

REGULATORY FOCUS

Evelyn Partners Fund
Solutions Limited

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Welcome

Introduction	1
Regulatory Change Timeline	2
FCA Quarterly Consultation No 35	4
FCA Portfolio Letter – Our custody and fund services supervision strategy	5
FCA launches three-year Strategy and Business Plan to improve outcomes	6
ESMA CP on notifications for cross-border marketing and management of AIFs and UCITS	7
Market Watch 69	8
FCA DP22/1: Resilience of Money Market Funds (MMFs)	10
Regulatory initiatives grid	11
FCA Quarterly Consultation No 36	12
Protecting investors in authorised funds following the Russian invasion of Ukraine (see side pockets)	14
How the UK will regulate for the future	15
Amendments to the Qualifying Asset Holding Companies (QAHC) regime	16
FCA Policy Statement (PS22/9) and Final Guidance (FG22/5): A new consumer duty	18
FCA review of TCFD-aligned disclosures by premium listed commercial companies	20
Broadening retail access to the long-term asset funds	21
Improvements to the Appointed Representatives regime	22
Strengthening our financial promotion rules for high risk investments and firms approving financial promotions	24
Appendix 1 - References	26

Introduction

What is the EPFL Regulatory Focus

Our Regulatory Focus provides you with a summary of current and forthcoming regulatory changes that we feel may have an impact on our business partners over the coming months.

It also confirms the action, if any, that EPFL will be taking in order to ensure that we and our business partners remain fully compliant.

Please feel free to contact Brian McLean, John McWilliam or Graham Duns should you wish to discuss further any points that you may have.

Regulatory Change Timeline

2022

September to
December

FCA Sustainability Disclosure requirements (SDR) & Sustainable Investment Labels'

Consultation Paper expected H2 2022

Consultation Paper on proposals to support improving diversity in financial services

Q3 2022

Broadening retail access to the long-term asset funds (CP22/14)

Deadline for feedback 10 October 2022

Consumer Duty implementation plan

Deadline for Boards to have created their implementation plan 31 Oct 2022.

First two Technical Screening Criteria (Climate *Change Adaptation* and Mitigation) of the UK green taxonomy to be finalised

End 2022

UK Sustainable Finance (TCFD) – Int'l Sustainability Standards Board (ISSB) standards*

expected to be finalised 2022

2023

January to
March

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

2023

FCA Consumer Duty - Manufacturers to complete reviews for existing open products and services and share information with distributors (where appropriate for outcomes)

End March 2023

2023

...continued

April to
June

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

by April 2023

Deadline for ending reliance on US dollar LIBOR

June 2023

July 2023
onwards

UK Sustainable Finance (TCFD)
- Other UK authorised asset managers, life insurers and FCA regulated pension providers

2023

FCA Consumer Duty Policy

New rules for existing products and services come into force

31 July 2023

FCA Consumer Duty Policy

New rules for closed products and services come into force

31 July 2024

Building Operational Resilience

Deadline for firms to operate within impact tolerances

31 March 2025

Large and medium sized pension providers required to connect to the pension dashboard

between August 2023 and October 2025

*UK Sustainable Finance (TCFD)
- Potential further refinements to measures across categories incl. response to evolving best practice*

2024-2025

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

FCA Quarterly Consultation No 35

Published

FCA (CP22/4), 4 March 2022

On 4 March 2022, the FCA published Consultation Paper CP22/4 setting out a number of miscellaneous amendments to the FCA Handbook:

- Changes to chapters 2 and 13 of the Perimeter Guidance manual to clarify application of the MiFID II Ancillary Activities Test in the absence of overall market size data.
- Chapter 3 - Changes to the research and inducement rules for collective portfolio managers so they are subject to the same rules as investment managers. The FCA propose to complete the changes to the research rules for CPMs, so they are subject to the same requirements as investment firms. CPM firms include:
 - UCITS management companies.
 - full-scope UK Alternative Investment Fund Managers (AIFMs).
 - small, authorised UK AIFMs and residual Collective Investment Scheme operators.
 - incoming European Economic Area AIFM branches.

The proposed changes are:

- Exemption for SME research: research on firms below the market capitalisation of £200m that is provided on a rebundled basis or for free, as well as corporate access, constitutes an acceptable minor non-monetary benefit.
- Exemption for FICC research: third-party research that is received by a firm providing investment services or ancillary services to clients, when it relates to fixed income, currency, or commodity instruments will not be considered an inducement.
- Independent research providers: The FCA will create an exemption for research provided by research providers that do not offer execution services or are not part of a financial services group that includes an investment firm offering execution services or brokerage services.

- Openly available research: included in the list of minor non-monetary benefits.
- Chapter 4 - Changes to reflect amendments the Treasury has made to the UK MiFID delegated regulation in places where it is copied out in the Glossary and COBS. In 2021, HM Treasury made a series of direct changes to the conduct of business rules derived from MiFID II (via the post Brexit UK MiFID delegation legislation), including:
 - Making electronic communications the default mode of communication with professional clients.
 - Disapplying the detail of costs and charges disclosure requirements when dealing with professional clients.
 - Enabling delayed costs and charges disclosures to be made in certain circumstances.
 - Turning off certain reporting requirements for dealings with professional clients, including the requirement to inform a client when the value of their portfolio falls by 10% within a quarter.

Whilst these rules are already applicable to investment firms, some of the FCA's COBS are being updated to reflect the changes.

- Chapter 5 - Changes to LR 14 to reflect the original policy position for investment entities other than OEICs prior to the amendments introduced in January 2021.
- Chapter 6 - Changes to the approach to continuing professional development for retail investment advisers and pension transfer specialists to remove the minimum 30-minute time requirement for structured CPD activities.

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

www.fca.org.uk/publication/consultation/cp22-4.pdf

Next steps

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

FCA Portfolio Letter – Our Custody and Fund Services Supervision Strategy

Published

FCA, 23 March 2022

On 23 March 2022, the FCA set out their 'custody and fund services supervision strategy'. In the letter the FCA outlines what they consider to be the key risks that custody and fund services firms need to manage in order to protect investors and the integrity of the markets in which they operate. For clarity, the custody and fund services portfolio covers firms acting as (i) third-party custodians, (ii) depositaries for both authorised and non-authorised funds; and (iii) third-party administrators who provide services such as fund accounting and transfer agency (such as EPFL).

The FCA sees four principal areas of potential harm to firms' clients and end consumers, or to market integrity:

- Disruption to consumers and market participants, or the loss, compromise, or lack of availability of data, due to insufficient operational resilience or weak cyber controls.
- Sub-standard oversight and control of client money and assets leading to financial losses for investors and/or an inability to recover assets efficiently.
- Inadequate depositary oversight of fund managers, and failure to take reasonable care to ensure an authorised Collective Investment Scheme (CIS) is managed in accordance with applicable rules and solely in the interests of the CIS and its unitholders.
- Inadequate oversight of business linked to high risk, illiquid or speculative investment products sold to retail investors, and failures to consider related consumer outcomes.

The FCA has also set out its supervisory priorities:

- Operational resilience and cyber.
- Protection of Custody Assets and Money (CASS).
- Depositary Oversight.
- Speculative and illiquid investments.
- Market and regulatory changes.

In relation to market and regulatory changes, the FCA expect firms to keep abreast of, and adequately prepare for market developments and regulatory change. One recent change in regulatory requirements is the Investment Firms Prudential Regime (IFPR). IFPR came into force on 1 January 2022. It refocuses prudential requirements and expectations away from a sole focus on the risks firms face, to also consider and look to ensure adequate capital to manage the potential harm firms can pose to consumers and markets. The FCA expects firms to understand how the new standards apply to them.

Furthermore, the FCA mentions that firms in this sector typically have business models that rely heavily on technology and often have complex system infrastructures. The FCA want firms in the sector to understand how future technology developments could impact the services that they offer, as well as understanding if there are risks to your business model that could be caused by disruption from new technology, and to plan appropriately.

The full FCA Portfolio Letter can be accessed at:

[www.fca.org.uk/publication/correspondence/
portfolio-letter-custody-fund-services-supervision-
strategy.pdf](https://www.fca.org.uk/publication/correspondence/portfolio-letter-custody-fund-services-supervision-strategy.pdf)

Next steps

Firms should be aware that the FCA will, in any future supervisory engagement, expect firms to confirm what action has been taken in response to this letter.

FCA launches three-year Strategy and Business Plan to improve outcomes

Published

FCA, 7 April 2022

On 7 April 2022 the FCA launched its new strategy to improve outcomes for consumers and in markets throughout the UK. The three-year strategy prioritises resources to deliver on three focus areas: prevent serious harm; setting and testing higher standards; and promoting positive change in competition. These have been introduced against a backdrop of the rising cost of living, how digital transformation is redefining markets, and the overall importance of financial services in global economic activity.

The regulator will also, for the first time hold itself accountable against published outcomes and performance metrics.

The FCA has defined four "consistent topline outcomes" that cut across both consumers and wholesale markets, which are:

1. **Fair value** – ensuring consumers receive fair prices and quality.
2. **Suitability and treatment** – products and services sold to consumers are suitable for them and they received good treatment.
3. **Confidence** – consumers have strong confidence and levels of participation in markets, in particular through minimised harm when firms fail and minimised financial crime.
4. **Access** – diverse consumer needs are met through high operational resilience and low exclusion.

The FCA has expanded on the three themes detailing where they will be strengthening their focus on for the next three years:

1. Reducing and preventing serious harm
 - The FCA has committed to "dealing with problem firms", which will result in the removal of firms from the market if they don't reach the regulator's minimum standards.
 - Improving the redress framework so that it is fairer for consumers and firms from a global perspective.
 - Improving oversight of Appointed Representatives, following previous communication.

- Reducing and preventing financial crime via a holistic, "whole system" response.
 - Being assertive in relation to detecting market abuse and taking decisive action.
2. Setting and testing higher standards
 - Putting consumers' needs first, starting with the progression of the proposed new Consumer Duty.
 - Enabling consumer self-service through ensuring promotions are legal, clear, fair and not misleading.
 - Further developing the FCA's ESG strategy, including developing a sustainability taxonomy and consulting on regulatory expectations relating to diversity and inclusion.
 - Minimising operational disruption through operational resilience expectations of firms.
 3. Promoting competition and positive change
 - Future-proofing the financial services sector by tailoring rules to benefit UK markets globally and thus strengthening the UK's position in global markets.
 - Shaping digital markets to achieve good outcomes.

The Business Plan and Strategy reflect the trend towards a widening of the FCA's powers, which continue to expand to meet the challenges posed by a wide range of issues such as geopolitical instability, climate change and rapidly evolving financial technologies such as cryptocurrency.

Full details of the FCA strategy can be found here:

www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf

The FCA's 2022/23 Business Plan can be found here:

www.fca.org.uk/publications/business-plans/2022-23

Next steps

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

ESMA CP on notifications for cross-border marketing and management of AIFs and UCITS

On the 17 May 2022, ESMA has published a Consultation Paper setting out Implementing Technical Standards (ITS) and Regulatory Technical Standards (RTS) for marketing products in host EU countries.

Directive 2009/65/EC (the UCITS Directive) and Directive 2011/61/EU (the AIFMD) empower ESMA to develop ITS and RTS to specify the information to be provided, as well as the content and format of notification letters to be submitted by UCITS, management companies and alternative investment fund managers (AIFMs) to the national competent authorities (NCAs) to undertake cross-border marketing or cross-border management activities in host Member States, as well as the procedure for the communication of the notification file by the relevant home NCA to the host NCAs of the Member States where these activities are envisaged. This consultation paper (CP) is the first stage in the development of the draft ITS and RTS.

The paper sets out:

- the draft RTS under the UCITS Directive and the AIFMD to specify the information to be notified by management companies and AIFMs to the relevant NCAs when notifying their intention to carry out their activities in other Member States.
- the draft ITS referred to in the UCITS Directive and the AIFMD to specify the form and content of the notification letters to be submitted:
 - By UCITS to their home NCA to propose to market their units in a host Member State.
 - By AIFMs to their home NCA to notify their intention to market the units or shares of the AIFs they manage in the home Member State or a Member State other than the home Member State of such AIFMs.
 - By management companies and AIFMs to their home NCA to manage UCITS and AIFs established in other Member States.

The CP closes 9 September 2022.

The full Consultation Paper can be found at:

www.esma.europa.eu/press-news/consultations/consultation-notifications-cross-border-marketing-and-management-aifs-and

www.esma.europa.eu/sites/default/files/library/esma34-45-1471_cp_on_technical_standards_on_notification_letters.pdf

Next steps

EPFL will review the Consultation Paper and act accordingly.



Market Watch 69

Published

FCA, 17 May 2022

On 17 May 2022, the FCA published Market Watch 69, its newsletter on market conduct and reporting issues.

In this edition of Market Watch, the FCA discuss firms' arrangements for market abuse surveillance, drawing on observations from engaging with small and medium-sized firms. While the topics covered apply to all firms subject to surveillance requirements under Article 16(2) of UK MAR, they may also be particularly relevant for firms with less complex business models. Also discussed are some observations about obligations involving policies and procedures to counter the risk a firm is used to further financial crime, specifically criminal market abuse, as per SYSC 6.1.1R. It also details investigations into potential market abuse by firms' employees and when firms should submit a STOR.

The key points are:

- **Market abuse risk assessments:** The FCA observed that some firms are less effective than others at identifying their exposure to market abuse risks. Particularly, firms who do not consider how different types of business activity, such as discretionary vs execution-only, or client vs house trading, might present different market abuse risks. This may also prove to be the case where firms do not review and update their systems to ensure they remain effective in the context of risks arising from changes in their business.
- **Order and trade surveillance:** The FCA observed cases where little or no monitoring is taking place, and where the effectiveness of current monitoring could be improved. However, sometimes firms are unaware of these developments and so may not be making best use of the technology. More generally, where firms use vendor-supplied systems, they should ensure they understand how alert scenarios work, otherwise they may fail to identify gaps or weaknesses in their surveillance. The FCA also observed instances where firms were not monitoring all orders and trades, including cancelled and amended orders, resulting in a lapse in the identification of market manipulation. Additionally, weaknesses were found in the way some firms were reviewing their surveillance exception alerts. We have seen some firms with weaknesses in their review of surveillance exception alerts. For example, only escalating and considering reporting where they identify an obvious link between the client and the issuer or source of the inside information. The FCA reminds firms that the existence of such a link may be an aggravating factor in assessing whether reasonable suspicion of market abuse has been reached, its absence does not necessarily serve as sufficient mitigation to close alerts.
- **Policies and procedures:** The FCA observed instances where policies and procedures are vague or have limited detail, such as directing analysts reviewing surveillance alerts to look for signs of market abuse, but with no guidance on what these signs might be, or what materials / information to use or consider. As such, alerts are being inappropriately closed rather than escalated. Likewise, it was shown that some firms struggled to ensure a consistent approach. The FCA proposes that firms may consider creating policies and procedures that provide a level of guidance on how work should be undertaken.

- **Outsourcing:** The FCA recognised that there may be organisational benefits for firms, particularly in large groups with overseas operations, to outsource aspects of their surveillance to another part of their organisation, or to a separate organisation. Whilst there may be organisational benefits in these arrangements, the FCA observed that in some cases there is limited understanding and/or oversight of the surveillance taking place. In a small number of cases, the FCA found that UK compliance teams had negligible understanding of the surveillance undertaken at group level and discovered the surveillance was ineffective for the UK business. The FCA remind firms that where there is delegation to a separate organisation, the person delegating should have sufficient expertise and resources to oversee the services provided.
- **Front office:** The FCA observed that where responsibilities for market abuse surveillance rests with both the front office and an independent compliance function, surveillance was more likely to be undertaken free from conflicts of interest, as opposed to relying solely on front office staff. The FCA observed that where a firm cited its front office's role as mitigation for a limited or absence of surveillance in compliance several risks arose including that potentially suspicious activity is not consistently identified and escalated.
- **Countering the risk of market abuse-related financial crime:** The FCA points to chapter 8 of its Financial Crime Guide which it published in December 2018 and which sets out guidance for firms in relation to market abuse-related financial crime. In its follow up work the FCA found that firms which have created a formal framework to manage relevant risks are generally able to take appropriate decisions in managing those risks in a consistent manner whereas firms that have not yet created a framework were found to struggle to demonstrate that their approach was consistent or effective. The FCA reminds firms to ensure that they have a formalised SYSC 6.1.1R framework in place.
- **Investigations into potential market abuse by firms' employees:** In relation to investigations into potential market abuse by firm's employees, the FCA reminds firms subject to Article 16 UK MAR that they should also consider the requirement to submit a STOR without delay, once they have a reasonable suspicion that the relevant conduct could constitute market abuse. This may be before the full internal investigation is concluded. If appropriate / necessary, any information not available at the time of the submission can be communicated to the FCA at a later date.

A copy of the FCA Market Watch 69 can be accessed at:

www.fca.org.uk/publications/newsletters/market-watch-69

Next steps

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

FCA DP22/1: Resilience of Money Market Funds (MMFs)

On 23 May 2022, the FCA, jointly with the Bank of England, published Discussion Paper 22/1 'Resilience of Money Market Funds' (DP22/1). At the same time the FCA published Finalised Guidance 22/3 'Finalised Guidance (non-Handbook) on parts of the UK MMF Regulation' (FG22/3).

The FCA, along with the Bank of England (joint DP) are asking for firms views on how to strengthen the resilience of Money Market Funds (MMFs).

In March 2020, financial markets reacted to the Covid pandemic with increased selling pressure, volatility and illiquidity. MMFs came under severe strain across major currencies, including in sterling, as investors quickly sought access to cash. There is concern amongst authorities that underlying vulnerabilities within MMFs and threats to financial stability remain. Financial Stability Board (FSB) members, including the UK, agreed to assess and address the vulnerabilities that MMFs pose in their country.

The full Discussion Paper can be found at:
www.fca.org.uk/publications/discussion-papers/dp22-1-resilience-money-market-funds

The Finalised Guidance 22/3 can be found at:
www.fca.org.uk/publication/finalised-guidance/fg22-3.pdf

Next steps

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

Regulatory Initiatives Grid

Published

FCA, 25 May 2022

On 25 May 2022 the Financial Services Regulatory Initiatives Forum (Forum) published an updated version of the Regulatory Initiative Grid which sets out the regulatory pipeline so that financial services firms and other stakeholders can understand, and plan for, the timing of the initiatives that may have a significant operational impact on them. The Forum comprises of the Bank of England, FCA, PRA, Payment Systems Regulator, the Competition and Markets Authority, the Information Commissioner's Office, the Pensions Regulator and the Financial Reporting Council. HM Treasury is an observer member.

Nikhil Rathi, CEO of the FCA, states in the foreword that under the surface of the Grid there are some significant developments that will shape the UK's regulatory model going forward. The Financial Services and Markets Bill aims to implement the outcomes of the Future Regulatory Framework (FRF) Review, including adding new secondary objectives for the PRA and the FCA on growth and international competitiveness. The Bill also aims to reform the rules that regulate the UK's capital markets, protect access to cash, introduce new consumer protections and harness innovation.

Collaboration between Forum members, and wider regulatory partners, continues with approximately a third of initiatives on the Grid being joint work and many other initiatives being closely coordinated, such as the work on climate-related disclosures.

Other themes include climate and sustainability, diversity and inclusion, innovation, wholesale financial markets, and work on cryptoassets and e-money.

A copy of the Regulatory Initiatives Grid can be found at:

www.fca.org.uk/publication/corporate/regulatory-initiatives-grid-may-2022.pdf

Next steps

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

FCA Quarterly Consultation No 36

Published

FCA (CP22/10), 10 June 2022

On 10 June 2022, the FCA published Consultation Paper CP22/10 setting out a number of miscellaneous amendments to the FCA Handbook:

- Chapter 5 – changes to Interim Prudential source book for Investment Businesses (IPRU-INV) 5.8.2R to clarify the items to be deducted as illiquid assets.
- Chapter 6 – updates to the FCA's Investment Firms Prudential Regime (IFPR) reporting forms and accompanying guidance.

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

www.fca.org.uk/publications/consultation-papers/cp22-10-quarterly-consultation-paper-no-36

Next steps

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



Protecting investors in authorised funds following the Russian invasion of Ukraine

Published

FCA, July 2022

On 6 July 2022 the FCA published Policy Statement PS22/08 setting out their response to Consultation Paper CP22/08, which closed to responses on 16 May 2022, proposing to allow authorised fund managers to take steps to protect investors in funds affected by the Russian invasion of Ukraine. It also details the final rules and guidance that are being introduced following the consultation.

The affected assets ('affected investments') include:

- Equities and fixed income securities issued by the governments, public authorities and corporates in Russia, Belarus and Ukraine and securities listed, offered or placed in those countries.
- Assets listed and traded on other stock exchanges and backed by such securities, such as depositary receipts.
- Securities issued by companies whose operations are particularly severely affected by the current situation, or which are owned or controlled by individuals who are subject to UK or international sanctions relating to Russia.
- Units in other collective investment schemes that have suspended dealings because of exposure to such assets.

Following the consultation, the FCA allowed authorised fund managers of UK authorised investment funds to create separate new unit classes ('side pockets') to hold affected investments.

Side pockets would allow AFMs to separate affected investments from the fund's other investments meaning that existing share classes would no longer reflect the value of those affected investments. Side pockets could therefore allow:

- new investors to enter the fund without sharing in the exposure to the affected investments.
- existing investors to sell the units which relate to assets that are not affected investments.
- some funds to end their current suspension of dealing.

The new Handbook rules and guidance came into force on 11 July 2022.

The full Policy Statement PS22/08 can be found at:

www.fca.org.uk/publications/policy-statements/ps22-8-protecting-investors-authorised-funds-following-russian-invasion-ukraine

Next steps

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

How the UK will regulate for the future

Published

14 July 2022

On the 14 July 2022, Nikhil Rathi, FCA Chief Executive, delivered a speech at the Peterson Institute for International Economics.

The key points of the speech were:

- That the FCA is redesigning their operational platform so that it can better adapt and collaborate, to address the threats, mitigate the shocks, and embrace opportunities. Not just address issues after significant harm or risk has become embedded.
- The FCA are investing in their data and tech platforms to improve the way they use analytics and insights to support their decision making.
- The FCA noted that investors are increasingly paying attention to where firms and the funds they back put their money. Their ESG strategy sets out their target outcomes and the actions that they will take to deliver them. The FCA will be releasing their Sustainability Disclosure Requirements later in the year.
- The FCA will consider further regulatory interventions on diversity and inclusion. This is a priority area of work given the clear links it sees between improving diversity and inclusion and meeting its regulatory objectives.
- The FCA is keen to promote diversity of thought and has been clear that diversity and inclusion is a regulatory issue. A failure to shape more diverse and inclusive leadership teams risks bias and, left unchecked, can result in poorer risk management. Improved board effectiveness supports better conduct and reduces market harm.
- In January 2023, Ashley Alder, currently the CEO of the Hong Kong Securities Commission and chair of the IOSCO Board, will join the FCA as its new chairman.

The full details of the speech can be accessed at:

www.fca.org.uk/news/speeches/how-uk-will-regulate-future

Next steps

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

Amendments to the Qualifying Asset Holding Companies (QAHC) regime

On the 20 July 2022, the Government published its Policy Paper, Amendments to the Qualifying Asset Holding Companies (QAHC) regime. The QAHC regime was introduced by the Finance Act 2022 to recognise circumstances where an intermediate asset holding company (AHC) is used to facilitate the flow of capital, income and gains between investors and underlying assets. The regime broadly taxes investors as if they had invested directly in the underlying assets, with the objective that the QAHC pays no more tax than is proportionate to the activities it performs.

HMRC has now published amendments to the Qualifying Asset Holding Companies (QAHC) regime allowing an investment fund to be treated as meeting the diversity of ownership condition when it is closely associated with another investment fund that meets that condition, facilitating the entry into the Qualifying Asset Holding Companies regime of certain types of fund entity (extending the existing anti-fragmentation rule).

Further details of the QAHC regime can be found at:

www.gov.uk/government/publications/amendments-to-the-qualifying-asset-holding-companies-regime/amendments-to-the-qualifying-asset-holding-companies-qahc-regime#:~:text=The%20Qualifying%20Asset%20Holding%20Companies%20regime%20was%20introduced%20by%20Finance,between%20investors%20and%20underlying%20assets.

www.gov.uk/government/publications/amendments-to-the-qualifying-asset-holding-companies-regime/amendments-to-the-qualifying-asset-holding-companies-qahc-regime?utm_campaign=378462_Bulletin%20-%201%20August%202022&utm_medium=email&utm_source=Personal%20Investment%20Management%20%26%20Financial%20Advice%20Association&dm_i=6ZSK,840U,1HOJRE,ZWPZ,1

Next steps

EPFL will review the Policy Statement and act accordingly.



FCA Policy Statement (PS22/9) and Final Guidance (FG22/5): A new Consumer Duty

Published

27 July 2022

On 27 July 2022, the FCA set out final rules and guidance for a new Consumer Duty ('the Duty') that will set higher and clearer standards of consumer protection across financial services and require firms to put their customers' needs first. The FCA also responds to Consultation Paper (CP21/36) which closed for feedback on 15 February 2022.

The FCA are introducing rules comprising:

- A new Consumer Principle that requires firms to act to deliver good outcomes for retail customers.
- Cross-cutting rules providing greater clarity on their expectations under the new Principle and helping firms interpret the four outcomes (see below).
- Rules relating to the four outcomes they want to see under the Consumer Duty. These represent key elements of the firm-consumer relationship which are instrumental in helping to drive good outcomes for customers.

These outcomes relate to:

- **products and services;** applies to existing products and services, including those sold before the Consumer Duty came into force. The FCA clarifies how it will apply the Consumer Duty rules and responds to concerns raised in the Consultation Paper around and retrospective action it may take. Changes include:
 - making it clear that firms are not subject to both PROD and the new rules in PRIN 2A.3.
 - making it clear that firms that follow PROD 3 as guidance (i.e. asset managers) may elect to follow PROD rather than the new rules.
 - Making it clear that a firm is not responsible for the activities of other entities in the distribution chain, but given more guidance as to the type of information distributors should be reporting up to manufacturers (e.g. customer feedback) and the types of questions manufacturers should be asking distributors (e.g. are there any issues identified by the distributor in relation to the target market assessment).

- **price and value;** the FCA has added further examples in its non-Handbook guidance of good (and poor) outcomes together with behaviours that it expects from firms in respect of this outcome, i.e. 'all customers to receive fair value'. Additionally:
 - distributors are only responsible for the prices that they control and are not required to duplicate manufacturers' value assessments.
 - For manufacturers that meet the value assessments there will be nothing further required.
 - Additional factors have been added to the value assessment, (e.g. accrued costs and/or benefits and whether there are products that have been priced significantly lower for a similar or better benefit than the product in question).
 - The finalised guidance sets out what types of data firms could use to monitor fair value, (e.g. customer complaints) and key questions for firms that the FCA could ask (e.g. can the firm demonstrate that its products and services are fair value for different types of consumers, including vulnerable consumers).
- **consumer understanding;** the FCA has clarified that firms are expected to ensure that communications are likely to be understood by the consumers intended to receive the communication. The FCA also clarifies the rules around testing communications, stating that firms must test where applicable. For example:
 - The FCA has amended the rules with respect to the 'average' consumer instead preferring the term 'retail customers in the target market'.
 - Firms are not expected to tailor all communications to meet the individual needs of customers but reiterates the importance of taking into account characteristics of vulnerability.

- Firms need to review their terms and conditions to ensure that they are easily understood by their clients and undertake further testing on their clients ensuring that they have the data to support the results and outcomes.
- **consumer support**, the FCA has confirmed its requirements for the consumer support outcome, and confirmed that it has again provided examples of good and poor practice in its non-Handbook guidance in order to assist firms in meeting this outcome. Examples of good practice include:
 - not creating unreasonable barriers. i.e. barriers which frustrate the customers use of the products or services, such as unreasonable additional costs.
 - Ensuring that customers can use products as reasonably anticipated.

The rules require firms to consider the needs, characteristics, and objectives of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the customer journey. As well as acting to deliver good customer outcomes, firms will need to understand and evidence whether those outcomes are being met.

The full Policy Statement can be accessed at:

www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty

The FCA's Consumer Duty Finalised Guidance can be accessed at:

www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf

Next steps

The rules and guidance the FCA are introducing come into force on a phased basis:

Boards (or equivalent) need to have agreed Consumer Duty implementation plans by 31 October 2022

By April 2023, manufacturers need to have completed reviews for existing open products and services and share information with distributors (where appropriate for outcomes)

For new and existing products or services that are open to sale or renewal the rules come into force on 31 July 2023

For closed products or services, the rules come into force on 31 July 2024

FCA Review of TCFD¹-aligned disclosures by premium listed commercial companies

Published

FCA, 29 July 2022

Increasing transparency on climate and wider sustainability risks and opportunities is a key priority under the FCA's ESG Strategy. They introduced a climate-related disclosure rule for premium listed issuers as a first step to improving the quality and quantity of disclosures across the corporate sector. On 29 July 2022, the Financial Reporting Council (FRC) and Financial Conduct Authority (FCA) published two reports which found that premium listed companies have made significant steps forward in the quality of climate related information provided in their financial reports, but further improvements are needed.

However, the FCA identified several areas where companies will need to raise the quality of their disclosures in future years, including:

- Providing more granular information about the effect of climate change on different business sectors and geographies.
- Balancing the discussion of climate related risks and opportunities appropriately.
- Linking climate-related disclosures to other risk management and governance processes.
- Explaining how they have decided which climate-related information should be disclosed.
- Explaining more clearly how the effects of different global warming scenarios and their own net zero commitments may affect the valuation of their assets and liabilities.

The FCA notes that to deliver the consistency and comparability of corporate reporting that the market needs, it will be important to build on, and complement, the Task Force on Climate-Related Financial Disclosures' (TCFD) recommendations by introducing a common international reporting standard.

The FCA have been working closely with international partners at the International Organization of Securities Commissions (IOSCO) to encourage progress towards a common global baseline sustainability-related reporting standard under the IFRS Foundation's new International Sustainability Standards Board, (ISSB).

The ISSB issued Exposure Drafts of general sustainability disclosure requirements and climate-related requirements in March 2022 and the FCA expect initial standards to be finalised by the end of 2022. The FCA supports the ISSB's direction of travel.

The full FCA review can be accessed at:

www.fca.org.uk/publications/multi-firm-reviews/tcf-aligned-disclosures-premium-listed-commercial-companies

The report from the FRC can be found at:

www.frc.org.uk/getattachment/65fa8b6f-2bed-4a67-8471-ab91c9cd2e85/FRC-TCFD-disclosures-and-climate-in-the-financial-statements_July-2022.pdf

Next steps

The FCA expects the Government to consult in due course on a mechanism to adopt the ISSB's standards in the UK. The FCA meanwhile will separately consult on adapting their existing TCFD-aligned climate related disclosure rules for listed companies to reference the final IFRS Sustainability Disclosure Standards adopted according to the legal and institutional architecture that the UK Government creates following this consultation process.

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

¹TCFD (Task Force on Climate related Disclosures)

Broadening retail access to the long-term asset fund

Published

FCA, Consultation Paper CP22/14, 1 August 2022

On 1 August 2022, the FCA published proposals for broadening the retail distribution of the long-term asset fund ('LTAF') to more categories of retail investors, whilst including further investor protections. The FCA proposes to treat the LTAF as a Restricted Mass Market Investment (RMMI), in line with PS22/10 (Strengthening our financial promotion rules for high risk investments). This will enable a broader range of retail investors to access the LTAF whilst ensuring investors understand the risks involved and can absorb potential losses.

The proposals would expand the group of investors that LTAF providers can distribute to although there will be no obligation for firms to produce and distribute LTAFs for retail investors, or for investors to use only LTAFs to invest in long term, illiquid assets. Not all LTAFs would necessarily be appropriate for all retail investors. Based on discussions with investment managers that invest in illiquid assets, investment platforms, and industry associations, the FCA are aware that it may take some time before a significant number of LTAFs are produced and are widely marketed.

The FCA, in thinking about their distribution regime for the LTAF, have regard to the priority outcomes set out in their Business Plan, specifically that consumers:

- are sold suitable products and services and receive good treatment.
- get products and services which are fair value.
- understand the information they are given and make timely and informed decisions as a result.

The FCA are looking for some LTAFs to be established and offered to a wide range of retail investors. Restricted retail investors would have to undertake appropriateness assessments to ensure they understand the investment risks and redemption terms, before they can invest up to 10% of their investible assets in total (certain assets being excluded from this calculation) into the LTAF and other RMMI products, as part of a wider diversified investment portfolio.

The LTAFs would need to operate to high standards and not require any special supervisory intervention for the FCA's proposals to be successful. The FCA will review the uptake of the LTAF, their distribution and the nature of LTAF funds on an ongoing basis as the first funds are launched.

Feedback is sought by 10 October 2022. Subject to the responses received, the FCA will look to publish a final policy statement and final Handbook rules early in 2023.

The full Consultation Paper can be found at:

www.fca.org.uk/publication/consultation/cp22-14.pdf

Next steps

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

Improvements to the Appointed Representative Regime

Published

FCA, Policy Statement PS22/11, 1 August 2022

On 3 August 2022, the FCA published its Policy Statement PS 22/11 which set out their responses and feedback to their earlier Consultation Paper CP21/34 on proposed changes to the AR regime, plus setting out its final policy and Handbook rules.

The Appointed Representatives (AR) regime allows self-employed representatives to engage in regulated activity without having to be authorised. Whilst the regime has its benefits, the FCA have identified a wide range of harm across all the sectors where principals and ARs operate. Where harm occurs, it is often because principals do not undertake adequate due diligence before appointing an AR, and/or due to poor on-going control and oversight.

As a result, the FCA's proposals in CP21/34 focussed on two main areas of change aimed at addressing the harms identified and protecting consumers. These were:

- Collecting additional information on ARs and strengthening reporting requirements for principals (chapter 3).
- Clarifying and strengthening the responsibilities and expectations of principals (chapter 4).

The CP also included a discussion chapter (chapter 5), seeking views on potential areas of future change.

With regard to the key requirements:

- The FCA are reducing the pre-notification period for new AR appointments from 60 calendar days to 30 calendar days.
- The FCA is proceeding with its consultation proposal that within 60 days of the rules coming into force, principals must provide information on their existing ARs. For existing ARs, the FCA will collect the data via a Section 165 data request. Principals will then have 60 days to submit the data to the FCA on all their existing ARs. The FCA considers that the period between publishing PS22/11 and firms having to submit the data to it gives principals enough time to compile and submit these data.

- The FCA is not taking forward its proposal to require principals to provide details on any non-regulated non-financial activities an AR performs, but will require this information for financial non-regulated activities.
- The FCA is not taking forward its proposal to require principals to provide, at appointment, an estimation of the proportion of a proposed AR's non-regulated activities compared to its regulated activities in the first year following the appointment.
- The FCA is introducing revenue bands for reporting anticipated revenue of the AR from regulated and non-regulated activity during the first year of their appointment.
- The FCA has given principals more time to annually report AR complaints and revenue data, from up to 30 business days after the principal firm's accounting reference date to up to 60 business days.
- The FCA has introduced revenue bands for annually reporting AR revenue from non-financial non-regulated activities.
- The FCA has not added more information on the nature of regulated activities ARs are permitted to conduct to the FS Register at this time.
- The FCA has refined the definition of 'regulatory hosting'. The only effect of firms' business models coming into scope of the definition of 'regulatory hosting' is that these firms will need to notify the FCA of their intention to provide such service in advance. The FCA is not imposing any additional rules or restrictions on firms which provide such services at this time.
- The FCA has clarified that the annual review requirements can be met by principals integrating them into existing internal reporting processes, so long as they continue to meet the standards set out in the rules and guidance.
- The FCA has clarified that the annual reviews can be conducted by responsible individuals with a suitable degree of knowledge and authority below the governing body's level, with significant issues identified at specific ARs escalated to the governing body.

- The FCA has explained that the self-assessment should focus on how the principal itself is meeting its responsibilities in relation to all its ARs. The FCA explains that it is a single document designed to identify any risks and gaps in compliance with the firm's obligations as principal, and must be reviewed and signed-off by the principal's governing body, at least every 12 months.
- The FCA is introducing a 4 month implementation period before the changes take effect.
- The FCA has put in place transitional arrangements to give firms more time to comply with the new rules, particularly those that require firms to submit information on an on-going basis and to review their ARs and self-assess annually.

Firms that are affected by these changes will need to take the necessary steps over the next few months to be ready to comply.

The full Policy Statement can be found at:

www.fca.org.uk/publication/policy/ps22-11.pdf

Next steps

The changes set out in PS22/11 will take effect on 8 December 2022, following a four-month implementation period.



Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions

Published

FCA, Policy Statement PS22/10, 1 August 2022

On 1 August 2022, the FCA published proposals

On 1 August 2022, the FCA published Policy Statement PS22/10 which sets out its final policy and Handbook rules for high-risk investments subject to its financial promotion rules and for firms communicating and approving financial promotions. The FCA also summarises the feedback it received to Consultation Paper 22/2 'Strengthening our financial promotion rules for high risk investments, including cryptoassets'. This followed consumer research showing that too many consumers are investing in high-risk products which are not aligned with their risk tolerance and are unlikely to meet their needs.

In CP22/2 the FCA proposed changes in the following areas:

- Classification of high-risk investments (Chapter 3). Firms reported that the existing marketing restrictions are difficult to navigate and that it is sometimes challenging to understand what restrictions apply. The FCA proposed to rationalise the rules in COBS 4 under the terms 'Restricted Mass Market Investments' and 'Non-Mass Market Investments.'
- The consumer journey into high-risk investments (Chapter 4). The FCA are concerned that too many consumers are just 'clicking through' and accessing high-risk investments without understanding the risks involved. Existing marketing restrictions are intended to ensure consumers only access high-risk investments knowingly. However, consumer research shows this approach isn't working as well as it should and as a result proposed a package of measures to strengthen the consumer journey by making changes to the following areas: strengthening risk warnings, banning inducements to invest, introducing positive frictions, improving client categorisation and stronger appropriateness tests.

- Strengthen the role of firms approving (s21 approvers) and communicating financial promotions (Chapter 5). The FCA want to strengthen the role of s21 approvers, as they play an important role in enabling unauthorised issuers of high-risk investments to reach consumers. They want to develop a robust regime to complement the proposed s21 gateway which, when implemented, will ensure s21 approvers meet high standards.

Summary of key changes from CP22/2 proposals:

- **Investments issued by local authorities:** The FCA clarifies that their marketing restrictions do not generally apply to investments issued by local authorities. Where necessary, they will amend the rules to expressly exempt investments issued by local authorities from their marketing restrictions. This will not affect units in unregulated collective investment schemes.
- **Risk warning and associated risk summaries:** The FCA will shorten their main risk warning for high-risk investments and allow alternative risk warnings in the following cases: (i) P2P agreements and portfolios; and (ii) where the activity of the product issuer or provider could be covered by the Financial Services Compensation Scheme. For the risk summary, the rules will allow firms to vary from their prescribed summary if they have a good reason. For example, if the wording would be misleading or irrelevant. Equally firms can include any key investment risks that are not covered by the template. Firms must make an adequate record of any divergence from the template and the rationale behind any change. Firms must ensure their risk summary is accurate and stays up to date with market developments and business model changes. The FCA will also exempt investment companies listed under Chapter 15 of our Listing Rules that are caught by their marketing restrictions from the risk warning, risk summary and personalised risk warning requirements.

- **Incentives to invest:** The FCA will exempt 'shareholder benefits'. For example, discounted products or services produced or provided by the firm receiving the proceeds of the investment, from their ban on incentives to invest.
- **Direct Offer Financial Promotion (DOFP) rules:** The FCA will clarify that the DOFP rules relate to promotions which include a manner of response or includes a form by which any response may be made (i.e. a mechanism by which consumers can respond in order to invest their money). They should not limit the information firms can otherwise provide about the investment. The FCA will provide greater clarity on how firms can comply with the DOFP and consumer journey rules.
- **Cooling off period:** The FCA clarifies that the 24-hour cooling off period starts from when the consumer requests to view the direct offer financial promotion (for Restricted Mass Market Investments) or financial promotion (for Non-Mass Market Investments). Firms will not be able to show consumers the relevant financial promotion until at least 24 hours have elapsed. However, firms can proceed with other parts of the consumer journey while the cooling off period 'applies' such as KYC/AML checks, client categorisation and the appropriateness assessment. If these other processes take more than 24 hours to complete, firms will not need to introduce an additional pause in the consumer journey although the consumer will still need to give their active consent that they wish to proceed with the investment.
- **Client categorisation:** The FCA clarifies that where consumers must provide their income/net assets to show they are high net worth they can provide these to the nearest £10,000/£100,000 respectively. They will clarify what level of checks they expect firms to conduct on the information provided by the consumer in the investor declaration.
- **Appropriateness assessment:** The FCA will modify its rules so that consumers must wait at least 24 hours before undertaking the appropriateness test again from their second assessment onwards.
- **Record keeping requirements:** The FCA will only introduce requirements to record the metrics proposed in CP22/2 that relate to client categorisation and the appropriateness assessment. The FCA suggests that regulated firms consider the other metrics that the FCA proposed in CP22/2 when considering their monitoring obligations as high risk investment distributors under the Consumer Duty rules and guidance, including the consumer understanding outcome.
- **Implementation period:** The FCA will extend the implementation period to six months, with the exception of the main risk warning rules (risk warning and risk summary, but not the personalised risk warning), which must be implemented within four months.
- **Date and time stamp:** The FCA will allow an alternative format for the date and time stamp for approved promotions where it is not possible to include these due to the space available in the financial promotion being limited by a third party provider. In these circumstances firms must display the Firm Reference Number (FRN) of the approver, instead of the full name and date of approval. This text must link to a web page where the firm's full name, and the date of the approval, must be displayed.
- **Competence and expertise requirements:** The FCA will provide greater clarity that firms should have competence and expertise in the investment to which the financial promotion relates. A firm does not necessarily require competence and expertise in the day to day commercial activities of the company issuing the investment.

Cryptoasset promotions currently sit outside the FCA's remit. In January 2022, the Treasury confirmed its intention to legislate to bring certain cryptoassets into the scope of the financial promotion regime. CP22/2 set out the FCA's proposed rules for cryptoasset promotions. The FCA will make final rules for cryptoasset promotions once the relevant legislation has been made by the Treasury.

Rules related to risk warnings for financial promotions of high-risk investments will have effect from 1 December 2022. All other rules will have effect from 1 February 2023.

The full Policy Statement can be found at:
www.fca.org.uk/publication/policy/ps22-10.pdf

Next steps

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

References:

Amendments to the Qualifying Asset Holding Companies (QAHC) regime (Gov.UK website)

A new Consumer Duty Feedback to CP21/36 and final rules – PS22/9 (FCA)

Broadening retail access to the long-term asset fund – CP22/14 (FCA)

Consultation on Notifications for Cross-Border Marketing and Management of AIFs and UCITS (ESMA website)

CRR Thematic review of TCFD disclosures and climate in the financial statements (FRC)

Draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS Consultation Paper (ESMA)

FCA Portfolio letter – Our custody and fund services supervision strategy

Final non-Handbook Guidance for firms on the Consumer Duty – FG22/5 (FCA)

How the UK will regulate for the future – speech by Nikhil Rathi, CEO FCA

Improvements to the Appointed Representatives regime – PS22/11 (FCA)

Market Watch 69 (FCA)

Our strategy – 2022 to 2025 (FCA)

Protecting investors in authorised funds following the Russian invasion of Ukraine – CP22/8 (FCA)

Quarterly Consultation No 35 – CP22/4 (FCA)

Quarterly Consultation No 36 – CP22/10 (FCA)

Regulatory Initiatives Grid – May 2022 (FCA)

Resilience of Money Market Funds – DP22/1 (FCA)

Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions – PS22/10 (FCA)

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