure that reporting enables management and the Board to read across outcomes between vulnerable and other customers and supports a positive discussion around the potential root causes.
- ▶ Assess whether the frequency and depth of MI and other reporting is appropriate for difference committees or working groups within the firm's governance structure.



03

Economic Crime Update



Economic Crime Update

FCA 'Dear CEO' letter to Annex 1 Firms

On 5 March 2024, the FCA published a 'Dear CEO' Letter setting out its findings from recent assessments of a number of Annex 1 firms in order to evaluate how they are complying with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) (as amended).

There are approximately 1,000 Annex 1 registered firms, which are not authorised or subject to wider FCA regulation. These include some lenders, safe custody providers, money brokers and financial leasing companies, which undertake specified activities which requires them to be registered and supervised by the FCA for compliance with the MLRs.

The letter outlines some of the weaknesses which the FCA commonly identified across its assessment population of Annex 1 firms, namely:

Business model

- ▶ Discrepancies between the activities that firms have told the FCA they would undertake when they registered, and the activities firms told the FCA they undertake when asked during the assessment.
- ▶ Firms' Financial Crime policies, procedures, and controls not keeping pace with the size and complexity of the business, resulting in an inadequate Financial Crime framework.

Risk Management

- ▶ Completely absent or poor-quality Business-Wide Risk Assessments ("BWRA")
- ▶ Customer Risk Assessments ("CRA") not being sufficiently tailored to customers' characteristics.

Due Diligence, Ongoing Monitoring, and Policies and Procedures

- ▶ Policies and procedures lacking sufficient detail over: the level of Due Diligence to be applied; if/how ongoing monitoring measures are applied; and the investigation and recording of Suspicious Activity Reports ("SARs")
- ▶ Policies and procedures being vague on staff responsibilities.
- ▶ Policies and procedures not being kept up to date.

Governance, Management Information and Training

- ▶ Firms' Financial Crime Prevention teams not being adequately resourced to carry out their functions effectively and/or there being insufficient senior management oversight.
- ▶ Financial Crime training not including role-specific training for employees and/or failing to cover crucial topics.
- ▶ Financial Crime not being a standing agenda item at senior management meetings, resulting in the absence of a clear audit trail to support Financial Crime decision making.

What should Compliance & Risk teams think about?

Whilst the 'Dear CEO' Letter is not principally targeted at the majority of the sector, regulated firms should consider the top-line messages regarding identified vulnerabilities. Thematic publications from the FCA provide helpful intelligence regarding the expectations of the Regulator in respect of firms' financial crime frameworks.

Compliance & Risk teams within all firms subject to the MLRs should, at a minimum, consider the letter as part of financial crime risk assessments and ensure second line teams are reviewing its implications, assessing financial crime frameworks for the common failings highlighted, and consider review of the audit plan to ensure upcoming assurance activities are appropriately tracking risks.

FCA Business Plan 2024/25

On 19 March 2024, the FCA published its Annual Business Plan for 2024/25 setting out its planned programme of work for the coming year.

The Business Plan sets out that the FCA will continue to deliver on its 13 public commitments which are focussed on:

- ▶ reducing and preventing financial crime
- ▶ putting consumers' needs first
- ▶ strengthening the UK's position in global wholesale markets.

In respect of reducing and preventing financial crime, the Business Plan notes that the FCA will continue to take a data-led approach to identify potential harm for supervisory and/or enforcement action. The Plan further splits the FCA's desired outcomes and key activities for the period. Some of the core points highlighted are as follows:

Outcomes the FCA wants to achieve

- ▶ slowing the growth in investment fraud victims and losses
- ▶ slowing the growth in Authorised Push Payment (APP) fraud cases and losses
- ▶ reducing financial crime by lowering the incidence of money laundering through supervised firms

Economic Crime Update

Key activities the FCA will start in 2024/25

- ▶ Increasing investment in systems to use intelligence and data more effectively within its Financial Crime work, so it can target higher risk firms and activities.

Key activities the FCA will continue in 2024/25

- ▶ Using its powers to disrupt, pursue and sanction those committing and enabling financial crime.
- ▶ Improving its capabilities to identify and request platforms remove unauthorised financial promotions, associated websites and social media accounts.
- ▶ Raising awareness of fraud through its consumer campaign.
- ▶ Focussing on proactive assessments of Anti-Money Laundering (“AML”) systems and controls for those firms deemed higher risk.
- ▶ Using data to target the firms that are more susceptible to receiving the proceeds of fraud and ensure they do more to stop the flow of illegitimate funds.
- ▶ Strengthening its supervision of firms’ sanctions systems and controls.

The Business Plan also notes that the FCA will seek to significantly increase its capability to tackle Market Abuse. Some of key work which the FCA will seek to carry out includes:

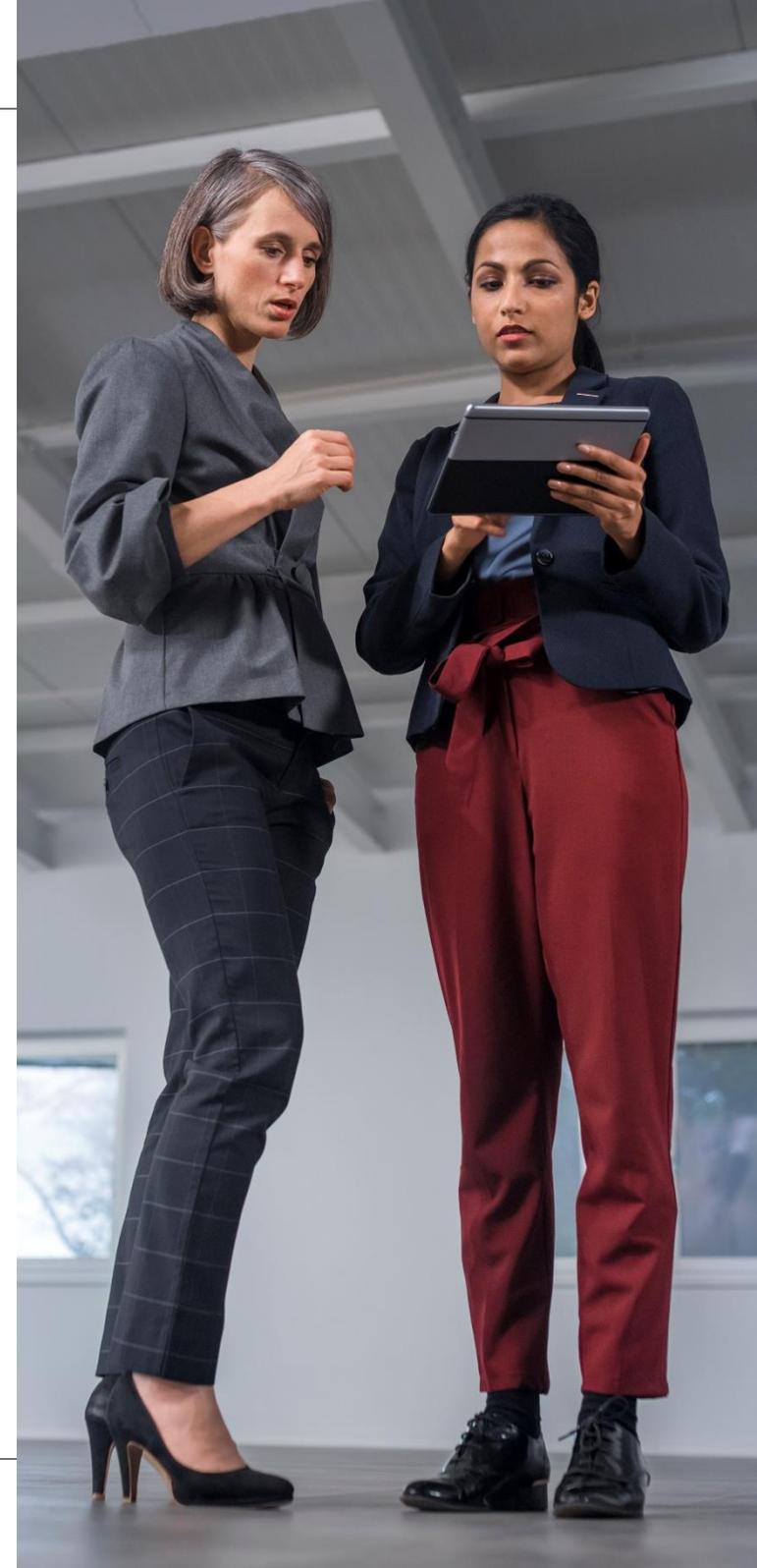
- ▶ Increasing its ability to detect and pursue cross-asset class market abuse and developing improved market monitoring and intervention in Fixed Income and Commodities.
- ▶ Assisting in delivering a proportionate Market Abuse regime for Crypto Assets.
- ▶ Publishing the results of its peer review of Market Abuse systems and controls in providers of Direct Market Access.

What should Compliance & Risk teams think about?

Whilst the Business Plan is relatively high level, firms should pay close attention to the FCA’s areas of focus for the year ahead.

Unsurprisingly, fraud prevention is a top priority for the Regulator. In the midst of the ‘Failure to Prevent Fraud’ offence (implemented through the Economic Crime and Corporate Transparency Act 2023) and the continued Government focus on reducing fraud within the UK, it would not be a stretch for the FCA to begin proactively assessing firms’ fraud prevention systems and controls. Compliance & Risk teams should, therefore, ensure that sufficient resources are devoted to reviewing fraud risk management frameworks.

AML and sanctions remain as high priority areas for the FCA. Firms should, therefore, continue to ensure that their frameworks are benchmarked against regulatory requirements and industry best practices and that their systems and controls are subject to frequent oversight and testing.





04

Data Protection
Update

ICO Priorities moving forward

In a recent [speech](#), the Information Commissioner, John Edwards, outlined the key priorities for the ICO over the coming months. These included:

- ▶ Advertising technologies and fair use of cookies - The Information Commissioner acknowledged the current power imbalance between online advertisers/aggregators and end users. In early 2024, the ICO reviewed the top 100 websites in the UK and identified 53 as having potentially non-compliant cookie banners. Those organisations were given 30 days to address non-compliance or potentially face enforcement action. Based on these figures, the Information Commissioner indicated that ICO time and resource will continue to focus on how to monitor and regulate cookie compliance, at scale.
- ▶ Artificial Intelligence (AI) - Given the transformative power and increased usage of AI (including within the Financial Services sector), the Information Commissioner confirmed that the ICO is focusing on ensuring that AI technologies are implemented in a way that complies with the principles of UK data protection legislation.

What should Compliance & Risk teams think about?

Third line teams should be aware of the current ICO focus as part of the Data agenda, and the potential impact of data on current activities.

- ▶ Advertising technologies - given the renewed focus on cookie compliance, the Data Protection Officer should ensure that Risk and Compliance teams have effectively reviewed existing cookie arrangements, and be aware of the requirement to notify individuals of the existence of cookies, clearly explaining the purpose of each cookie, and finally obtaining an individual's explicit consent to store a cookie on their device. Essentially, the firm should ensure that the option to reject cookies is clearly highlighted.
- ▶ Artificial Intelligence - for AI technologies already in use within the sector, firms would do well to keep an

eye on the ICO's consultation series on generative AI, with the first chapters published focusing on the [lawful bases used for web scraping to train GenAI models](#), and how purpose limitation should be applied at different stages of the AI lifecycle. From a governance perspective, Compliance & Risk teams should ensure that AI technologies are not developed in siloes, but instead developed, implemented and monitored with input from data protection compliance teams from the outset (demonstrating a 'privacy by design' approach), as well as other relevant stakeholders from across the organisation, including risk, legal, IT security, data scientists and senior management.

Case Study - Recent ICO enforcement action on an FS firm

In January 2024, the ICO issued a £50,000 financial penalty to an FS firm for being in breach of regulations 22 and 23 of the Privacy & Electronic Communications Regulation (PECR) for sending over 30,000 direct marketing text messages without valid consent. The enforcement notice highlighted that individuals were not given the opportunity to 'opt-out' of receiving further messages.

Financial services firms should be aware that the requirements for processing on the basis of consent are high, under the UK data protection legislation and the onus is on the data controller to evidence the collection of consent from each individual. Some considerations for an organisation relying on consent as a legal basis include:

- ▶ Ensuring any consent collected constitutes an unambiguous indication of an individual's wishes, so 'opt-in' not 'opt-out' (passive consent is not permitted);
- ▶ Consents are not 'bundled together' or captured for multiple data processing activities, but must be clearly distinguishable;
- ▶ Consents are written in clear plain language, so that the individual can clearly understand what they are consenting to;

- ▶ Ensuring that for direct marketing, the option for individuals to 'opt-out' of future marketing emails should be clearly highlighted on each communication; and
- ▶ Organisations should also maintain a record of consents, including the time/date evidence was obtained in the event of any challenge.

What should Compliance & Risk teams think about?

The ICO continues to be active in issuing enforcement action, including financial penalties non-compliance with nuisance marketing texts and/or emails across different sectors. To reduce the risk of individuals making complaints directly to the ICO and avoid some of the pitfalls highlighted in the example above, Compliance & Risk teams should review that consent arrangements are aligned to the requirements of UK data protection legislation and PECR, and refer to the [ICO guidance for Direct Marketing and Regulatory Communications](#), specifically for regulated sectors.

It is also worth noting that the FCA's Consumer Duty (which came into force for existing products in July 2023) will come fully into force in July 2024 for closed products or services. Under the duty, firms should actively communicate with customers about products and services. In order to understand consumers, however, consideration should be given to whether Consumer Duty driven communications with customers potentially cross over into direct marketing. If a regulatory communication constitutes direct marketing, the firm must give individuals the right to object to being sent such direct marketing. The ICO has provided [guidance](#) on direct marketing and regulatory obligations.



05

ESG Update

From Net Zero strategies to Transition Plans: How can Compliance & Risk support evolving expectations?

A transition plan is an integral component to a firm's overall strategy in that it sets out the plan to contribute to and prepare for a transition towards a lower GHG-emissions economy. Transition plans have the core purpose of explaining how an organisation will meet climate targets, manage climate-related risks, and contribute to the economy-wide climate transition.

To help financial institutions and other organisations to produce the highest standard for best practice climate transition plans, the [Transition Plan Taskforce \(TPT\)](#) was launched by HM Treasury in April 2022. Importantly for the financial services sector, the TPT has developed a [Disclosure Framework](#) with the intention of providing organisations with guidance on how to develop credible, robust climate transition plans as part of their annual reporting on their forward business strategy. This is because the credibility and integrity of transition finance has been a focal point for stakeholders.

The production of the Disclosure Framework was part of the TPT's wider role within HM Treasury. The initiative was announced at COP26, in November 2021, began operations in April 2022 and was the first area opened for consultation in November 2022. In November 2023, consultation began on Sector Deep Dives, which are scheduled to be published in Spring 2024. Additionally, in January 2024, the TPT began contributing to the Transition Finance Market Review, with an accompanying Forward Pathway on transition plans intended to be published in Summer 2024. Most financial services firms have already developed Net Zero Plans and the PTP framework will support them in further developing these plans into more comprehensive decarbonisation plans to transition into lower GHG emissions.

Key considerations for transition plans

Generating a credible, effective, comprehensive, and compliant climate transition plan is one of the greatest challenges facing firms in financial services. Achieving these decarbonisation targets requires expert knowledge of new legislation and climate-related guidance initiatives in the context of how they apply to a firm's specific business sub-sector e.g., banking, asset managers, etc. Climate transition plans must cover a [wide range](#) of a business' impact on, and engagement with, society.

The TPT recommends any transition plans are based around the following four pillars:

- ▶ **Implementation Strategy:** The implementation strategy is expected to cover typical business operations, a firm's products and services, policies and conditions, and financial planning.

- ▶ **Engagement Strategy:** Firms are expected to disclose their engagement financed emissions and, with supply and value chains, how they intend to engage with industry, and how they intend to engage with bodies from the government, public sector, and wider civil society.
- ▶ **Metrics & Targets:** Disclosure must include measurable progress on climate-related issues, including financial metrics and targets, GHG metrics and targets, and carbon credits (when applicable).
- ▶ **Governance:** Effective governance is central to suitable accountability for a climate transition plan. Board oversight, the role of management, company culture, and incentive / remuneration packages are all expected areas of disclosure.

To be successful in embedding each of the above in their climate transition plans, firms will require well-designed internal controls to ensure that their new processes for producing climate-related disclosures operate as intended. Climate transition plans cover the length and breadth of an organisation's operations, from regular business activity, financed emissions and investments, metrics and targets, and company culture.

What should Compliance & Risk teams think about?

For firms who have already designed a Net Zero or transition plan, Compliance & Risk can provide strenuous testing for both the design and operational effectiveness of their plan. Such testing provides firms with recommendations for improvement, alongside the confidence that they can embed their ESG strategy and achieve their ESG targets. This will contribute to increasing transparency and credibility of the plans.

Firms who are yet to design and implement a transition plan may benefit from the input of an external ESG specialist. Taking TCFD disclosures as a starting point, an external specialist can review the current framework of metrics and targets and provide advice and expertise on what is a new and specialised field to ensure that firms are aware of what is expected from them in the coming years and the steps they will need to take to ensure regulatory compliance.

How can Compliance & Risk teams support evolving expectations?

Compliance & Risk teams can also use transition planning guidance and recommendations to assist the firm in shaping its own ESG strategies. The four pillars of the climate transition plans stipulated by the TPT could be effectively utilised by Compliance & Risk during the early stages of deciding on ESG targets and strategies.

Compliance & Risk teams should take a more holistic approach, whereby ESG challenges are viewed as part of a wider issue to be tackled, as opposed to a collection of separate problems to be addressed.

Current trends clearly indicate one direction of momentum regarding climate-related disclosures. Firms would do well to heed them and start preparing for mandatory disclosure of climate transition plans as soon as practicable.

[Regulatory updates](#) are expected in the UK sooner rather than later. The FCA indicated in August 2023 of its intention to consult on transition plan disclosures by listed companies in line with the TPT Disclosure Framework, alongside its consultation on implementing UK-endorsed ISSB Standards. The FCA's new requirements are expected to be enforced for accounting periods from January 2025, with the first reporting beginning from 2026.





06

Digital Update

Digital Operational Resilience Act (DORA)

The European Union Council adopted the Digital Operational Resilience Act (DORA) regulation to ensure that digital infrastructure, including the systems and networks that underpin critical services in the financial sector, is secure and resilient against potential threats. While cyberattacks cannot be avoided, financial stability in Europe can still be achieved if organisations mitigate the impact of cyber threats on information and communication technologies (ICT). The objective of DORA is to improve the cybersecurity and operational resilience of all regulated European financial institutions and of critical, third-party ICT service providers.

To whom does it apply?

DORA applies to a wide range of organisations, including regulated financial services firms and ICT third-party service providers, such as cloud computing services, software, data analytics services and data centres.

DORA puts the relationship between the financial institutions and their technology suppliers in a new light to jointly address the regulatory requirements. Financial entities and ICT third-party service providers should increase their collaboration to address the requirements of this new regulation.

What are the DORA Requirements?

Overall, responsibility for this implementation of DORA and other governance obligations imposed by DORA, will rest on the firm's management, which will be responsible for reviewing, approving, implementing and updating the risk management framework. Management will be required to have full awareness and understanding of the financial institution's ICT usage, services and risk profile. Companies may want to assess how reporting lines from their ICT department to senior management operate daily. The financial institutions that are subject to DORA must appoint a senior executive responsible for digital operational resilience and report incidents to the appropriate authorities.

When will DORA be implemented?

In December 2022, DORA was announced in the journal of the EU. Following, the general regulation, technical standards (RTS) were published in January 2024. DORA will be implemented on 17 January 2025.

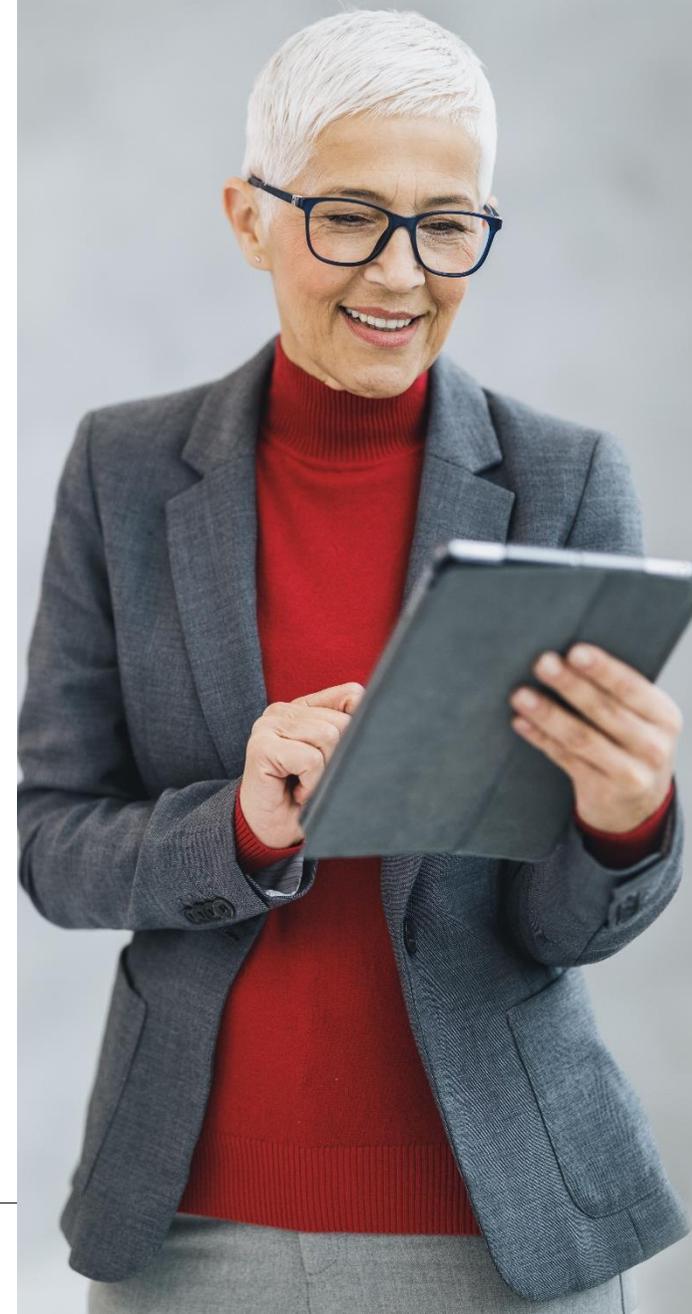
What should Compliance & Risk teams think about?

Achieving compliance with the onerous DORA obligations within the stipulated timeframe will be challenging and time-consuming. While DORA allows a transition period until 17 January 2025, Compliance & Risk teams should check that appropriate preparations have been put in place.

Given the substantial programme of work to deliver compliance by January 2025, Compliance & Risk teams should develop a phased approach, whereby assurance providers coordinate their activities to support compliance over the transition period. This should include periodic reporting to Board and senior management on the assurance activities supporting compliance change management.

Compliance & Risk teams should also consider co-source partners to provide support on the function's key review activities during the transition period, such as:

- ▶ Performing a DORA gap analysis and assess the firm's current cyber maturity and resilience level.
- ▶ Defining a prioritised roadmap that includes DORA requirements and associated compliance with other applicable legislation and regulations.
- ▶ Supporting project management and/or hands-on execution of the security roadmap, e.g. putting in place key policies and procedures, performing resilience testing, managing the penetration testing and implementation of subsequent recommendations, performing third party/vendor risk assessments, etc.



A woman with long brown hair, wearing glasses and a red sleeveless top, is seated at a desk and working on a silver laptop. A man with dark hair and glasses, wearing a grey suit and blue tie, is seated next to her, looking at the laptop screen. The background is a bright, modern office space with a large window showing a cityscape. A white diagonal shape is overlaid on the bottom left corner of the image.

07

Summary of
regulatory
publications in
March 2024

REGULATORY ROUND UP FOR APRIL 2024

General

Operational Resilience Update from the FCA

The Financial Conduct Authority (FCA) has published an [update](#) regarding the importance of operational resilience and the requirements for firms.

What firms are impacted?

Banks, building societies, PRA-designated investment firms, insurers, Recognised Investment Exchanges, Enhanced scope Senior Managers and Certification Regime firms, and entities authorised and registered under the Payment Services Regulations 2017 and Electronic Money Regulations 2011

Summary of the regulatory update

Operational resilience is the ability of firms, financial market infrastructures and the financial sector as a whole to prevent, adapt and respond to, recover and learn from operational disruption. With the first policy milestone having passed on 31 March 2022, firms now have until no later than 31 March 2025 to have:

- Performed mapping and testing so that you can remain within impact tolerances for each important business service.
- Made the necessary investments to enable you to operate consistently within your impact tolerance.

By now, in-scope firms must already have:

- Identified your important business services that, if disrupted, could cause intolerable harm to consumers of your firm or risk to market integrity, threaten the viability of firms or cause instability in the financial system
- Set impact tolerances for the maximum tolerable disruption to these services
- Carried out mapping and testing to a level of sophistication necessary to identify important business services, set impact tolerances and identify any vulnerabilities in your operational resilience
- Conducted lessons learnt exercises to identify, prioritise, and invest in your ability to respond and recover from disruptions as effectively as possible
- Developed internal and external communications plans for when important business services are disrupted
- Prepared self-assessment documentation

When does it take effect?

This update was published on 4 March 2024.

What should firms be thinking about?

Firms in scope of the operational resilience rules must ensure they have carried out the appropriate mapping and testing listed above. Additionally, firms should ensure that if they haven't already done so, they are on track to be able to perform the required mapping and testing to ensure they can remain consistently within impact tolerances by March 2025 at the latest.

REGULATORY ROUND UP FOR APRIL 2024

General

FG24/1 Finalised Guidance on Financial Promotions on Social Media

The Financial Conduct Authority (FCA) has published its [finalised guidance](#) clarifying its expectations on how financial promotions should be communicated on social media.

What firms are impacted?

Authorised persons involved in communicating or approving financial promotions on social media; Unauthorised persons, including influencers or other affiliate marketers, involved in communicating financial promotions on social media.

Summary of the regulatory update

This new guidance replaces the previous guidance on Financial Promotions (FG15/4) and provides greater clarity in this area on what the FCA's expectations are when companies or individuals (such as influencers) promote financial products or services on social media. The guidance does not introduce new obligations for authorised firms. In summary, the guidance:

- Sets out a clear framework for determining when the financial promotion rules apply
- Clarifies the FCA's expectation that financial promotions will be standalone compliant, i.e., when considered individually
- Reminds readers of its prominence requirements for risk warnings
- Requires persons who issue financial promotions to consider whether social media is appropriate for the products or services in question
- Sets out actions non-UK persons can consider to ensure their promotions remain within the exemption for overseas persons
- Reminds firms to consider how their use of social media marketing aligns with their obligations under the Consumer Duty
- Sets out expectations for firms' oversight of their affiliate marketers

When does it take effect?

Immediately.

What should firms be thinking about?

Firms who use social media to promote their products or services directly or through the use of affiliate marketers should review the guidance and update policies and procedures accordingly.

REGULATORY ROUND UP FOR APRIL 2024

General

Changes to the Financial Promotions Order

HMT has [published](#) an update to the Financial Promotions Order (“FPO”) following stakeholder concerns raised about the changes to the eligibility criteria for exempt financial promotions which were set out in the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023 (S.I. 2023/1411) (“the 2023 Order”).

What firms are impacted?

All firms using the financial promotions exemption for communications to high net-worth individuals and self-certified sophisticated investors.

Summary of the regulatory update

Following the publication of the 2023 Order, concerns have been raised by stakeholders in the angel investing, technology, and theatre sectors about the impact of the changes on the ability of start-up business to obtain investment from scall-scale investors. Consequently, the changes published make the following changes:

- Reduces the thresholds for individuals to be classified as high-net worth to income of at least £100k in the last financial year, or net assets of at least £250k throughout the last financial year
- Amends the criteria to be eligible for the self-certified sophisticated investor exemption by:
 - Reinstating the criterion of having made two or more investments in an unlisted company in the previous two years; and
 - Reducing the company turnover required to satisfy the “company director” criterion to £1 million (i.e. individuals who have been directors of companies with at least £1 million turnover in the last two years will remain eligible for the self-certified sophisticated investor exemption)

When does it take effect?

Providing that investor statements that comply with the 2023 Order remain valid until and including 30 January 2025. After 30 January 2025, investor statements that comply with the 2023 Order will have no effect for any purpose.

What should firms be thinking about?

Firms should update relevant policies and procedures in anticipation of the coming changes and communicate these changes to the relevant teams.

REGULATORY ROUND UP FOR APRIL 2024

General

Using Synthetic Data in Financial Services

The Financial Conduct Authority (FCA) has published a [report](#) by the Synthetic Data Expert Group (SDEG), which highlights the experiences of SDEG members in generating and utilising synthetic data within the financial services industry.

What firms are impacted?

Regulated firms considering the use of synthetic data.

Summary of the regulatory update

The Synthetic Data Expert Group (SDEG) is a specialised sub-group of the Innovation Advisory Group (IAG) and was established in February 2023 by the FCA Innovation department. It operates under the guidance of the IAG Terms of Reference and chaired by the FCA. The SDEG helps to foster collaboration across industry, regulators, academia, and civil society to advance the responsible use of synthetic data to shape digital markets to achieve good outcomes and digital transformation at the FCA. The SDEG was launched in March 2023 and plans to run until November 2024.

This report has been collectively authored by members of SDEG and colleagues from the FCA, to reflect a diverse range of perspectives, expertise, and skills, focusing on three key themes across the data lifecycle:

- data augmentation and bias mitigation,
- system testing and model validation, and
- internal and external data sharing for fraud controls.

The report seeks to assist industry and regulatory practitioners in gaining a thorough grasp of the technique, resources, practical opportunities, and challenges related to synthetic data in order to contribute to the efficient and secure deployment of synthetic data. The key findings will serve as a helpful guide to industry participants by explaining the steps to consider when creating and using synthetic data and the types of problem statements where synthetic data can be useful.

There are several important considerations for practitioners to think about when creating synthetic data. These are centred around ensuring clarity on regulatory and legal aspects which may vary depending on the approach and the use case. Additionally, thorough evaluation of the methodology, including whether synthetic data is the best approach, whether other privacy enhancing technologies alone or in combination with synthetic data may improve model quality, should be considered.

The integration of synthetic data within the financial services landscape represents a forward-looking approach to harnessing the power of data. As organisations navigate this evolving landscape, strategic governance, developed with ethical considerations of the points in the report, will help to realise the full potential of synthetic data.

When does it take effect?

The report was published on the 8 March 2024.

What should firms be thinking about?

Firms interested in using synthetic data for overcoming data challenges should consider the report and the key themes highlighted.

REGULATORY ROUND UP FOR APRIL 2024

General

Alternative investment fund manager (AIFM) hosting

The Financial Conduct Authority (FCA) has published a [webpage](#) which sets out important information for Alternative Investment Fund Managers (AIFMs) which use the host model to manage alternative investment funds

What firms are impacted?

Alternative Investment Fund Managers adopting the hosting model

Summary of the regulatory update

The FCA has published its findings following a review of firms using the AIFM hosting model. These firms engage individuals (typically on a seconded basis) to carry out specific tasks such as portfolio management, investor onboarding, or other administrative jobs.

The review identified that a number of these AIFMs had weaknesses in their oversight of these seconded staff. In some cases, these employees were supervised remotely which increased the risk of harm being caused by these staff.

In addition, the FCA identified that the AIFMs did not adequately oversight the onboarding activities of investors by these seconded staff.

Finally, there were weaknesses identified in the capital adequacy assessment of these firms as they failed to consider the increased risk of harm arising from its hosting model and the number of funds supervised.

When does it take effect?

Immediately.

What should firms be thinking about?

Impacted firms should review their oversight arrangements of these secondees and ensure the FCA findings and concerns are taken into account.

REGULATORY ROUND UP FOR APRIL 2024

General

FCA updates position on cryptoasset Exchange Traded Notes for professional investors

The Financial Conduct Authority (FCA) has [announced](#) that it will not object to requests from Recognised Investment Exchanges (RIEs) to create a UK listed market segment for cryptoasset-backed Exchange Traded Notes (cETNs). These products would be available for professional investors, such as investment firms and credit institutions authorised or regulated to operate in financial markets only.

What firms are impacted?

Recognised investment exchanges

Summary of the regulatory update

Exchanges will need to continue to make sure sufficient controls are in place, so trading is orderly and proper protection is afforded to professional investors. cETNs must meet all the requirements of the UK Listing Regime, for example on prospectuses and on-going disclosure.

With increased insight and data due to a longer period of trading history, the FCA believes exchanges and professional investors should now be able to better establish whether cETNs meet their risk appetite.

The FCA continues to believe cETNs and crypto derivatives are ill-suited for retail consumers due to the harm they pose. As a result, the ban on the sale of cETNs (and crypto derivatives) to retail consumers remains in place.

The FCA continues to remind people that cryptoassets are high risk and largely unregulated. Those who invest should be prepared to lose all their money.

The FCA is collaborating with government, international partners and industry to develop the UK's cryptoasset regulatory regime and lead international standards in this space.

If an RIE creates a new UK listed market segment, the FCA will consider applicants on a case-by-case basis for listing cETNs on the Official List. Exchanges must have the appropriate safeguards in place to ensure that the market segment is accessible to professional investors only. Exchanges must also make sure that they fully understand the nature of the risks of admitting crypto-linked instruments to trading and are satisfied that their admission to trading criteria and trading controls will adequately mitigate those risks.

When does it take effect?

This announcement was made on the 11 March 2024.

What should firms be thinking about?

RIEs should consider the FCA's update on its position on cETNs and where the RIE applies for cETNs to be listed on the exchange, it should ensure it has the appropriate safeguards in place.

REGULATORY ROUND UP FOR APRIL 2024

General

Thematic Review of Retirement Income Advice – Dear CEO Letter

The Financial Conduct Authority (FCA) has issued a Dear CEO Letter to financial advice firms asking them to review their processes when providing retirement income advice.

What firms are impacted?

Firm's offering retirement income advice.

Summary of the regulatory update

The letter comes following the FCA's [thematic review](#) of retirement income advice which examined how firms were providing advice. The review identified examples of good practice in the market, however, the FCA also found some examples where firms were not taking account of the needs of their customers.

The key areas for improvement identified by the FCA are:

- The approach to determining income withdrawals was applied without taking account of individual circumstances, or based on methods and assumptions that were not justified or recorded.
- Risk profiling was not evidenced, was inconsistent with objectives and customer knowledge and experience, or lacked consideration of capacity for loss.
- Failure to get necessary information about customers to demonstrate advice suitability, including expenditure or other financial provision, or not exploring future objectives or circumstances, including income needs or lifestyle changes.
- Periodic review of suitability, where relevant, was not always delivered to customers who had paid for ongoing advice.
- Inaccurate or insufficient records held as the control framework to enable customer outcomes to be assessed and track whether periodic review services were delivered.

Addressing the above areas will help raise standards and deliver good outcomes for customers.

Firms should take steps to address the review's findings and take appropriate steps to meet the FCA's requirements on income advice, including the Duty and document how any issues have been addressed. Firms should review the good and poor practice identified in the review to identify how customers can be supported to make informed decisions, avoid causing foreseeable harm and act to deliver good outcomes for retail customers.

The FCA has also published the [Retirement Income Assessment Tool](#) and accompanying [instructions](#) to help firms providing retirement income advice to understand the FCA's methodology which is used in file reviews of retirement income advice.

When does it take effect?

Immediate.

What should firms be thinking about?

Impacted firms should carefully consider the FCA's review findings and take the necessary steps to meet the FCA's requirements.

REGULATORY ROUND UP FOR APRIL 2024

General

Investing in outcomes: a regulatory approach to deliver for consumers, markets and competitiveness

[Speech](#) by Nikhil Rathi, FCA Chief Executive delivered at the Morgan Stanley European Financials Conference.

What firms are impacted?

Regulated firms.

Summary of the regulatory update

The key points of the speech are as follows:

- The FCA want a deeper, more open relationship with investors, analysts, and the markets as a whole - particularly now that they have more freedom to tailor their rules to their markets.
- The FCA will be pragmatic when looking at enforcement of the Consumer Duty, tackling breaches that pose the greatest risk of harm but looking favourably on firms that have made reasonable efforts to address concerns.
- The FCA is not a price regulator, and it will not stand in the way of well-run businesses making profits in the face of effective competition.
- In dealing with motor finance claims, the FCA has intervened now to establish the facts and are aiming for earlier clarity than previous redress events. The more quickly and comprehensively firms cooperate with requests for data, the sooner the FCA can conclude their work.
- Firms and their investors need honest conversations about the balance between short-term shareholder returns and long-term investment to ensure medium-term competitiveness.

The FCA has also updated its pages setting out its approach to [Supervision](#) (which highlights this shift to outcomes-focussed regulation); its approach to [protecting consumers](#) (updated for Consumer Duty); its approach to tackling harms arising from a lack of [competition](#); and its expectations of [international](#) firms providing services in the UK or preparing to apply for full UK authorisation.

When does it take effect?

The speech was delivered on the 14 March 2024.

What should firms be thinking about?

Firms should consider the key points covered in the speech. The refreshed approach documents should also be considered as firms update business models and/or consider new initiatives.

REGULATORY ROUND UP FOR APRIL 2024

General

The hallmarks of a future-fit workforce

The Financial Conduct Authority (FCA) has [published](#) Authorisations Chief Operating Officer and Executive Director Emily Shepperd's speech at TheCityUK and Financial Services Skills Commission Future Skills Conference.

What firms are impacted?

Regulated firms.

Summary of the regulatory update

The highlights of the speech are as follows:

- As financial services look to plug the skills gap and ensure its future competitiveness, it is important to tap into skills markets outside of London. This also helps firms to better reflect consumer demographics. Since the pandemic, the FCA has more than doubled its presence in Edinburgh to around 250 colleagues. In 2022, it opened a regional office in Leeds with c.200 colleagues based there. It has also established a presence in Cardiff and Belfast.
- To attract and retain talent, it is important for firms to build strong and healthy cultures that are inclusive, enabling diversity of thought and healthy challenge. An inclusive culture is one where colleagues feel safe to speak up and challenge. In this environment colleagues are also more innovative and creative, and able to perform at their best. It improves job satisfaction, retention and ultimately outcomes.
- A highly skilled and agile workforce is better able to respond and adapt to changing world events and also new ways of working. Firms should look at ways to upskill their workforce as we grapple with the potential and challenges linked to AI. The FCA is currently using machine learning to support them in supervisory work and to make recommendations - this includes predictive tools. Ultimately humans are still making the decisions. As they evolve to increase the use of large language models and Generative AI, they are mindful of doing this securely, with strong controls or governance, ensuring appropriate levels of human or technical validation.

When does it take effect?

The speech was delivered on 5 March 2024

What should firms be thinking about?

Firms should consider their efforts to help build a future-fit workforce using markets outside of London, diverse cultures and agile workforces.

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