Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 FCA CEO Nikhil Rathi speech: "Learning from the last 30 years to face the next"

On 5 May 2022, the Financial Conduct Authority's (FCA) CEO, Nikhil Rathi, delivered a speech at the Chartered Institute for Securities & Investment (CISI) 30th anniversary dinner. His speech touched on recent regulatory developments, including:

- The FCA's focus on digital transformation and the regulator's role in the Digital Regulation Cooperation Forum (DRCF). The forum aims to support regulatory cooperation and coordination in digital markets. It is composed by the FCA, the Office of Communications (Ofcom), the Competition Markets Authority (CMA) and the Information Commissioner's Office (ICO).

- The FCA's CryptoSprint event held on 10 and 11 May, attracted hundreds of applications from firms. The event, which aims to explore how the evolving world of cryptoassets could be regulated in the UK, is an important milestone in the Regulator's three-year strategy objective of preparing financial services for the future.

- The use of technology in the field of Environmental, Social and Governance (ESG) development. Mr. Rathi remarked how the Big Four are now running the ESG training programmes for both staff and customers and emphasised the importance of automation in the industry, pointing out both risks and benefits for consumers.

Mr. Rathi also mentioned the results of a recent research by the FCA unveiling over 2,000 cases of screen sharing scams, where victims have lost over £25 million in total, reminding the audience of the FCA's new ScamSmart campaign focused at tackling the problem.

1.2 FCA is speeding up removal of firms that do not use their regulatory permission

On 19 May 2022, the Financial Conduct Authority (FCA) issued a Press Release stating that it is to use new powers to cancel or change on its own initiative permissions given to Firm to carry out regulated activities when these are not being used.

The press release is concurrent to FCA's Policy Statement PS22/5: "New cancellation and variation power: Changes to the Handbook and Enforcement Guide". Appendix 1 of the Policy Statement illustrates the changes made to the Handbook and Enforcement Guide (EG) in light of the new cancellation powers.

Schedule 11 of the Financial Services Act 2021 amended the Financial Services and Markets Act 2000, giving the FCA additional power to cancel or vary an FCA-authorised person's Part 4A permission on its own initiative. The new powers also extend to cases of inappropriate use of permissions, failure to pay periodic fees or levies, and failure to provide the FCA with information required under the Handbook.

The FCA will issue two warnings to a Firm when it believes it is not using a regulatory permission. Firms that fail to take action 28 days after the first warning will face cancellation of the regulatory permission.

Waystone can help Firms navigate Perimeter Guidance and advise on variations of permission. For additional information, please contact us.

1.3 FCA Market Watch 69 on market abuse surveillance

On 17 May 2022, the Financial Conduct Authority (FCA) released its 69th newsletter on market conduct and transaction reporting issues. The issue focuses on recent observations made by the regulator regarding market abuse surveillance arrangements in small and medium-sized firms. These include:

Market abuse risk assessments – the FCA has found that many firms still lack proper market abuse risk assessments methodologies. The regulator suggests that firms consider different types of market abuse and how these apply to different areas of their business.

Policies and procedures – the FCA express concern in relation to vague policies and procedures that contain limited detail of actual abuse events which the firm may be subject to and no guidance for employees on what they should look out for.

Front office – while it is important that front office staff are offered adequate market abuse training, this is not sufficient to replace effective monitoring by an independent compliance function. The FCA emphasises that firms should consider whether market abuse training is effective and tailored to the risks associated with the business.

The findings are relevant to all firms that have surveillance requirements under Article 16(2) of UK Market Abuse Regulation (MAR) but may extend also to firms with simpler business models. Identifying and reporting instances of potential market abuse is a UK MAR requirement and firms must have appropriate systems and controls in place.

Waystone provides independent reviews of MAR systems and controls. For more information, please contact us.

1.4 Findings from the FCA's cost and charges review

On 4 May 2022, the Financial Conduct Authority (FCA) has released findings of its review of investment platform costs and charges. The review stems from its 2019 Investment Platform Market Study, in which the FCA said it would keep the role of platforms in helping consumers understand their investment costs under review.

The FCA has looked at whether charging information was easily accessible and comprehensive in helping customers understanding what they pay. The FCA has found evidence of both good and bad practices in the market for investment platforms, with many Firms still lacking clearly signposted, succinct, and comprehensive list of charges. In several cases activity-based charges, such as telephone trades costs, foreign exchange, and interest on cash, where hard to locate or spread out across different webpages.

A previous survey by the FCA had found that only 56% of customers found it easy to find total costs of their platform. The FCA has stated that consumers should be able to easily identify and understand their investment charges in order to select products that best suit their needs.

1.5 FCA introduces £250 fee for SM&CR notifications

On 27 May 2022, the Financial Conduct Authority (FCA) has made changes to the FEES 3.2, 3 Annex 15R sections of its Handbook. The amending instrument introduces a £250 charge for applications under the Senior Managers Regime (SMR) and Controlled Functions for Appointed Representatives (CF(AR)).

On the same date, the FCA issued a new release on its online application platform CONNECT. The payment will be triggered automatically by the submission of a standalone Form A, as per SUP 10C Annex 3D of the Handbook.

If you require support with your SMF applications, or with any other aspects relating to the SM&CR, please contact us.

1.6 FCA webpage for reporting sanctions evasion

On 17 May 2022, the Financial Conduct Authority (FCA) published a webpage on the reporting of sanctions evasions. The FCA is requiring persons that become aware of suspected or actual breaches of the sanctions regime, cases of poor sanctions controls, or any methods being used to breach sanctions, to report their concerns to the FCA.

Reports may be provided by speaking with the FCA's Whistleblowing team or by filing a report directly on the webpage. The FCA reminds Firms not requiring anonymity to abide by the rules set out in SUP 15. Persons sharing information with the FCA must also fulfil any statutory legal requirements, for example under the Proceeds of Crime Act 2002 or the Sanctions and Anti-Money Laundering Act 2018.

If you wish to discuss how to protect your business from sanctions breaches, please contact us.

2. PRA UPDATES & DEVELOPMENTS

2.1 BoE Publishes minutes of the Climate Financial Risk Forum - Session 3

On 27 May 2022, the Bank of England (BoE) published on its website the minutes of the first meeting of the Climate Financial Risk Forum (CFRF) Session 3. The CFRF is an industry forum jointly chaired by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The forum aims to share best practice and generate responses to the financial risks produced by climate change.

During the first Session 3 meeting, the forum discussed the latest developments relating to the war in Ukraine and its impact on Energy, in particular its effect on firms transitioning to net zero. The Forum's Transition to Net Zero Working Group ('Transition WG') has agreed to develop a framework that will help firms transition to net zero while taking into account the financial impact on firms. In an effort to not generate duplicated outputs, the Transition WG will "actively engage with other fora focused on the transition to net zero, including the HMT Transition Plan Taskforce and the Glasgow Financial Alliance for Net Zero".

Session 3 of the CFRF began on 27 April and will run for approximately 12 months.

3. EU REGULATORY UPDATE

3.1. Basel Committee finalises principles on climate-related financial risks and progresses on cryptoassets' prudential treatment

On 31 May 2022, the Bank of International Settlements (BIS) published a press release on its website informing the public that the Basel Committee had finalised principles for effective management and supervision of climate-related financial risks.

This follows a consultation held by the committee in June 2021. The objective is to promote a principles-based approach to improving banks' risk management and supervisors' practices in the field of climate-relate financial risks. The Principles will be published in the coming weeks.

The Basel Committee has also progressed work towards issuing a second consultation paper on the prudential treatment for banks' cryptoassets exposure. BIS plans to publish another consultation and is aiming to finalise the prudential treatment towards the end of the year.

Waystone is helping clients navigate Environment, Social and Governance (ESG) regulation. To discuss how we can help you, please contact us.

3.2. ESMA briefing on sustainability risks and disclosures in investment management

On 31 May 2022, the European Securities and Markets Authority published a supervisory briefing providing supervisors with guidance on the integration of sustainability risk and disclosures in the area of asset management.

Supervisory briefings are not binding to National Competent Authorities (NCAs). Nevertheless, ESMA is of the view that there is a strong need to promote supervisory convergence as well as regulatory convergence. The briefing contains guidance on the following topics:

- Guidance for the supervision of fund documentation and marketing material;
- Guiding principles on the use of sustainability-related terms in funds' names;
- Verification of the compliance with the website disclosures' obligations;
- Verification of the compliance with the periodic disclosures' obligations;
- Integration of sustainability risks by AIFMs and UCITS; and
- Regulatory interventions in case of breaches.

Regulatory convergence in the field of sustainability disclosures is progressing by virtue of regulations such as the Sustainable Finance Disclosure Regulation (SFDR) and Regulation 2020/852 (TR). ESMA's latest supervisory briefing intends to further enhance convergence among NCAs and thereby increase transparency for investors and hinder the practice of "greenwashing".

Waystone is helping clients navigate Environment, Social and Governance (ESG) regulation, including the requirements of transitioning Article 6 to Article 8 funds. To understand how we can help you, please contact us.

3.3. Commission proposal to make sanctions evasion an EU crime

On 25 May 2022 the European Commission advanced a legal proposal to make the breaking of an EU imposed sanction a crime. This would allow EU governments to confiscate assets that have been frozen as a response to the Russian invasion of Ukraine. In an interview with reporters, Justice Commissioner Didier Reynders stated that "any kind of attempt to circumvent would be considered a criminal offence."

If EU countries unanimously agree to the proposal, the Commission will propose a directive that will need to be approved by a majority of European countries and the European Parliament. The contents of the potential directive have been anticipated in a communication statement form the Commission to the European Parliament.

On 17 May 2022, the Financial Conduct Authority (FCA) published a webpage for reporting sanction evasion in the UK. Persons with information about sanctions evasion or weaknesses in sanction controls should report to the FCA. The webpage contains guidance for both firms and individuals wishing to report their concerns.

To discuss how to protect your business from sanctions breaches, please contact us.

4. FINANCIAL CRIME

4.1 Wolfsberg Group FAQs on Negative News Screening

On 11 May 2022, the Wolfsberg Group published on its website Frequently Asked Questions (FAQs) on “Negative News Screening” by financial institutions. NNS relates to searches of ‘information available in the public domain which financial institutions would consider relevant to the management of financial crime risk’.

The Wolfsberg Group is a non-governmental organisation of thirteen global banks that aims at developing financial industry standards for Anti-Money Laundering (AML), Know Your Customer (KYC) and counter terrorist financing (CTF) policies. The FAQs ‘seek to set out relevant considerations which Financial Institutions may find useful in setting out standards with consideration to:

— Applying Negative News Screening (NNS) as part of a risk-based approach to Anti-Money Laundering and Counter-Terrorist Financing.

— Documenting a risk-based approach to NNS, considering the legal and regulatory requirements in the jurisdiction(s) in which the Financial Institution operates.

— Ensuring that NNS processes are both effective and efficient.

— Providing guidance on assessing the reliability of NNS sources and the materiality of NNS results as well as the configuration of screening systems, alert management, and associated governance.’

The Group reminds practitioners that NNS should not be confused with other forms of searches, such as Sanctions or Politically Exposed Persons (PEP) screening, which are traditionally list-based.

If you would like to obtain an independent review of your AML and CTF systems and controls, please contact us.

5. ENFORCEMENT ACTIONS

5.1 FCA refuses authorisation to Alexander Jon Compliance Consulting Limited

On 13 May 2022, the Financial Conduct Authority (FCA) published a notice on its website informing the general public that it has refused authorisation to regulatory consultancy firm Alexander Jon Compliance Consulting Limited (AJCC).

AJCC aimed at offering hosting services to Appointed Representatives (ARs). The company aimed at taking on regulatory responsibilities for forms aiming at carrying out regulated activities without being directly approved by the FCA.

In its motivation, the FCA stated that AJCC failed to demonstrate it had the necessary skills, experience and staff to oversee ARs. In addition, the company was unable to demonstrate that it would have direct responsibility for the conduct and compliance of its ARs. In particular, it failed to show how its ARs would ensure that the products or services offered would be appropriate for consumers.

Emily Shepperd, Executive Director of Authorisations at the FCA, stated: “'It is vital those who are seeking the FCA’s authorisation meet our high standards. If this is not the case, we will refuse their applications in the interests of consumers and other businesses.”

Waystone Compliance Solutions (UK) Limited can offer assistance to firms applying for FCA authorisation, as well as offering Principal firms control solutions to manage the risk of appointed representatives. Please contact us for more information.

CCL Compliance is now Waystone Compliance Solutions

Titan Regulation, Argus Global, CCL Compliance and ISAS are now Waystone Compliance Solutions who offer a new and unique approach to compliance services at a corporate level.

Formed by merging four specialist compliance companies – we have the capabilities to help you manage regulatory risk right across your organisation.

We can provide key services from initial registration and licensing to compliance programme integration. Our compliance solutions span business strategies, market activities, operational and technology infrastructure not to mention sales and marketing procedures. And we can do so anywhere in the world.

Our aim at Waystone is simple: to enable our clients to navigate the complex regulatory environment with confidence.

At Waystone, we have brought together the experience, the expertise and the global reach to give you the certainty you need to address the ever-changing regulatory world. And by doing so, provide you with a secure route on the road to success.
https://compliance.waystone.com/

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- FCA Authorisation
- Prudential Rules & Regulatory Reporting
- Hot Topics
    - COVID-19
    - Senior Managers & Certification Regime (SM&CR)
    - Fifth Anti-money Laundering Directive (5MLD)

If you wish to discuss how Waystone can assist you with any of the issues raised in this regulatory update, please contact us the details below:

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