

Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 FCA statement on IFPR and eligibility for enhanced SM&CR status as a Significant SYSC firm

On 16 August 2022, the Financial Conduct Authority (FCA) published on its website a [statement](#) on Investment Firm Prudential Regime (IFPR) and eligibility for Enhanced scope Senior Managers & Certification Regime (SM&CR) status as a 'Significant SYSC firm'.

With the introduction of the IFPR in January 2022, the FCA had renamed and moved the definition of 'Significant IFPRU firm', which was used as one of the criteria for identifying Enhanced Firms under the SM&CR. In response to a number of stakeholders pointing out that the new definition of 'Significant SYSC firm' could result in more firms being brought into Enhanced scope, the FCA has made known that it will shortly be consulting to modify its rules.

In its statement, the FCA clarifies that only firms that would have been both Significant IFPRU firms and IFPRU investment firms under the pre-IFPR arrangements fall within the new definition of 'Significant SYSC firm'. Firms that have unintentionally come under the Enhanced Scope SM&CR Regime under the new version of Significant SYSC, need take no action.

If you require guidance on any aspects relating to the SM&CR and IFPR, please [contact us](#).

1.2 FCA Policy Statement on strengthening financial promotion rules for high-risk investments and firms approving financial promotions

On 1 August 2022, the FCA published [Policy Statement PS22/10](#) setting out final policy aimed at strengthening financial promotion rules for in-scope high-risk investments (HRIs) and firms communicating and approving financial promotions. The FCA had expressed concern 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. The main changes to the Rulebook are in the following areas:

Classification of high-risk investments. COBS 4 has been rationalised under the terms 'Ready Realisable Securities' (RRS), 'Restricted Mass Market Investments' (RMMI) and 'Non-Mass Market Investments (NMMI). Amongst other things, the current rules ban Non-Mainstream Pooled Investments (NMPI) and Speculative Illiquid Securities (SIS) from being mass marketed to retail investors.

The consumer journey into high-risk investments. Measures have been introduced aimed at strengthening risk warnings, banning inducements to invest, introducing positive frictions, improving client categorisation and stronger appropriateness tests. In addition, the new rules comprise:

- A standardised risk warning to be included on all financial promotions for RMMIs and NMMIs;
- A minimum 24-hour cooling off period for first time investors in NMMIs and RMMIs, obliging at least 24 hours to pass between the response of a customer to a financial promotion and a direct offer being made and accepted by the customer.

- Requirements aimed at helping clients better categorise themselves. E.g., consumers will be required to state why they meet the relevant criteria, such as stating their income to show they are high net worth.
- A package of measures strengthening appropriateness assessment requirements for RMMIs, including new guidance on the types of questions to be covered by an appropriateness assessment.

Strengthen the role of firms approving (s21 approvers) and communicating financial promotions:

the new rules are aimed at ensuring s21 approvers have the relevant expertise in the promotions they approve and the overall quality of financial promotions in the market is high. The new rules require that:

- All approved promotions include the name of the authorised firm approving the promotion, as well as the date of approval.
- Firms shall self-assess whether they have the necessary competence and expertise (C&E) in an investment product or service before approving or communicating a relevant financial promotion.
- Firms will need to ensure approved promotions remain compliant for the lifetime of the promotion – not just at a single point in time. This includes ongoing consideration on whether the proposition remains commercially viable in time.
- Approver firms will be required to obtain attestations of ‘no material change’ from clients with approved promotions every 3 months.

In its statement, the FCA also emphasised that, while cryptoasset promotions still sit outside the FCA’s remit, final rules for cryptoassets promotions will be published once the relevant legislation is finalised by the Treasury.

The new rules can be found in Appendix 1 of CP22/10. 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.

Our RegTech solution, CORE, can help you manage financial promotions, attestations and your wider compliance requirements. For guidance and support in implementing the required changes, please feel free to [contact us](#).

1.3 FCA looks for external experts to help shape its work on ESG issues

On 23 August 2022, the FCA Board announced its decision to include a small number of external experts with in-depth knowledge of Environmental, Social and Governance (ESG) issues in its new ESG Advisory Committee.

The ESG Advisory Committee was established earlier this year to help the FCA execute its ESG-related responsibilities, including meeting the Government’s expectation regarding the UK’s commitment to achieving a net zero economy by 2050. The Committee’s role will be to provide advice to the Board on:

- How it executes oversight of ESG issues relevant to the FCA both as a regulator and our own operations;

- Relevant emerging ESG topics or issues; and
- How the FCA should develop its ESG Strategy, in keeping with the organisation's statutory objectives and regulatory principles

The Committee is expected to meet quarterly starting Q4 2022. The FCA expects the Board to appoint members in a personal capacity who are not currently employed by FCA regulated entities. Individuals interested in joining the Committee should contact the [ESG Advisory Committee](#) with a copy of their CV by 16 September.

Waystone is helping clients with the operational implementation and oversight of ESG processes. To discuss how we can help you, please [contact us](#).

1.4 UK Finance on the Financial Services and Markets Bill

On 3 August 2022, the trade association, UK Finance, published a [blog](#) on 'What does the Financial Services and Markets Bill (FSM Bill) mean for UK capital markets?'

UK Finance has worked with members to respond to key initiatives such as the Wholesale Markets Review, Lord Hill's Listings Review and the subsequent Prospectus Regime Review, amongst others. The FSM Bill represents the implementation of many of the changes UK Finance has been advocating for.

The blog summaries the main changes capital markets and wholesale changes brought forward by the FSM Bill. These include:

- Empowering the regulator with greater responsibilities for setting rules. The regulator will reproduce repealed regulation on in its own rulebook and have the power to consult on and amend rules as necessary;
- Removal of the double volume cap, which limits the level of dark trading to a certain proportion;
- Removal of the share trading obligation requiring certain trades to be traded on specific venues; and
- Overhaul of the existing EU Prospectus Regulation, reducing the burden on issuers and introducing greater and enhanced disclosures, which will better enable investors to make informed investment decisions.

In addition to the blog, UK Finance has released an [accompanying document](#) analysing in detail the capital markets and wholesale changes within the Financial Services and Markets Bill, including the special resolution regime for Central Counterparties (CCPs) and the Prospectus Regime Review.

The Financial Services and Markets Bill is at the second reading stage in the House of Commons. Waystone will keep a close eye on the evolution and potential impact of the bill on our clients and will keep you updated accordingly.

1.5 FCA 'Dear CEO' letter on Alternatives Supervisory Strategy

On 9 August 2022, the FCA published a 'Dear CEO' [letter](#) on its Alternatives Supervisory Strategy.

The letter aims at informing the governing body of alternative investment firms on the regulator's supervisory strategy and priorities, as well as stating areas where it believes improvements can be made. The letter sets out the following supervisory priorities:

- **Investment strategies that carry inappropriate levels of risk for their target client.** The FCA urges firms to ensure they act to reduce the risk that consumers with limited investment knowledge or risk appetite are exposed to inappropriate investment strategies by conducting thorough investor assessments. In the coming months, the FCA will be issuing a questionnaire asking all portfolio firms for information about their business model, products, investor categorisations and associated control framework. Firm's will need to evidence the reasonable steps taken to ensure their target market is both appropriately defined and not exposed to an unsuitable level of risk.
- **Conflicts of interest.** The FCA states that boards should carefully review their procedures to ensure conflicts are avoided, managed, or disclosed in a way that minimises harm to investors and markets. Firms should also consider the impact of their shareholder structure and the potential implications this has on the effective governance of their organisation.
- **Market integrity and disruption.** Where funds employ high leverage or expose investors to elevated levels of risk, the FCA expects firms to ensure their risk management systems, controls and resources are fit for purpose. Firm Boards should ensure that risk functions are appropriately resourced, contemporaneous, and commensurate with the levels of portfolio and business risk being taken.
- **Market abuse.** The FCA expects firms to have effective systems and controls to enable them to discharge their obligations under the UK Market Abuse Regulation (UK MAR).
- **Culture.** The FCA states that during the forthcoming supervisory cycle, it will look at how senior managers and firm policies influence an organisation's culture. In addition, the FCA reminds firms that are subject to the MIFIDPRU Remuneration Code that they are required to apply the relevant rules from the performance period on or after 1 January 2022. The regulator also mentions that it plans to produce a Consultation Paper later this year following its July 2022 Discussion Paper 21/2 on diversity and inclusion.
- **ESG.** In December 2021, the FCA made rules requiring asset managers, including authorised alternative investment fund managers, to make disclosures in line with those recommended by the Taskforce on Climate-related Financial Disclosures (TCFD). Firms offering products with an ESG or sustainability focus should expect to be subject to review to ensure marketing materials accurately describe their product, with funds offering clear and consistent disclosure.

Executive committees should consider which of the risks highlighted above are applicable to their business and take action to ensure they mitigate those risks and meet regulatory requirements.

From our experience, Firms must take these communications seriously. To discuss how we can help you meet the expectations set out in the Dear CEO letter, please [contact us](#).

1.6 FCA Consultation on broadening retail access to Long-Term Asset Funds (LTAF)

On 1 August 2022, the FCA [published Consultation Paper CP22/14](#): Broadening retail access to the long-term asset fund. The Long-Term Asset Fund (LTAF) is a new category of authorised open-ended fund designed to enable investors to invest in long-term illiquid assets through an authorised fund vehicle. Long-term illiquid assets include venture capital, private equity, private debt, property and infrastructure.

Promotion of the LTAF is currently restricted to professional investors, certified and self-certified sophisticated investors, and certified high net worth individuals (HNWI). The FCA is consulting on opening these funds for distribution 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](#) on strengthening financial promotion rules for in-scope high-risk investments (HRIs).

The consultation closes on 10 October 2022. The FCA expects to publish a final policy statement and final Handbook rules early in 2023.

2. PRA UPDATES & DEVELOPMENTS

2.1 Treasury Committee publishes Bank of England response to Financial Services and Markets Bill

On 11 August 2022, the Treasury Committee [published a letter](#) from Bank of England (BoE) Governor Andrew Bailey in response to questions on the Financial Services and Markets Bill (FSM Bill) put to Mr. Bailey during the 11 July 2022 Treasury Select Committee (TSC).

In his statement, Mr. Bailey confirmed that the BoE welcomes the Future Regulatory Framework (FRF) measures contained in the Bill, and that it supports the proposals for regulators to have increased responsibility for setting regulatory requirements within a strong accountability framework set and overseen by Parliament.

Most notably, Mr. Bailey announced that the PRA expects to publish a discussion paper in September setting out how it intends to implement the new accountability framework with respect to strong standards; accountability to Parliament, stakeholders, and the public at large; responsiveness; and accessibility.

The Financial Services and Markets Bill is still at the second reading stage in the House of Commons. Waystone will keep a close eye on the evolution and potential impact of the bill on our clients and will keep you updated accordingly.

2.2 Minutes published for the Climate Financial Risk Forum Session 3

On 18 August 2022, there were [published](#) on the BoE website minutes for the second meeting of the Climate Financial Risk Forum's (CFRF) third session held by the FCA and PRA on 12 July 2022.

The Forum discussed progress by its Working Groups on their areas of work, namely: scenario analysis; disclosure; data and metrics; and transition to net zero. Members discussed how the Forum can guide the

industry's near-term plans for managing climate-related financial risks while considering longer-term plans in support of targets to reduce greenhouse gas emissions.

Discussions mentioned the challenges Firms face in meeting UK and other jurisdictions' climate-related disclosure requirements simultaneously, and pointed out that the industry is broadly supportive of disclosure requirements proposed by the International Sustainability Standards Board (ISSB). Members stressed that global baseline standards should be interoperable with specific jurisdiction requirements.

The next CFRF meeting will take place in October 2022.

3. EU REGULATORY UPDATES

3.1 Commission publishes summary report of targeted consultation on the functioning of the ESG ratings market

On 4 August 2022, the European Commission published a [summary report](#) on its '[targeted consultation](#) on the functioning of the ESG ratings market in the EU and on the consideration of ESG factors in credit ratings'. The report summarises the 168 answers received to a series of questions on the use of ESG ratings by Firms and the need for EU intervention on the issues identified on the ESG ratings market. The main results are as follows:

- The vast majority of respondents declare that they do use ESG ratings and among these, 77% use them 'very much', while a smaller share use them 'a little'.
- The large majority of respondents (over 84%) consider that the market is not functioning well today.
- A large majority of respondents (83%) consider that the lack of transparency on the methodologies used by the providers is a problem in the ESG ratings market.
- The vast majority of respondents (91%) also consider that there are significant biases with the methodology used by providers.
- Almost all respondents (94%) consider that intervention is necessary, of which the large majority (80%+) support a legislative intervention, with the remainder supporting the development of non-regulatory intervention in the form of guidelines and code of conduct.
- The vast majority of respondents (82%) consider that ESG rating providers should be subject to some form of authorisation/registration regime in order to offer their services in the EU.
- Credit ratings - For a large majority of users it is either very important (60%) or important (34%) to understand to what extent individual credit rating actions have been influenced by sustainability factors. Most respondents (70%) do not find information about the extent to which credit rating agencies (CRAs) methodologies or the rating process incorporate sustainability factors to be sufficiently well disclosed.
- Slightly more respondents consider that the current trends in the market are sufficient to ensure that CRAs incorporate relevant ESG factors in credit ratings (52 out of 101), than those who disagree.

The targeted consultation is part of the [renewed sustainable finance strategy](#) adopted in July 2021 and aims to inform the Commission on the use and objectives of ESG rating, and on the interplay between larger and smaller market players.

Waystone is helping clients navigate ESG challenges. To discuss how we can help you, please [contact us](#).

3.2 Commission updates Asset Freeze FAQs relating to Council Regulation 269/2014

On 30 August 2022, the European Commission updated its [FAQs](#) on asset freeze and prohibition to make funds and economic resources available. The FAQs relate to Council Regulation 269/2014 on 'restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine'.

The FAQs have been updated to include the following question: 'Does a listing affect the status of a beneficial owner of a legal person?'

EU sanctions are temporary measures that do not entail expropriation or modification of the ownership. The status of beneficial owner does not cease to exist in the moment the beneficial owner is listed.

It follows that the listing of an individual, as such, should not result in any change to the information held by national beneficial ownership registers.

To discuss how to protect your business from sanctions breaches, please [contact us](#).

4. FINANCIAL CRIME

4.1 OFSI updates general guidance for financial sanctions reporting in the UK

On 30 August 2022, the Office of Financial Sanctions Implementation (OFSI) of HM Treasury updated its ['General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018'](#).

The OFSI has updated Section 5 of the Guidance on Reporting Obligations to OFSI. Reporting obligations apply to relevant firms (as defined in the UK regulations under the Sanctions Act ("UK regulations") and referred to below), who are required to inform OFSI as soon as practicable if they know or reasonably suspect a person is a designated person or has committed offences under financial sanctions regulations, where that information is received in the course of carrying on their business.

The Guidance includes examples of information to be reported, including illustrations of the types and offences and economic resources subject to sanction rules.

On the same day, the OFSI has also published a helpful [blog](#) outlining what companies' reporting obligations are and how they can be met. The blog explains which relevant firms are required to report sanctions and gives examples of what types of offences must be reported.

Reports of a suspected designated person, frozen assets, credits to frozen accounts and suspected breaches should be emailed to: ofsi@hmtreasury.gov.uk. Reports should be submitted to OFSI using the form available at the following [link](#).

If you wish to discuss how to protect your business from sanctions breaches, please [contact us](#).

5. ENFORCEMENT ACTIONS

5.1 FCA fines Citigroup's international broker-dealer £12.6m for failed MAR implementation

On 19 August 2022, the FCA [announced](#) a fine of £12.6m Citigroup Global Markets Limited (CGML), the group's international broker-dealer, for failing to properly implement the Market Abuse Regulation (MAR) trade surveillance requirements relating to the detection of market abuse. The fine was for breaches of Principle 2 (Skill, care and diligence) and Article 16(2) of MAR, requiring that firms operating a trading venue to have effective arrangements to detect and report insider dealing and market manipulation.

- MAR was introduced in 2016 and expanded requirements to detect and report potential market abuse. The FCA found that CGML, among other things:
- Proceeded to implement Article 16(2) without initially considering the secondary legislation that supplemented MAR;
- Did not begin preparing an Article 16(2) risk assessment until December 2017;
- The MAR Working Group, which was one of the forums involved in the implementation of the requirements of Article 16(2), failed to provide sufficient oversight of the implementation of the requirements of Article 16(2);
- CGML's UK Business Risk, Compliance, and Controls committee and the CGML Board were both wrongly informed in late 2016 that MAR implementation was complete; and
- Until January 2018, CGML failed to identify significant gaps in its arrangements, systems, and procedures for trade surveillance for the purposes of compliance with Article 16(2).

Mark Steward, Executive Director of Enforcement and Market Oversight, commented:

'The framework for market integrity depends on the partnership between the FCA and market participants using data to detect suspicious trading. By not fully implementing the new provisions when required, Citigroup Global Markets did not carry its full weight in this partnership, impacting market integrity and the overall detection of market abuse.'

Waystone provides independent reviews of MAR systems and controls as well as support with your Market Abuse Risk Assessment (MARA). For more information, please [contact us](#).

5.2 FCA fines Sir Christopher Gent for disclosing inside information

On 5 August 2022, the FCA issued a [press release](#) reporting that Sir Christopher Gent, former non-executive Chairman of ConvaTec Group Plc, had been fined £80,000 for unlawfully disclosing inside information to individuals in senior positions at two of ConvaTec's major shareholders before this information had been announced properly to the market.

The FCA believed Sir Christopher acted negligently in disclosing the information, and that there is no evidence he intended to make personal gain from the disclosure. Nevertheless, Sir Christopher should have realised that the information he disclosed - concerning an expected RNS announcement relating to the revision of ConvaTec's financial guidance and the retirement of ConvaTec's CEO - was inside information and that it was not within the normal exercise of his employment to disclose it.

Sir Christopher's actions amount to unlawful disclosure of inside information under Article 10 and in breach of Article 14 (c) of the EU Market Abuse Regulation. For an independent reviews of MAR systems and controls, please [contact us](#).

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.

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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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This Regulatory Update provides information about the consultative documents and publications issued by various regulators which are still current, proposed changes to the Rules and Guidance set out in Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the regulators' document referred to therein.