

REGULATORY FOCUS

Evelyn Partners Fund
Solutions Limited

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evelyn
PARTNERS

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are reflected in each other's windows, creating a complex geometric pattern. The sky is filled with soft, white clouds. The overall tone is professional and corporate.

Introduction

What is the EPFL Regulatory Focus?

Our Regulatory Focus provides you with a summary of what we believe to be the most important current and forthcoming UK regulatory changes that may have an impact on our business partners over the coming months.

It is not intended to supplement or replace your own Compliance Department.

Please feel free to contact Neil Coxhead, John McWilliam or Graham Duns or your EPFL Relationship Manager should you wish to discuss further any points that you may have.

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Regulatory Change Timeline

2023

January to March

Sustainability Disclosure Requirements Consultation Paper CP22/20

Deadline for response 25 January 2023

Required compliance with new PRIIPs rules

January 2023

UK Sustainable Finance (TCFD) – Government expected to consult on the adoption of the ISSB standards*

2023

Section 165 Data Requests for Appointed Representatives

Deadline for response 28 February 2023

Diversity & Inclusion in Financial Services (FCA, PRA and BoE)

Consultation expected 2023

HM Treasury & PRA/FCA Senior Managers & Certification Regime (SMCR) reform review

(Q1 2023)

FCA British Steel Pension Scheme consumer redress scheme starts (PS 22/14)

Firms will have until 28 March 2023 to identify all consumers within scope

April to June

A new Consumer Duty - by April 2023, manufacturers need to have completed reviews for existing open products and services and share information with distributors (where appropriate for outcomes)

Deadline for ending reliance on US dollar LIBOR

June 2023

Consumer investments data review covering April 2022 to March 2023

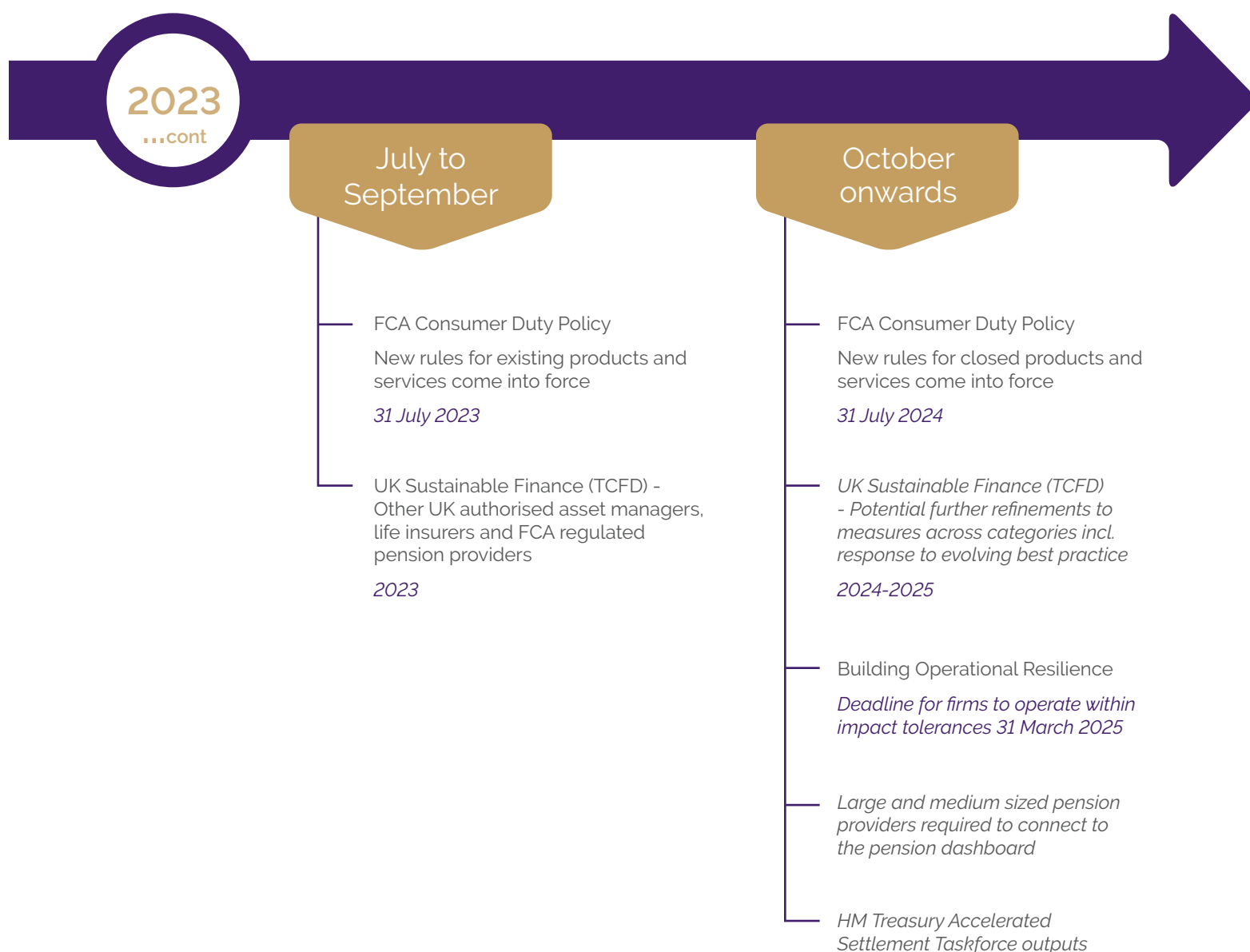
Q2 2023

(UK) TCFD climate-related disclosures (first mandatory annual entity and product/ portfolio disclosures)

Financial Services & Markets 2022/23 Bill expected to become law

FCA 'Sustainable Disclosure Requirements & investment labels' Policy Statement expected (anti-greenwashing rule expected to be in force immediately; other requirements phased in thereafter)

Updated UK Government Green Finance Strategy expected



* TCFD (Task Force on Climate-Related Financial Disclosures)

Implementing the Consumer Duty in Asset Management, Custody & Fund Services and Alternatives portfolios

Published:

FCA, Dear CEO letter, 3 February 2023

On 3 February 2023, the FCA published a letter to firms in the Asset Management, Custody & Fund Services and Alternatives portfolios, providing guidance on how to implement and embed the Consumer Duty ('Duty') effectively.

The letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in Asset Management, Custody & Fund Services and Alternatives portfolios.
- The FCA's expectations for how firms should embed the Duty in Asset Management, Custody & Fund Services and Alternatives portfolios, including relevant examples of good and poor practice.
- Feedback from the FCA's recent review of firms' implementation plans.
- FCA's approach to supervising the Duty in Asset Management, Custody & Fund Services and Alternatives portfolios and planned next steps.

The letter reminds firms that the final rules and guidance were published in July 2022 and set out the following timeline for firms to implement the Duty:

- By the end of October 2022 firms' boards or management bodies should have agreed their plans for implementing the Duty
- By the end of April 2023 manufacturers should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors
- The Duty comes into force on 31 July 2023 for new and existing products or services that are open to sale or renewal
- On 31 July 2024 the Duty comes into force for closed products or services.

The letter also reminds firms that the Duty requires them to act to deliver good outcomes for retail customers. They must act in good faith towards customers, avoid causing them foreseeable harm, and to enable and support them to pursue their financial objectives. They should also consider the diverse needs of their customers, including those with characteristics of vulnerability.

The letter also details some feedback from their review of implementation plans which contains examples of good practice, and areas for improvement, which they feel will be useful for all firms to review as they implement the Duty.

Whilst many of the plans the FCA reviewed showed that firms have understood and embraced the shift to focus on consumer outcomes, established extensive programmes of work to embed the Duty, and are engaging with the substantive requirements, they did identify plans that suggested some firms may be further behind in their thinking and planning for the Duty.

The FCA identified three key areas where firms should particularly focus their attention during the second half of the implementation period (to 31 July 2023):

- **Effective prioritisation:** Firms should make sure they are prioritising appropriately, focusing on reducing the risk of poor consumer outcomes and assessing where they are likely to be furthest away from the requirements of the Duty.
- **Embedding the substantive requirements:** The FCA urges firms to carefully consider the substantive requirements of the Duty, so that when they are reviewing their products and services, communications and customer journeys, they identify and make the changes needed to meet the new standards.
- **Working with other firms:** The FCA feels that in order to implement the Duty on time, many firms need to work and share information with other firms in the distribution chain. Some firms may need to accelerate their work on this important aspect of implementation.

The Consumer Duty is a cornerstone of the FCA's three-year strategy, a key element of their work to set and test higher standards between now and 2025. It is being prioritised at every level of the FCA, from the Board down, and it will drive their supervision strategies and prioritisation

The FCA continue to engage with the relevant trade bodies and other stakeholders to provide further support and guidance to firms during the implementation phase. They will also continue their work to support firms' embedding activities in the run-up to the July 2023 implementation deadline.

The FCA promises that their programme of communications on the Duty will continue, with further events and updates to their dedicated webpages.

The letter contains annexes providing information on how the Duty applies specifically to each type of firm and the key things for these firms to consider.

A copy of the Dear CEO Letter can be accessed at:

www.fca.org.uk/publication/correspondence/consumer-duty-letter-asset-management.pdf

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.



Consumer Duty implementation plans

Published

FCA, Update, 25 January 2023.

On 25 January 2023, the FCA published a review of how firms are planning to implement the Duty.

The FCA stated that they had reviewed a sample of implementation plans and whilst many firms demonstrated that they understand and embrace the shift to delivering good customer outcomes, by having established extensive programmes of work to comply with the Duty, they did find that some firms are further behind in their planning, and that there is a risk that they may struggle to apply the Duty effectively once the rules come into force.

In the run up to the July 2023 deadline, the FCA wants firms to particularly focus on:

- Prioritising - Firms should make sure they are prioritising effectively, with a focus on the areas that will make the biggest impact on outcomes for consumers.
- Making the changes needed - The FCA urges firms to ensure they are making the changes needed so consumers receive communications they can understand, products and services that meet their needs and offer fair value, and they get the customer support they need, when they need it.
- Working with other firms – The FCA encourages firms to share information and work closely with their commercial partners to make sure they are all delivering good customer outcomes. The FCA has found that some firms need to accelerate this work to implement the Duty on time.

The FCA reiterates that the Consumer Duty is a cornerstone of their three-year strategy and will help the FCA set and test higher standards and reduce and prevent serious harm.

The rules come into force on 31 July 2023 for new and existing products or services that are open to sale or renewal, and 31 July 2024 for closed products or services.

Full details of the review can be found at:

www.fca.org.uk/publications/multi-firm-reviews/consumer-duty-implementation-plans

Next steps

EPFL will review the results of the consultation and act accordingly.

Implementing the Consumer Duty in the Consumer Investments sector

Published

FCA, Dear CEO letter, 30 January 2023

On 30 January 2023, the FCA published a letter to firms in the Consumer Investments Sector, providing guidance on how to implement and embed the Consumer Duty ('Duty') effectively.

The letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in the Consumer Investment sector
- FCA's expectations for how firms should embed the Duty in the Consumer Investment sector, including relevant examples of good and poor practice
- Feedback from the FCA's recent review of firms' implementation plans
- The FCA's approach to supervising the Duty in the Consumer Investment sector and planned next steps.

The FCA acknowledges that work on the Duty pre-dates the cost-of-living crisis, and reminds firms that it is particularly important as consumers face increasing pressures on both their household finances and decisions affecting their financial future.

The letter goes on to explain the FCA's expectations on how firms should embed the Duty in the Consumer Investments Sector. The letter sets out four initial areas where particular focus is needed in light of the FCA Consumer Investments strategy and the harms in the sector:

Mainstream investments: Firms need to check that their products and services are delivering fair value. Where problems are identified, the FCA expect firms to fix them. The FCA state that they will be paying particular attention to how Platforms, Wealth Management firms and Financial Advisers deal with the price and value requirements of the Duty. They also consider that more needs to be done to speed up transfers between investment platforms and to improve the support provided to non-advised consumers.

Higher risk investments: Firms need to ensure that their products and services are appropriately designed for the needs and objectives of their target market, and that they are being promoted and distributed effectively. The FCA are particularly concerned that the design of trading apps may lead to poor consumer outcomes. They also expect firms to have effective oversight of introducers, with additional scrutiny of any unregulated introducers.

Scams and Fraud: Firms must act to avoid causing foreseeable harm to their customers and take appropriate action to help stop consumers falling victim to scams and fraud.

Consumer Redress: The FCA expect firms to act in good faith when they identify harm (either through action or inaction), and to take appropriate proactive action to rectify the situation, which may include redress. Redress should be paid promptly when it is due.

The FCA says in the letter that the Duty will drive its supervision strategy and prioritisation over the course of the next couple of years. In addition, firms are warned that they can expect the FCA to act much more quickly and assertively where firms are not meeting their requirements under the Duty. Therefore, it is crucial to do all you can in this next six-month implementation period to get into good shape for when the rules come into force.

The letter contains annexes providing information on how the Duty applies specifically to each type of firm and the key things for these firms to consider.

A copy of the Dear CEO Letter can be accessed at:

www.fca.org.uk/publication/correspondence/consumer-duty-letter-consumer-investments.pdf

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

What firms and consumers can expect from the consumer duty and other regulatory reforms

Published

FCA, 17 May 2022 [FCA, 29 September 2022](#)

On 29 September 2022, the FCA published a speech by Sheldon Mills (FCA Executive Director, Consumers and Competition) at the Consumer Protection in Financial Services Summit entitled 'What firms and customers can expect from the Consumer Duty and other regulatory reforms'.

Consumer Duty is at the heart of the FCA's work to make financial services work well and will be a significant shift in what the FCA expects of firms. It means making lasting changes to culture and behaviour to consistently deliver good outcomes.

What the Consumer Duty means for firms:

- **Consumer Understanding.** The FCA expects products to come with timely and clear information that customers can understand. Customers are making complex choices about debt, mortgages, pensions, investments, and other products, often on a smartphone. It's more important than ever to ensure they have the key product information, such as its features and charges, easily accessible and understandable.
- **Products and Services.** The FCA expects firms to deliver customers products that meet their needs, rather than pushing products that aren't suitable or needed. The FCA states that they see consumers being pushed into high-risk investments, unaffordable high cost credit and unsuitable debt products that do not meet their needs.
- **Consumer support.** The FCA expect firms to ensure customers are supported throughout their relationship with them and consider the best ways to engage including digital or non-digital in order that customers' problems are solved quickly and effectively.
- **Price and value.** The FCA expects consumers to receive fair value. The regulator's intention is not to set prices and the rules do not have this effect. But the FCA expects firms to satisfy themselves that the prices they charge are reasonable for the benefits. For example, a firm lending to customers with high credit risks would need to satisfy themselves that any high charges have a reasonable relationship with the benefits for the customer.

Other key points were:

- Boards and senior management have a critical role in overseeing firms' implementation of the Consumer Duty. That is why the FCA has strengthened the requirements around governance and accountability to ensure senior managers and executives are held accountable.
- Firm's plans should be sufficiently developed to provide their governing bodies and the FCA with assurance that the Consumer Duty will be fully implemented for new and existing products by the July 2023 deadline.
- The FCA expects boards to have an ongoing role overseeing their firm's plans and ensure they remain on track.
- The Consumer Duty is intended to promote competition based on merit with firms competing and innovating to attract and retain customers based on the quality of their products and services and the value they can deliver.
- The rising cost of living underlines the importance of outcomes that the FCA would expect under the Duty.
- For savers, the FCA expects banks to be transparent and be able to explain clearly to them how they decide on the pace at which they pass on base rate increases to savers for both easy access and fixed term deposits.

The FCA recognises that the Consumer Duty comes at a challenging time for consumers and the wider economy and that it represents a significant shift, both for firms and the FCA.

Selling suitable products at a fair price, providing good standards of customer service and communications people can understand shouldn't be controversial. The shift to outcomes-based regulation offers an opportunity to move towards a less prescriptive and more flexible regulatory framework.

The full text of the speech by Sheldon Mills can be accessed at:

www.fca.org.uk/news/speeches/what-firms-and-customers-can-expect-consumer-duty-and-other-regulatory-reforms

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

What is the Consumer Duty price and value outcome?

Published

FCA, podcast 6 January 2023.

On the 6 January 2023, the FCA published a transcript from their podcast on what is Consumer Duty price and value outcome. The main points from the podcast are as follows.

Price and value is one of the four outcomes that firms need to assess under the Consumer Duty. The four outcomes are the consumer understanding outcome, products and services outcome, consumer support outcome and the price and value outcome. Price and value is one of the core ones and essentially what it's saying is that firms need to ensure that the price a customer pays for a product is reasonable compared to the overall benefits that the customer gets from the product.

The FCA want firms to assess upfront the price that a customer pays for the product over time, because often the price can be contingent on the way that a customer uses a product. They might, for example, get fees throughout the lifetime of the product, or they might pay commissions. The FCA urges firms to look at the price from all aspects and then compare that to the benefits that the customer gets from the product and make sure that those benefits are commensurate with what the customer is paying.

The FCA wants firms to look upfront at that price and value equation, but then consistently through the lifetime of the product to make sure that it represents ongoing value for the customer in terms of the benefits that it's receiving and the way that it's using that product. It's an upfront examination of price and value, but then ongoing as the lifecycle of the product evolves.

Regulated firms who are already subject to existing rules requiring manufacturers and distributors to assess whether the price of a product and service provides fair value and to review this regularly are likely to already meet the price and value outcome although they will have to ensure they meet all other requirements and outcomes to fully comply with the Consumer Duty.

The FCA explains that there are three elements that they would want to see in a good value assessment framework:

1. Product assessment - assessing the price that a customer pays over the lifecycle of the product and comparing that to the benefits that a typical customer might get from using that product.
2. Know your customer - different customers use products in different ways. This is about different groups of customers getting different types of benefit, paying different charges, and really be clear for the firm on whether each of those different groups are getting fair value in the way that they're using the product and the prices that they're paying for the product. Additionally, firms should be looking at the sorts of behavioural biases that some customers might have in the way that they use the product that might lead to unfairness because they are either not switching away from the product when they don't get any benefits from it, or they may be using it in ways that the firm hadn't anticipated, and the firm needs to be conscious of that.
3. Price drivers - what is driving the price both at a firm and at the market level? The FCA explains that it can be useful to see how the price of the product has moved over time, and for the firm to ask itself, what is driving that price movement? Is it a result of higher costs? Have costs been rising over the time, or might it actually reflect rising margins and higher profits that the firm is getting from the sales of those products. Is the firm using those price increases also to cross-subsidise other products in its portfolio, which might create unfairness between different groups of customers?

The FCA explains that benchmarking is important for firms needing to satisfy themselves that the product itself is fair value, but also looking across the market and looking within the products that it also sells, does this particular product represent fair value against those benchmarks.

The FCA are developing a programme of supervisory and enforcement work and firms that aren't conducting a proper assessment of the price and value of their products, that haven't used appropriate evidence to demonstrate that it's fair value, or that haven't thought about different cohorts of customers and the sort of value that they're receiving, can expect the FCA to take action, including enforcement action against them once the Duty is in force.

The full details of the podcast can be found at:

www.fca.org.uk/multimedia/inside-fca-podcast-price-and-value-outcome

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.



Understanding the Consumer Duty products and services outcome

Published

FCA, podcast 17 January 2023.

On the 17 January 2023, the FCA published a transcript from their second podcast on Understanding the Consumer Duty products and services outcome. The main points from the podcast are as follows.

The FCA want to see products and services designed to meet the needs of a clearly defined target market and for firms to monitor and see what happens in practice. Firstly, to ensure that products and services work as expected and secondly, to ensure that products or services are being sold to the right people, i.e., only to the people in that clearly defined target market. The FCA believes that firms who put in place good governance and oversight of their products and services, and act on what they see, will take a big step towards the overall objective of delivering good consumer outcomes.

In some sectors, rules on product governance are not new. Sectors such as investments, insurance and funeral plans are already subject to rules on product governance. However, firms in these sectors still need to consider if the Duty applies to any additional requirements to what the firm is doing.

The new Consumer Duty rules apply across all sectors where there is a retail customer, to all firms in a distribution chain that reaches a retail customer. The rules overlap with some existing product governance rules (the 'PROD' rules in the FCA rulebook) so where firms are already following PROD rules on product governance and distribution, they should continue to do so.

The new Consumer Duty rules apply equally to products and services. The FCA feels that traditionally governance and oversight only really applied to products, but the FCA is keen to stress that it applies to services as well, for example, not only advice services, payment services, but also the distribution services that firms are doing.

The FCA don't want to see vague or very broadly defined target markets that might include vulnerable customers that wouldn't benefit from the product or service. They want to see the target market defined in enough detail to avoid including any groups of customers who would suffer harm from that product or service. As vulnerable circumstances can change at any time, the FCA wants firms to review or to track individual customers potential vulnerability. In 2021, the FCA published guidance for firms on their fair treatment of vulnerable customers, and this can also be found on their website.

In identifying target markets, the FCA feels that firms should have a good idea of the kinds of consumers who they think will benefit from their product or service when they go about designing and developing it. However, firms need to think about the design and features of that product or service and whether any features or exclusions mean a product isn't suited to some customers. If so, then that should be reflected in their target market. The FCA states that the risk and complexity of the product should be reflected in the target market so that for more risky or complex product, it might only be appropriate for a much narrower group.

In all aspects of the Duty, the FCA expects firms to monitor outcomes for their customers and to consider if groups of customers are getting poor outcomes and therefore change their distribution strategy.

The FCA provides information on what reviews the manufacturers and distributors need to undertake and how regularly they need to happen. The rules have specific requirements for both manufacturers and distributors stating that they must regularly review whether their product or service meets the identified needs of the target market, whether the distribution strategy remains appropriate for the target market, and whether the product or service has actually been distributed to those customers in the target market correctly. Distributors must do their own regular review and consider whether their distribution arrangements are appropriate and up-to-date, and whether products and services have actually been distributed to customers in the target market. Both manufacturers and distributors must do their own reviews and own work to make sure they're meeting the products and services outcome.

The FCA adds that they want firms to conduct regular reviews because they want firms to take action where they see problems in order to make sure they are delivering good outcomes for retail consumers. If firms identify issues, the FCA expects firms to take appropriate mitigatory action that will prevent further harm from occurring.

The rules do not stipulate the frequency of the reviews, however, in deciding the appropriate time for the review, firms need to consider the nature and complexity of the product and service, the nature of the customer base, including any indication of customer harm.

In the finalised Guidance, the FCA have set out some key questions that they think firms could ask themselves to see if they're complying with the rules. The FCA notes these are also the likely questions that they could pose to the firms that they supervise.

The full details of the podcast can be found at:

www.fca.org.uk/multimedia/inside-fca-podcast-understanding-consumer-duty-products-services-outcome

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

Explaining the Consumer Duty

consumer understanding outcome

Published

FCA, podcast 27 January 2023.

On the 27 January 2023, the FCA published a transcript from their third podcast on what is Explaining the Consumer Duty consumer understanding outcome. The main points from the podcast are as follows.

The FCA explains that the consumer understanding outcome is about how firms communicate with their customers. The FCA wants consumers to be given the information they need at the right time and presented in a way they can understand so that they can make informed decisions and choose products and services that best meet their needs. They believe that this will go a long way in supporting good consumer outcomes, which is a key part of the Duty and avoid situations where consumers experience really poor outcomes.

The FCA appreciates that there are already lots of disclosure requirements across different sectors in their rules and in legislation that are designed to help support consumer decision making and that firms should continue to comply with those sector specific disclosure obligations. Under the Duty, the FCA expects firms to take a step back, consider their approach more holistically and ask themselves is there more that they need to do to support good customer outcomes. The FCA suggest providing simple, plain English explanations of any complex technical informational or industry jargon that's in the mandatory communication as they can confuse consumers and cause them to disengage.

The FCA doesn't expect every single communication to be tailored to meet the individual needs of each customer but does expect firms to consider the information needs of target recipients, for example, the purpose of the communication, who is it going to, what do they need to know, and how can they engage those particular customer's information that's relevant to them. The FCA comments that generic communications, probably for operational efficiency, are often overlooked because it's not obvious to the customer why they are addressed to them. It's about firms understanding their customers and targeting

communications appropriately to make them relevant and engaging.

The FCA want communications to be equally effective, regardless of the channel used, whether that's digital, face-to-face, over the phone, etc. The FCA doesn't want firms to focus on making one channel work well at the expense of another, because this would likely lead to a situation where customers using a particular channel or channels get worse outcomes than others. Firms must deliver good outcomes through all the channels that they operate.

From 31 July 2023 the rules will apply to existing products and services that are open for sale or renewal. This means the rules will apply to all communications relating to those products and services from that date. It doesn't matter if these are newly drafted communications or ones that have been issued for some time, they will all be covered. Existing communications will need to be reviewed by firms before those rules come into effect in July 2023 to make sure they meet the new standards of the Duty.

The FCA state that testing communications with consumers is the best way to determine if they are as understandable as intended. It's not the case that every communication needs to be tested before it can be sent out. In the rules and guidance, the FCA set out various factors for firms to consider when deciding whether it's appropriate to test consumer understanding of a communication, key things to consider include the purpose, context, timing and frequency of the communication.

The FCA have not been prescriptive about how often communications should be tested. They encourage firms to think about, for example, how important the communication is, how many consumers will be using it, and what will the impact be. The FCA suggest that firms need to keep monitoring communications to make sure that they are being effective. Further testing is suggested where there are problems identified, or where changes to the communication are made in order to try and improve it, perhaps redoing the testing at that stage.

The FCA is aware that smaller firms don't have the same testing capabilities and same resources as larger firms, and therefore the rules and guidance are designed to flex to these differences and apply in a proportionate way. The FCA expects firms to take a proportionate approach in this area and have provided examples of different approaches firms could take to testing in chapter 8 of their finalised Guidance.

The FCA does not have specific and set requirements in terms of documentation or evidencing of consumer outcomes. They do however include a range of good practice examples in their finalised Guidance on the metrics firms can use to monitor and evidence good customer outcomes.

The FCA has set out in their policy statement how they plan to supervise the Duty more broadly so firms should expect to be asked to share their implementation plans. Some have been approached already and been asked to share board papers and minutes with supervisors and been challenged on the contents.

In order to ensure they are ready for implementation in July 2023, firms should carefully consider the rules and the guidance and work out where they need to make changes to meet the standards of the Duty. Firms should make sure they've got a programme of work in place to deliver those changes to meet the deadline and that they've got proper governance and oversight of the work. Firms should be thinking about prioritising that implementation work where appropriate based on the risk of poor outcomes, and their assessments of where they're likely to be furthest away from the Duty standards.

The full details of the podcast can be found at:

www.fca.org.uk/multimedia/inside-fca-podcast-explaining-consumer-duty-consumer-understanding-outcome

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

What does the Consumer Duty consumer support outcome mean?

Published

FCA, podcast 7 February 2023.

On the 7 February 2023, the FCA published a transcript from their fourth podcast on What does the Consumer Duty consumer support outcome mean? The main points from the podcast are as follows.

The FCA want to see consumers getting the support they need, when they need it. They want to see firms providing the support that enables consumers to use and enjoy the full benefits of the products and services they buy, and support that enables consumers to act in their interest, whether that's by switching products, moving to a new provider or making a complaint. The FCA feels that it's never been more important that consumers get the support they need given the cost-of-living pressures they're facing.

They want to see a more consistent and high level of consumer support right across retail and financial services whilst recognising that firms are different in terms of their size, their product offerings and customer bases among other things. In the finalised Guidance the FCA have included what they call rules of thumb to give all firms a better idea of what they're looking for in real terms.

The FCA doesn't prescribe which channels of support firms must offer, for example, the telephone, in-branch, via email, online, their websites, even social media and they don't expect that support will always be provided via each individual customer's preferred channel. The key thing is that support is always effective in meeting the needs of customers.

The Consumer Duty calls out so-called sludge design practices. The FCA explains that there's obligations on firms to both include appropriate friction in customer journeys but also ensure customers don't face unreasonable barriers or sludge when they want to act in their interests, for instance by making a claim, complaint or switching to a better product or a different provider. In the right places friction can act as a valuable safeguard against harm. The FCA expects firms to review their customer journeys and look out for frictions along the way, considering the impact on customers.

In providing appropriate levels of support, as is the case with all aspects of the Duty, monitoring is key. The FCA list plenty of examples in their guidance and were pleased to see firms cite various data they intend to use to monitor this outcome in their Consumer Duty implementation plans.

The FCA recognises that firms won't always get it right and on occasion individual customers will have a poor support experience. When this happens, they expect firms to act promptly and fairly, providing redress where appropriate to deliver good outcomes for customers.

The full details of the podcast can be found at:

www.fca.org.uk/multimedia/inside-fca-podcast-what-does-consumer-duty-consumer-support-outcome-mean

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

Finance for positive sustainable change: guidance, incentives and competence in regulated firms (DP23/1)

Published

FCA, 10 February 2023.

On 10 February 2023, the FCA published Discussion Paper 23/1, Finance for positive sustainable change: governance, incentives, and competence in regulated firms (DP23/1). The aim of this Discussion Paper (DP) is to encourage an industry-wide dialogue on firms' sustainability-related governance, incentives, and competencies.

The first part of the DP the FCA:

- Chapter 2 examines how governance, incentives and competence are considered in the Taskforce on Climate-related Financial Disclosures' (TCFD) recommendations, and how expectations in these areas are evolving with the work of the International Sustainability Standards Board (ISSB), the UK's Transition Plan Taskforce (TPT) and the Glasgow Financial Alliance for Net Zero (GFANZ).
- Chapter 3 considers more deeply firms' sustainability-related objectives and strategies, and how these are supported by their governance and incentive arrangements. The FCA also reflects on how asset managers and asset owners organise and govern their stewardship activities to influence positive change.
- Chapter 4 considers firms' training and competence.

In the second part of DP the FCA includes commissioned articles. These articles, along with the FCA's analysis, may help firms reflect on how their approaches to governance, incentives and competence support positive change.

The FCA will use the feedback in considering what the industry would find most helpful in this evolving area, whilst aiding the FCA's future regulatory approach.

The deadline for responses to the DP is 10 May 2023.

Full details of the review can be found at:

www.fca.org.uk/publication/discussion/dp23-1_updated.pdf

Next steps

EPFL await the results from the feedback to the DP and then will act accordingly.

Task Force on Climate-related Financial Disclosures (2022 Status Report)

Published

TCFD, 13 October 2022

On the 13 October 2022, the Task Force on Climate-related Financial Disclosures (TCFD) published its 2022 Status Report. It is now five years since the TCFD's final recommendations were published in 2017, and the report assesses developments over the past five years, including the state of climate-related disclosure, perspectives on TCFD implementation, and opportunities for further progress.

As part of its assessment, the Task Force reviewed publicly available reports of over 1,400 companies from five regions and eight industries to better understand current climate-related financial disclosure practices and their evolution.

The key points from the report include:

- The percentage of companies disclosing TCFD-aligned information continues to grow, but a more urgent progress is needed.
- All regions have significantly increased their levels of disclosure over the past three years.
- A majority of asset managers and asset owners report to their clients and beneficiaries.
- Nearly 50% of asset managers and 75% of asset owners reported information aligned with at least five of the 11 recommended disclosures.
- The percentage of companies disclosing the TCFD recommendations in financial filings or annual reports has increased each year.
- The availability and quality of climate-related financial disclosures has increased since June 2017.
- Investors and others use disclosures in decision-making and pricing.

The Task Force will continue to monitor companies' progress in disclosing climate-related financial information aligned with the TCFD recommendations and will prepare another status report for the Financial Stability Board in October 2023.

The full details of the report can be accessed at:

<https://assets.bbhub.io/company/sites/60/2022/10/2022-TCFD-Status-Report.pdf>

Next steps

EPFL will continue to review any output from the TCFD and act accordingly.

Sustainability Disclosure Requirements (SDR) and investment labels (CP22/20)

Published

FCA (CP22/20), October 2022

On 25 October 2022, the FCA published Consultation Paper CP22/20 on sustainability disclosure requirements (SDR) and investment labels for investment products.

The FCA are concerned that firms may be making exaggerated, misleading or unsubstantiated sustainability-related claims about their products; claims that don't stand up to closer scrutiny (so-called 'greenwashing').

In a bid to clamp down on greenwashing, the FCA is proposing a package of new measures including investment product sustainability labels and restrictions on how terms like 'ESG', 'green' or 'sustainable' can be used.

The measures are among several potential new rules which will protect consumers and improve trust in sustainable investment products. The work forms part of the commitment made in the FCA's ESG Strategy and Business Plan to build trust and integrity in ESG-labelled instruments, products and the supporting ecosystem.

There has been growth in the number of investment products marketed as 'green' or making wider sustainability claims. Exaggerated, misleading or unsubstantiated claims about ESG credentials damage confidence in these products. The FCA wants to ensure that consumers and firms can trust that products have the sustainability characteristics they claim to have.

Therefore the FCA is proposing to introduce:

- Sustainable investment product labels that will give consumers the confidence to choose the right products for them. There will be three categories – including one for products improving their sustainability over time – underpinned by objective criteria.
- Restrictions on how certain sustainability-related terms – such as 'ESG', 'green' or 'sustainable' – can be used in product names and marketing for products which don't qualify for the sustainable investment labels. It is also proposing a more general anti-greenwashing rule covering all regulated firms. This will help avoid misleading marketing of products.

- Consumer-facing disclosures to help consumers understand the key sustainability-related features of an investment product – this includes disclosing investments that a consumer may not expect to be held in the product.
- More detailed disclosures, suitable for institutional investors or retail investors that want to know more.
- Requirements for distributors of products, such as investment platforms, to ensure that the labels and consumer-facing disclosures are accessible and clear to consumers.
- different global warming scenarios and their own net zero commitments may affect the valuation of their assets and liabilities.

The deadline for responses to the consultation paper was 25 January 2023. The FCA is now reviewing feedback received and intends to set out its final rules in a policy statement by 30 June 2023.

The FCA also intends to follow with further consultations in due course. These consultations include expanding the scope of the SDR regime to overseas and pension products, new rules for financial advisers on taking sustainability preferences into account, disclosure of transition plans, and taxonomy-related disclosure requirements.

Full details of the FCA Consultation Paper can be found at:

www.fca.org.uk/publication/consultation/cp22-20.pdf

Next steps

Consultation closed on the 25 January 2023. EPFL will review the final rules and guidance when available from the Regulator and act accordingly.

The Proceeds of Crime (Money Laundering) (Threshold Amount) Order 2022

Published

HM Treasury, December 2022.

On 15 December 2022, the UK Government published the Proceeds of Crime (Money Laundering) (Threshold Amount) Order 2022 and an accompanying explanatory memorandum.

This is in connection to the changes to the Proceeds of Crime Act (POCA) that came into force 5 January 2023 for reporting thresholds where firms make a Suspicious Activity Report (SAR) to the National Crime Agency (NCA).

The Order amends section 339A of the Proceeds of Crime Act 2002 ("POCA") to increase the value below which some transactions can be carried out by certain businesses (i.e. "deposit taking bodies", electronic money institutions and payment institutions) in operating an account for a customer, from £250 to £1,000, without committing an offence under sections 327-329 of POCA.

The decision has been made in order to improve the suspicious activity reporting regime by reducing the volume of 'defence against money laundering' reports received by the National Crime Agency. This is to allow it to focus on opportunities that lead to asset seizure and deliver cost savings to the regulated sector.

Full details can be found at:

www.legislation.gov.uk/uksi/2022/1355/pdfs/ukxi_20221355_en.pdf

Next steps

Changes came into effect 5 January 2023.



Suspicious Activity Report (SARs) Annual Report 2022

Published

National Crime Agency, 24 January 2023.

On 24 January 2023, the National Crime Agency (NCA) published the 2022 Suspicious Activity Report (SARs) Annual Report, which features statistics covering the years 2020-21 and 2021-22.

The latest report shows that:

- There was another record set in the last financial year with 901,255 SARs received and processed - a 21% increase on the previous year.
- An estimated £305.7M denied to suspected criminals as a result of Defence Against Money Laundering (DAML) requests - a 120.6% increase on the £138.6M denied in 2020-21.
- The financial and predicate crimes intelligence provided by SARs has proved to be invaluable as criminals sought to take advantage of the pandemic to advance their illicit enterprises. More recently, as a result of Russia's invasion of Ukraine, SARs have provided increasingly important information on money laundering linked to sanctioned individuals and their associated entities.
- In 2022, the NCA set up the new Combatting Kleptocracy Cell (CKC), with a remit that includes the investigation of criminal sanctions evasion and high end money laundering.

SARs are an important component of the information coming into the cell, and the UK Financial Intelligence Unit (UKFIU) - which receives, processes and assesses SARs on behalf of the NCA - now has a dedicated team to work as part of the CKC.

Under the SARs Reform Project the UKFIU has undertaken a significant transformation since the last report with new methods of working and new teams. This has included an uplift in staff to over 150 and measures are in place to reach the target of 201 by the end of the next financial year, driving increased analysis and engagement within the SARs regime.

The full report can be found at:

www.nationalcrimeagency.gov.uk/who-we-are/publications/632-2022-sars-annual-report-1/file

Next steps

For information.

Reporting Suspicious Activity Report (SARs) Online

Published

National Crime Agency, 24 January 2023.

On 24 January 2023, the National Crime Agency (NCA) launched SAR Online, which is a secure web-based system through which firms can submit SARs to the NCA.

The UK Financial Intelligence Unit (UKFIU) has also published an updated guidance note on Submitting a Suspicious Activity Report (SAR) within the Regulated Sector.

The guidance focuses on how to register with, and use, their new secure web-based system through which firms can submit SARs to the NCA: SAR Online. This is now the NCA's preferred means of SARs submission and provides a standardised and structured approach to assist reporters with their submissions. The portal can be used by anyone including members of the general public and/or organisations (regulated and unregulated).

The online portal can be found at:

[www.ukciu.gov.uk/\(3oz4px45mraxcm45blanjseg\)/saronline.aspx](http://www.ukciu.gov.uk/(3oz4px45mraxcm45blanjseg)/saronline.aspx)

Guidance can be found at:

www.nationalcrimeagency.gov.uk/who-we-are/publications/634-new-presentation-of-sar-data-user-guide-c/file

Next steps

For information.



Fighting financial crime – the force multiplier effect

Published

FCA, 7 September 2022.

On 7 September 2022, the FCA published a speech by Sarah Pritchard, Executive Director, Markets, at the Financial Crime Summit entitled 'Fighting financial crime – the force multiplier effect'.

Ms Pritchard outlined the FCA's strategic response to financial crime in the four following areas:

Robust defences and actions:

The FCA are working with firms and their partners through joint taskforces to help drive a whole system response. The FCA recently prosecuted a major bank, for money laundering system and control failures and since 2018 have fined approximately ten firms for money laundering weaknesses. Fines issued have totalled over £665m.

Thinking ahead: Following the Russian invasion of Ukraine, the FCA's work on sanctions is ongoing, using data and intelligence to identify firms with potential weaknesses in controls, and then using data tools to test the effectiveness of those firms' sanction screening systems.

The FCA warn firms that if they use vendor solutions for their sanction screening processes, they need to make sure that the solution is tailored and suitable for their customer and business profile.

Cost of Living: The FCA is asking firms to plan how they are going to respond to the risks of the cost of living crisis as they anticipate a potential rise in people being recruited to act as money mules where they are asked to transfer money through their accounts by strangers in exchange for payment.

The FCA is asking firms what they are doing to calibrate their financial crime controls to changing risks in the cost of living crisis?

A whole system response: The FCA stated that they need a whole system response to effectively limit the threat. Together with the Payment Systems Regulator and industry partners, the Home Office, Treasury, NECC and NCA, international regulators, and industry, the FCA wants to understand the tech solutions that could help prevent Authorised Push Payment (APP) fraud in real time. Furthermore, the FCA wants to test how financial services and other sectors can share data and analytics in real time, and how to spot fraud at source.

The full text of Ms Pritchard's speech can be accessed at:

www.fca.org.uk/news/speeches/fighting-financial-crime-force-multiplier-effect

Next steps

For information.

Market Watch 71

Published

FCA, 13 December 2022

On 13 December 2022, the FCA published Market Watch 71 in which they shared their observations about changes in advisory firms' insider lists since the publication in August 2019 of Market Watch 60. The FCA reminds firms of the requirement within UK Market Abuse Regulation (MAR) to include personal information in insider lists and reiterates the importance of firms maintaining accurate insider lists and strictly limiting access to insider information to employees who require access to perform their role in order to prevent market abuse.

The FCA reports that they have seen considerable reductions in the numbers of permanent insiders as well as enhanced monitoring of access to insider information. Some methods introduced include:

- Register of events and/or specific 'permanent insiders' resulting in persons that only need access to specific inside information appearing on a smaller list rather than a permanent insider list.
- Cross referencing records of electronic access to files containing insider information with insider lists and withdrawing access if it can be shown that a person did not access the information.
- Reviewing whether those that access data require access to only anonymised high-level information rather than full details of transactions.

Article 18 of UK MAR and personal information,

The Insider lists are used by the FCA when investigating possible market abuse, as well as by firms to maintain records of who has access to inside information. The FCA reminds firms that regulatory requests of this nature require personal information other than just names. Telephone numbers, dates of birth, and national identification numbers helps the FCA to eliminate people from their enquiries by cross referencing the information with MiFIR transaction reports, MAR suspicious transaction and order reports and also from other information sources.

Firms not providing all of the required information hinders the review of potentially suspicious trading and contravenes Principle 11 which requires firms to deal with the regulator in an open and cooperative way.

The full text can be found at:

www.fca.org.uk/publications/newsletters/market-watch-71

Next steps

EPFL will continue to monitor the funds through the normal course of its fund oversight.

Edinburgh Reforms for the UK Financial Services

Published

UK Government, 9 December 2022

On 9 December 2022, the Chancellor of the Exchequer Jeremy Hunt MP unveiled at an industry roundtable in Edinburgh over 30 regulatory reforms. These 'Edinburgh Reforms' follow on from the Chancellor's Autumn 2022 Statement in which he highlighted financial services as one of the UK's five key growth sectors..

The reforms are intended to deliver the next chapter of the government's vision for UK financial services, set out at Mansion House in 2021 and will repeal, and replace much EU retained laws governing financial services. This will establish a smarter regulatory framework for the UK that is agile, less costly and more responsive to emerging trends.

The Edinburgh Reforms include:

A competitive marketplace promoting the effective use of capital

The Chancellor will:

- Overhaul the UK prospectus regime to make it more attractive for firms to list and raise capital
- Reform the ring-fencing regime in response to the recommendations of the Skeoch Review - including by freeing retail focussed banks from the regime.
- Issue new remit letters to the Financial Conduct Authority and Prudential Regulation Authority emphasising new secondary competitiveness objectives. Regulators will have a duty to facilitate the international competitiveness of the UK economy and its growth in the medium to long term.
- Simplify the deployment of more capital in productive assets such as UK infrastructure and low carbon and clean energy. This will be facilitated by Long-Term Asset Funds, a new type of fund structure tailored to the UK market and which will replace the EU's European Long Term Investment Fund regime, which will be repealed from the UK rulebook.

Delivering for consumers

- The government is publishing its first consultation on proposals to modernise the Consumer Credit Act, simplifying the regime to encourage innovation in the credit sector and cutting costs for consumers and businesses.

A sector at the forefront of innovation and technology

- The government will publish a consultation on proposals to establish a UK Central Bank Digital Currency. Other measures will see the Investment Management Exemption extended to crypto assets, ensuring more overseas investment can flow into the sector
- The government has recommitted to establishing the Financial Markets Infrastructure Sandbox in 2023, allowing firms and regulators to safely test, adopt and scale new technologies that could transform financial markets.

A world leader in sustainable finance

- The government will publish a new green finance strategy in early 2023.
- The government will consult on bringing Environmental, Social and Governance (ESG) ratings providers into the FCA's regulatory perimeter, to ensure these products are transparent and use consistent standards.

The government's Financial Services and Markets Bill is expected to receive Royal Assent in Spring Summer 2023. This further delivers on the government's vision for financial services, including the bringing of certain types of stablecoins within the payments regulatory perimeter and enabling the Payments Systems Regulator to force banks to reimburse the victims of Authorised Push Payment (APP) fraud.

Full details of the Chancellor of the Exchequer's announcement can be accessed at:

www.gov.uk/government/collections/financial-services-the-edinburgh-reforms

Next steps

EPFL will continue to monitor further Edinburgh Reform output and act accordingly.

PRIIPS and UK Retail Disclosure – A Consultation

Published

HM Treasury, 9 December 2022

On 9 December 2022, HM Treasury published a consultation setting out the government's plans to revoke the PRIIPs Regulation and seeking views on a proposed alternative framework for retail disclosure, as part of the implementation of the Future Regulatory Framework (FRF) Review.

Within this consultation document:

- Chapter 2 sets out the key issues that the government has identified with the PRIIPs Regulation, as well as some of the background to the regulation and this consultation
- Chapter 3 outlines a new direction for retail disclosure, designed to address each of the issues raised in Chapter Two
- Chapter 4 seeks views on delivery and on the parameters for retail disclosure going forward, given the balance of competences and HM Treasury's responsibilities under the Financial Services and Markets Act (FSMA) model of regulation
- Chapter 5 outlines the government's views on some wider retail investment and disclosure issues

The key points from Chapter 2 are:

- HM Treasury believes that the PRIIPs Regulation, which the UK inherited from the EU in January 2018, is not fit for purpose. Consequently, UK PRIIPs legislation will be revoked and replaced by a new regime.
- The rules on the format, presentation and content of new retail disclosures regime will sit within the FCA Handbook, enabling the FCA to review/update it as markets evolve.
- UCITS will be integrated into the same disclosure framework at some point before their exemption from the existing PRIIPs regime expires at the end of 2026.
- In explaining its decision, HM Treasury identifies various deficiencies in the KID and the wider regime:
 - HM Treasury believes that the prescriptive format of the KID is costly and burdensome for firms and does little to develop client understanding;
 - HM Treasury believes that the KID creates a false impression of comparability across a huge range of products, resulting in unhelpful and/or misleading information being presented to consumers;
 - HM Treasury believes that the regime constrains the use of investment products from other jurisdictions – notably, US ETFs; and
 - HM Treasury believes that the regime has had a negative impact on the availability of retail bonds.

- Although HM Treasury's immediate priority is PRIIPs/UCITS reform, the Consultation Paper also set out some principles for a broader retail disclosure review. Consequently, any new regime will need to:
 - ensure that retail investors have access to clear and useful information to support their investment decisions
 - ensure that disclosure is proportionate (1) to the risk that clients take in purchasing an investment product and (2) to the complexity of the decision they are making
 - and provide additional choice for retail investors and to reduce burdens for firms

The key points from Chapter 3 are:

- disclosures will become more flexible - while there may be prescription for high-risk or complex investments or some types of information, "in most cases, flexible requirements that can be incorporated into firms' existing information documents should be sufficient".
- comparability across broad ranges of products is no longer the primary objective for disclosure - disclosure will focus instead on ensuring that a consumer "understands the nature of the product that they are purchasing to a sufficient degree to enable an informed choice"
- stand-alone product disclosure documents will disappear - "it is the government's expectation that the PRIIPs KID - or any new comparable prescriptive disclosure document - will no longer be a feature of the UK's new retail disclosure regime"
- The paper also considers whether the FCA has sufficient powers to ensure an appropriate regulatory framework for product disclosure and largely concludes that it does although some additional powers may be needed in specific areas - for example, around the marketing of overseas funds to retail investors.

The key points from Chapter 4 are:

- "revocation of the PRIIPs Regulation will be commenced as a matter of priority following Royal Assent of the FSM Bill" (expected Spring / Summer 2023);
- the FCA will consider changes to its rules in light of feedback to the HMT consultation but, in the interim, HM Treasury/FCA will work together to ensure that there are no gaps in the regulatory regime.

The key points from Chapter 5 are:

- HM Treasury does not want to discourage firms from offering investment products from different jurisdictions to UK retail investors
- HM Treasury feel that the revocation of the PRIIPs Regulation and its replacement with a less prescriptive approach to disclosure will permit greater innovation with respect to format and presentation.

The consultation closed on 3 March 2023.

Full details of the Consultation Paper can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128533/Consultation_PRIIPs.pdf

Next steps

EPFL will await the outcome of the consultation and act accordingly.

Future Disclosure Framework

Published

FCA DP22/6, December 2022

On 13 December 2022, the FCA published Discussion Paper DP22/6 on the Future Disclosure Framework.

The distribution of retail investments has changed in recent years, and disclosure regulations have not always reflected this. The FCA has seen a trend towards online investment, and subsequently an increase in digital distribution of disclosure. However, most disclosure regulations were designed with advised sales and paper-based disclosure in mind. The FCA feels that a review of retail disclosure is necessary to help financial services to be fit for the future.

The revocation of the PRIIPs Regulation provides the FCA with an opportunity to design and deliver a retail disclosure framework that is tailored to the UK market and supports retail investors to make informed investment decisions. In this Discussion Paper (DP) the FCA invites feedback on how they can design and deliver a good disclosure regime. The FCA believe a replacement regime should be supportive, engaging, accessible and flexible, helping safeguard investor protection while increasing choice and reducing unnecessary or over prescriptive constraints on firms.

The FCA is also seeking input on how they can future-proof retail disclosure regulation. They feel that it is important that a replacement regime does not constrain innovation in the market.

The FCA is seeking views on:

- the delivery of retail disclosure, as discussed in Chapter 3
- the presentation of retail disclosure, as discussed in Chapter 4
- the content of retail disclosure, as discussed in Chapter 5

The key points from Chapter 3 (delivery of retail disclosure) are:

- disclosure rules have often been drafted to regulate paper-based disclosure and firms have raised concerns that rules can, at times, constrain them from delivering information in innovative and engaging ways.
- The FCA want to align the delivery of information with the consumer journey, ensuring information is provided when it will be useful to consumers.
- The FCA are unlikely to amend the durable medium requirement in the short term. However, they are conscious that in the longer term they will need to evaluate it to enable more appropriate delivery of information and to effectively future-proof disclosure rules. The FCA are currently exploring the balance between the safeguards the existing durable medium requirements supply and the constraint they have on innovation and consumer understanding.
- The FCA intend to introduce rules that are technology-neutral and to enable the delivery of effective digital disclosure while also ensuring investors receive supportive paper-based disclosure if that is their preference.
- The FCA notes that product manufacturers and retail distributors have adapted their marketing to the digital age, designing marketing materials in a way that engages retail investors and influences their decision making. The FCA want to re-examine the relationship between product manufacturer and distributor in the creation and delivery of disclosure and ensure that a replacement regime enables them to meet requirements under the Consumer Duty.
- The FCA are seeking industry feedback on the relationship between manufacturers and distributors on the responsibility for designing and delivering disclosure.

The key points from Chapter 4 (presentation of retail disclosure) are:

- The FCA notes that consumer research suggests that consumers retain information if it is presented in a way that is novel, simple, and accessible. The FCA's Smarter Communications work found that the key principles for effective disclosure design included plain language.
- The FCA believes that this review is an opportunity to move away from overly prescriptive presentation requirements of existing disclosure requirements.
- The FCA are seeking input on the concept of layering, and if this is an effective way to present information to retail investors as layering would allow firms to include certain information upfront, with more granular information provided later. The FCA think this approach could provide an appropriate balance between providing succinct and useful information while ensuring transparency is maintained.
- With the increasing digital distribution of investments, the FCA note that it would be beneficial for a future disclosure framework to accommodate interactive retail disclosure allowing disclosures to provide information tailored to the retail investor, for example, hover-over buttons, hyperlinks or pop-ups.
- The FCA are seeking input on how they can enable the use of plain language that facilitates consumer understanding. The FCA believes that there are benefits to adopting terms and definitions, as it means that its use is always the same and always referring to the same thing.

The key points from Chapter 5 (content of retail disclosure) are:

- It is the FCA's view that there are some elements of disclosure, such as costs and charges, that are so essential to consumer investment choice that they should be more strictly prescribed. This view is shared by HM Treasury, who noted that such areas may require more prescriptive rules in their consultation on this matter.
- A high degree of standardisation across a diverse market may mean that the disclosure will work better for some products than others. The FCA recognise that comparability can be useful in many instances to enhance consumer understanding, support competition, and reduce manipulation of data or information gaming and invites feedback on the right balance between flexibility and consistency in consumer disclosure.
- Flexibility can facilitate consumer understanding by tailoring information more appropriately to the target market. Prescriptivism is useful for facilitating like-with-like comparisons of similar products, allowing consumers to fully appreciate and understand the differences between similar products. The FCA want to understand the degree to which they should introduce flexibility into the content of disclosure
- The FCA want to ensure there is a balance between providing information that is useful to a consumer in their decision making and not providing too much information which is either unhelpful and/or clouds a consumer's decision making.
- The FCA observed that currently, firms are required to disclose, one-off, ongoing costs, and incidental costs in both percentages and whole numbers for different scenarios and as reductions in yields. The FCA notes however that in some instances, retail investors do not always understand the costs that are included due to the complexity of the underlying methodology and the composition of indirect costs.

- The FCA are inviting feedback on disclosing a single figure for one-off and ongoing costs upfront, with investors able to find further information about the component parts if they want to do so. Firms would then be able to prominently display simplified costs while signposting to more detailed cost and charges breakdowns that can provide more granular information for interested consumers
- To ensure investors purchase products that suit their objectives and risk appetite, the FCA feel it is important that consumers have information on the risks of products. The FCA are seeking input on how we can ensure that risk is displayed appropriately, in an informative and proportionate way
- The FCA want to understand if it would be beneficial to provide firms with the flexibility to include risk in a graphic format, and/or to be allowed to disclose risk in the way they see fit as they believe that visual representations, such as graphics or graphs, can help improve information processing.
- The FCA invited feedback on what the purpose of performance information is and how performance can best be communicated to retail investors based on product type.

The deadline for responses on DP22/6 was 7 March 2023. The FCA will then provide feedback and issue a Consultation Paper later in 2023.

Full details of the FCA Discussion Paper can be found at:

www.fca.org.uk/publication/discussion/dp22-6.pdf

Next steps

Consultation closed on the 7 March 2023. EPFL will review any feedback and future Consultation Papers from the Regulator and act accordingly.

Asset Management Supervision Strategy

Published

FCA, Dear CEO letter, 3 February 2023

On 3 February 2023, the FCA published a Dear CEO letter to firms in the Asset Management sector, entitled 'Our Asset Management Supervision Strategy'. This letter outlines the harms to consumers or markets that the FCA think are most likely to arise from Asset Managers business models. It sets out how the FCA intend to supervise the Asset Management portfolio to address these harms and it supersedes the FCA's previous strategy letter of January 2020.

The letter flags a number of risks that have been identified from a mixture of the FCA's supervisory and authorisation work, external data and its interaction with both trade associations, and other regulators.

The letter also warns that, in its future supervisory engagement with firms, the FCA will consider whether firm's governing bodies and Senior Managers with accountabilities "have taken appropriate action to ensure that consumers and markets are adequately protected from these harms".

The letter identifies five areas which the FCA regards as its supervisory priorities:

Product governance: This includes product design, distribution strategy, customer communications and assessment of value. The FCA will have a particular focus on assessment of value. The FCA states that a key risk for the sector is that the quality and value of product offerings, or the quality of communications with customers, do not deliver good outcomes for consumers or meet their needs. This could be for a range of reasons, including because the product carries excessive costs and charges, is not designed with the target audience in mind, or is distributed to the wrong type of investor.

The FCA will follow up on its 2021 Assessment of Value review findings and seek to identify outliers, for example where firms do not apply all the minimum considerations, assess value at fund level rather than unit class, or where fund performance is assessed using measures that do not reflect a fund's investment policy and strategy. It will also consider in this review how firms have built maturity of ESG into value assessment considerations.

The FCA will also conduct a review of the embeddedness of the Consumer Duty in 2024, with a focus on the price and value outcome.

ESG and sustainable investing: The FCA's supervisory activity will focus on how governance structures oversee ESG product development, integration of ESG into the investment process, the use of third-party and proprietary information and the viability of sustainability-related claims. The FCA advice it will be testing the ESG and sustainable investing claims made in firms communications with investors, as part of its efforts to reduce greenwashing risk, with a particular focus on outlier firms identified in previous supervisory activities or involved in ongoing surveillance. The letter also indicates that the FCA will focus on ensuring that asset managers' governance bodies are structured to oversee and manage information about ESG and sustainability integration in the investment process, ESG information providers, and other sustainability claims made by the firms.

The FCA encourages firms to assess how they have taken into account net zero commitments in their transition planning. In order for firms' governance and culture to support the net zero transition, firms need to ensure they have aligned priorities, identified responsibilities clearly, transformed cultures and plugged educational gaps.

Product liquidity management: The FCA wants firms to use liquidity management tools correctly and consistently, to ensure that different investors are treated fairly, and to ensure that their operational systems and processes are fit for purpose. The FCA is concerned that while firms have tools available to improve the quality of their liquidity risk management, they may not always oversee them correctly or use them consistently. Firms should ensure exiting and remaining investors are treated fairly when considering the costs of redemption, and the mix of assets which may be employed to meet redemption requests. They should work with stakeholders to ensure that operational systems and processes are fit for purpose, can be executed at pace, and can be scaled to handle additional demand when needed.

The FCA notes that it is working with the Bank of England (BoE), and other regulators internationally, to strengthen resilience of money market funds, funds with significant liquidity mismatches, and transmission of risk from the non-bank financial sector to the wider market. It is also in the process of completing a liquidity management multi-firm review.

Investment in operations and resilience: Firms need to understand the operational health of their business and be able to respond in a timely manner, manage the risks associated with third-party providers effectively, and report operational incidents to the FCA. Where firms rely on third parties for services, they should ensure they have sufficient information, skills, and knowledge to make sure that third parties will continually deliver a service which allows them to meet their regulatory obligations. The FCA notes that the current level of incident reporting across the sector is variable. Over the cycle the FCA will complete a range of proactive programmes to monitor and test asset managers' ability to meet these regulatory requirements. It may select firms for further review, including through using its cyber and operational resilience assessment tools and its intelligence-led penetration testing scheme (CBEST).

Financial resilience: Firms need to ensure they have sufficient capital and liquidity to address harms from on-going operations and conduct an orderly wind-down, and to ensure that their governance processes allow them to assess their prudential health regularly and adequately.

A copy of the Dear CEO Letter can be accessed at:

www.fca.org.uk/publication/correspondence/portfolio-letter-asset-management-2023.pdf

Next steps

EPFL will continue to review output from the Regulator and act accordingly.

Updating and improving the UK regime for asset management

Published

FCA DP23/2, February 2023

On 20 February 2023, the FCA published Discussion Paper DP23/2 on updating and improving the UK regime for asset management.

The FCA are publishing this discussion paper (DP) to get a broad range of views about the current UK regime for regulating funds and asset managers. It sets out a number of ideas about how they might modernise this regime to improve outcomes for UK markets and consumers whilst taking account of developments in technology and supporting innovation.

Some of the issues where the FCA is seeking feedback include:

- whilst acknowledging that there are benefits to host Authorised Fund Managers (AFMs) for consumers, the FCA have found that some host AFMs fall short of the required standards. The FCA may clarify its expectations of host AFMs by creating specific contractual requirements between host AFMs and portfolio managers
- amending the rules and guidance around liquidity stress testing by removing or significantly restricting the limitation around liquidity stress testing in COLL 6.12.11R(2)
- whether the FCA should make their rules on liquidity management and anti-dilution clearer as they believe that differing practices in this area could lead to harm to consumers
- comments on the benefits or costs associated with public disclosure of fund liquidity
- making their expectations on investment due diligence clearer for all asset managers ensuring that where investments are made in illiquid or complex securities the appropriate due diligence is performed.
- Clarifying their expectations on depositaries, including systems and controls to identify breaches, their oversight of the AFMs liquidity management and the oversight on the AFMs pricing and dealing function.
- The potential for removing or modifying detailed or prescriptive requirements in the rules on prudent spread of risk, the 5/10/40 rule.

The FCA recognises that their Handbook may lack clarity about whether and how firms are able to adopt new technology and innovation in that it may contain rules that obstruct change. The FCA is looking to identify areas where improvements could be made to fund regulation, so that firms can take advantage of technological developments in their customers' best interests.

Alongside this DP the FCA plan to engage with a wide range of stakeholders in forums and roundtables as well as individual meetings. They want to rank the priority of ideas covered in this paper. Depending on feedback the FCA will look at ways to develop some of these ideas using tools such as policy sprints.

The FCA will consider feedback and publish a Feedback Statement later in 2023, possibly as part of a consultation paper on some of the discussion topics.

Full details of the FCA Discussion Paper can be found at:

www.fca.org.uk/publication/discussion/dp23-2.pdf

Next steps

EPFL will review any feedback and future Consultation Papers from the Regulator and act accordingly.

Quarterly Consultation No 37

Published

FCA (CP22/17), September 2022

On 2 September 2022, the FCA published Consultation Paper CP22/17 setting out a number of proposed changes:

- Chapter 2. Changes to the individually recognised overseas schemes regimes and other amendments to COLL. The FCA proposed a new rule in COLL 9.3 (Section 272 recognised schemes) to specify when a proposed alteration to a scheme recognised under the s.272 regime would fall within the scope of being a 'material alteration'. The rule identifies some specific changes which the FCA believe will always be material. As a result of the UK's withdrawal from the EU, the FCA made extensive changes to the Handbook to remove and replace references to the EU and its laws and institutions where these are no longer relevant to the UK. However, the FCA have since noticed instances where rules and guidance were not amended as they should have been during that exercise and now propose to make those amendments. They are as follows, COLL 4.3.10R, COLL 6.6B.24G, COLL 6.9.10G.
- Chapter 3. Changes to reporting requirements in the Supervision manual (SUP). The FCA proposed amendments to form FSA035. The same text is also presented in SUP 16 Annex 24R and the guidance on validation in SUP 16 Annex 25G. They also sought to amend labelling errors in SUP 16 Annexes 24R and 25G.
- Chapter 4. Changes to Perimeter Guidance manual (PERG), Consumer Credit sourcebook (CONC) and Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) to align with recent changes to the regulatory perimeter in respect of credit agreements entered into with high-net-worth borrowers.
- Chapter 5. Changes to clarify the definition of a 'significant SYSC firm'. The FCA sought to make clear that only firms that would have been both significant IFPRU firms and IFPRU investment firms under the pre-IFPR arrangements fall within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope SM&CR regime. The FCA will make this change by limiting application of the definition of a 'significant SYSC firm' in their Handbook provisions about the SM&CR to reflect the scope of 'significant IFPRU firm' as it had previously been understood and applied by the FCA and firms.

The deadline for comments was September / October 2022.

Full details of the FCA Consultation Paper can be found at:

www.fca.org.uk/publication/consultation/cp22-17.pdf

Next steps

EPFL will continue to review any output from the Regulator and act accordingly.

Consumer Investment Strategy – 1 year update

Published

FCA, 18 October 2022

On 18 October 2022, the FCA published a one-year update on the progress it has made with its Consumer Investments Strategy which it committed to in September 2021. The FCA stated that in the last year they have maintained their focus on acting assertively and innovatively to tackle harm, preventing 1 in 5 firms from entering the Consumer Investments market and have taken action against unauthorised firms with a 40% increase in the number of consumer alerts issued. The FCA believes that setting high standards and acting quickly to crack down on problem firms will help ensure market and consumer confidence, supporting the integrity and growth of UK financial services.

The FCA has placed restrictions on twice as many firms in the investment market compared to last year, as part of its strategy designed to prevent harm in the consumer investment market.

The FCA stopped 17 firms and seven individuals attempting to obtain a new FCA authorisation in the investment market where 'phoenixing' or 'lifeboating' was suspected. This is where firms or individuals try to avoid the consequences of having provided unsuitable advice by moving to or setting up a new firm.

The FCA also stopped the UK operations of 16 Contracts for Difference providers that had entered the UK's temporary permissions regime in 2021, where suspected scam activity was detected or consumers were encouraged to trade excessively to generate revenue. Without FCA action consumers could have lost around £100m a year.

New rules to protect consumers from harm have been introduced by the FCA over the last year, including strengthening financial promotions rules and introducing the Consumer Duty. The FCA have also consulted on a more proportionate advice regime for investing in stocks and shares ISAs. The FCA also intends to conduct a holistic review of the boundary between advice and guidance.

As part of its commitment to be a more outcomes focussed regulator, the FCA set four targets for the consumer investments strategy to achieve. While three of the four outcomes have declined, the FCA was clear when it launched the strategy that it will take time to embed changes and see the impact of these. The metrics are also impacted by external factors, including the deteriorating economic environment which can lead to an increase in scams and people investing in high-risk investments which may not be right for them. Once the strategy is fully implemented the FCA expects the outcome measures to improve.

The FCA will continue to review the consumer investments strategy and bolster this work where growing harm to consumers is identified.

Full details of the review can be found at:

www.fca.org.uk/data/consumer-investments-data-review-april-2021-march-2022#lf-chapter-id-next-steps

Next steps

EPFL will continue to review output from the Regulator and act accordingly.

Principals and appointed representatives

Published

FCA, Webpage, updated 15 December 2022

On 3 August 2022, the FCA published its Policy Statement PS 22/11 which set out its responses and feedback to its earlier Consultation Paper CP21/34 on proposed changes to the Appointed Representative ('AR') regime. They also set out the final policy and Handbook rules, which became effective on 8 December 2022. The FCA webpage has been updated to reflect a number of amendments following the publication of the Policy Statement and the mandatory Section 165 data requests sent to principal firms between the 8 and 12 December 2022. Firms had until 28 February 2023 to respond to the Section 165 data request.

Your responsibilities

As a principal firm, you must:

- have a written agreement with the AR, setting out what business they can do
- assess an AR before appointing them to ensure they're fit and proper, financially stable and suitable to carry out business for the firm
- notify the FCA when the firm appoints new ARs at least 30 days before the appointment takes effect
- review information on ARs' activities, business and senior management regularly
- ensure data on ARs is up to date and notify the FCA of any changes
- take reasonable steps to ensure ARs act within the scope of their appointment
- ensure at all times that the firm has the skills and resources to oversee the AR, including if an AR's business changes or expands
- provide complaints data and revenue information for ARs on an annual basis
- be clear on when and how to terminate an AR relationship
- ensure an AR continues to meet the necessary standards

How to oversee your ARs

The FCA states that the firm needs to be responsible for their ARs on an ongoing basis, and apply an appropriate level of oversight and monitoring to them, including:

- assessing senior management at the AR(s) for fitness and propriety, which includes competence and capability
- if a firm delegates functions or tasks to an AR, they must put safeguards in place – this includes identifying conflicts of interest and implementing enhanced monitoring
- regularly assessing whether the firm's controls and resources are adequate
- monitoring and assessing the risk of harm to consumers and market integrity
- overseeing ARs to the same standard as the firm's own employees
- showing that the firm is monitoring their AR and the business risks they present

A principal firm also needs to review their ARs at least every 12 months, covering:

- fitness and propriety of senior management at ARs and their competence
- AR's financial position
- adequacy of controls and resources to oversee their AR(s)
- An annual self-assessment which should focus on how the firm is meeting its responsibilities as the principal firm and identify any material deficiencies or concerns. This should be:
 - a single document designed to identify risks and gaps in compliance
 - reviewed and signed off by the governing body, e.g. Board, at least every 12 months
 - kept for at least 6 years and available to the FCA if requested

The principal firm should also understand how to terminate an AR when necessary.

The FCA webpage can be found at:

www.fca.org.uk/firms/appointed-representatives-principals#revisions

Details of the Section 165 requests including frequently asked questions can be found at:

www.fca.org.uk/firms/appointed-representatives-principals/section-165-request

Next steps

Where appropriate, EPFL, through its due diligence process, will look to see that the above measures are in place.



Raising standards in new firms and financial promotions

Published

FCA, Webpage, 22 November 2022.

On 22 November 2022, the FCA launched a webpage on raising standards in new firms.

The FCA has created a new Early and High Growth Oversight function that provides closer supervision and help new firms through the first stages of being authorised. This work raises standards, helps the FCA spot and act on potential harm sooner, and promotes competition.

The webpage describes a pilot during 2021 to 2022 with 32 newly-authorised firms to help them adapt to FCA supervision in order to understand FCA requirements and improve their standards where they needed to. The webpage describes areas where the FCA has intervened where firms have not understood the rules.

The FCA has now launched Phase 2 of the pilot, increasing the number of newly-authorised firms being reviewed to 300, the findings from which will be used in the next stage of identifying further common areas where firms need to raise their standards to meet the rules.

Details of the Early and High Growth Oversight function can be found at:

www.fca.org.uk/firms/authorisation/early-high-growth-oversight

Next steps

EPFL will continue to review output from the Regulator and act accordingly.



Investing in Less Liquid Assets – Key Considerations

Published

Productive Finance Working Group, November 2022

In November 2022, the Productive Finance Working Group (PFWG) published their guide 'Investing in Less Liquid Assets – Key Considerations'. Whilst the guide has been written primarily from a DC Pension Scheme perspective, there is information included around the following aspects of investment in less liquid assets with particular reference to the Long-Term Assets Fund (LTAF):

- Value for money and less liquid assets – the guide outlines a process for assessing value for members from investing in less liquid assets and provides case studies on how that could work in practice for different types of DC schemes.
- Performance Fees in less liquid assets – the guide sets out key principles and maps them to specific features of performance fees to highlight their implications for DC schemes.
- Liquidity Management Guidelines – the guide outlines how DC schemes can meet the liquidity needs of their members, while investing in less liquid assets, by managing liquidity at two levels – the DC scheme and underlying fund levels.
- Fund structures to access less liquid assets – the guide provides an overview of the key features and considerations around the fund structures potentially available to UK DC schemes.
- Legal Guide to the Long-Term Assets Fund (LTAF) – the guide highlights the key features of the LTAF, including its legal structure and a summary of the key terms.
- Due Diligence considerations for investing in Less liquid assets (from a DC Pensions perspective) – this guide highlights the key considerations around due diligence on the investment managers and products.

Key Features of the LTAF:

- a new form of FCA-authorised investment fund.
- "open-ended" meaning investors can realise their investment by selling (or redeeming) their shares or units with the fund itself although the frequency of redemptions may vary between funds.

- invests across a very broad range of asset classes including venture capital, private equity, infrastructure, private debt and real estate.
- provides a high degree of governance and liquidity management (including the alignment of fund liquidity with the liquidity of the underlying assets) which should provide a degree of comfort to investors to invest in less liquid assets
- open for investment by professional and sophisticated retail investors but was designed with the default arrangements of DC pension schemes in mind.

There is a summary of the key terms of the LTAF which covers off aspects such as Constitution, Currency, Investment Powers and Restrictions and Valuation & Pricing amongst others.

A model Instrument of Incorporation for the LTAF has also been published by the Investment Association and is available for use.

The FCA has set up a dedicated webpage intended to help investors and potential investors understand how their units in a LTAF are priced. It summarises at a high-level what the rules require for valuation of assets held by an LTAF and pricing of units in an LTAF.

The LTAF structure is currently only available to professional and sophisticated retail investors but the FCA is also considering expanding access to it to retail investors.

A copy of the PFWG paper can be found at:

<https://www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2022/Investing-in-less-liquid-assets-key-considerations.pdf>

Details of the FCA LTAF valuation and pricing requirements can be found at:

www.fca.org.uk/firms/ltaf-valuation-pricing-requirements

Next steps

EPFL will continue to review regulatory output on less liquid assets and the LTAF, and act accordingly.

References:

Implementing the Consumer Duty in Asset Management, Custody & Fund Services and Alternatives portfolios (FCA Dear CEO letter)

Consumer Duty – Areas of focus for firms implementing the Consumer Duty – FCA Multi-firm Review Consumer Duty Implementation Plan (FCA webpage)

Implementing the Consumer Duty in the Consumer Investments sector (FCA Dear CEO letter)

What firms and consumers can expect from the consumer duty and other regulatory reforms - Speech by Sheldon Mills (FCA Executive Director, Consumers and Competition)

What is the Consumer Duty price and value outcome – FCA Consumer Duty Podcast - 6 January 2023.

Understanding the Consumer Duty products and services outcome – FCA Consumer Duty Podcast – 17 January 2023.

Explaining the Consumer Duty consumer understanding outcome – FCA Consumer Duty Podcast – 27 January 2023.

What does the Consumer Duty consumer support outcome mean? – FCA Consumer Duty Podcast – 7 February 2023.

Finance for positive sustainable change: governance, incentives and competence in regulated firm (FCA Discussion Paper DP23/1)

Task Force on Climate-related Financial Disclosures – Task Force on Climate-related Financial Disclosures 2022 Status Report (October 2022)

Sustainability Disclosure Requirements (SDR) and investment labels – FCA Consultation Paper CP22/20

The Proceeds of Crime (Money Laundering) (Threshold Amount) Order 2022 (Statutory Instruments 2022 No 1355 – Proceeds of Crime)

United Kingdom Financial Intelligence Unit Suspicious Activity Reports 2022

New Presentation of SAR Data (www.Nationalcrimeagency.gov.uk)

Fighting financial crime – the force multiplier effect – Speech by Sarah Pritchard, FCA Executive Director, Markets

FCA Market Watch 71 – FCA Market Watch 71

Edinburgh Reforms for the UK Financial Services – UK Government - Edinburgh Reforms hail next chapter for UK Financial Services (www.gov.uk)

PRIPs and UK Retail Disclosure – A consultation (HM Treasury)

Future Disclosure Framework (FCA Discussion Paper DP22/6)

Our Asset Management Supervision Strategy (FCA Dear CEO letter)

Updating and improving the UK regime for asset management (FCA Discussion Paper DP23/2)

FCA Quarterly Consultation No 37 - FCA Quarterly Consultation No 37 (CP22/17)

Consumer Investment Strategy – 1 year update – FCA Consumer Investments Date Review April 2021 to March 2022 (FCA webpage)

Principals and appointed representatives - FCA Principals and appointed representatives (FCA webpage) / Section 165 request for principal firms (FCA webpage)

Raising standards in new firms and financial promotions – FCA Early and High Growth Oversight (FCA webpage)

Investing in Less Liquid Assets – Key Considerations - Pensions & Lifetime Savings Association / LTAF valuation and pricing requirements (FCA website)

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