

Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 Financial Services and Markets Bill ends second reading in Commons

On 7 September 2022, the House of Commons held the [second reading](#) of the Financial Services and Markets Bill, a set of new laws proposed by parliament aimed at implementing the outcomes of the [Future Regulatory Framework \(FRF\)](#) Review. Amongst other things, the Bill sets the conditions for the United Kingdom to repeal or reform onshored EU legislation for financial services and create a more internationally competitive set of rules.

Some key takeaways from the Commons' reading are the following:

- The Treasury welcomes the [recommendations](#) set out in the Independent Panel on Ring-fencing's report and is committed to publishing a Government response later this year. (The Ring-fencing regime, introduced in the aftermath of the 2008 financial crisis, requires large banking groups to separate core retail banking services from investment banking).
- The Government intends to bring forward an intervention power that will enable Her Majesty's Treasury to direct a regulator to make, amend or revoke rules where there are matters of significant public interest.

During the discussion, Economic Secretary Richard Fueller has refuted speculation about proposals to merge the FCA and the PRA.

As is customary following the second reading, the bill has been referred to a [Public Bill Committee](#) for further scrutiny. The Committee is receiving written evidence from outside organisations and members of the public and aims to end proceedings on Tuesday, 25 October 2022.

Waystone will keep a close eye on the evolution and potential impact of the bill on our clients and will keep our clients updated accordingly.

1.2 FCA consults on regulatory perimeter for trading venues

On 22 September 2022, the FCA published [Consultation Paper 22/18](#) on Guidance on the trading venue perimeter. The consultation is part of the [Wholesale Markets Review](#) by the FCA and HM Treasury. The review had highlighted, inter alia, the need for greater clarity on the types of firms which need to be authorised as a trading venue.

The FCA is proposing new guidance in the Perimeter Guidance Manual (PERG) of its Handbook, clarifying the definition of multilateral system and how it applies to different types of arrangements in financial markets. In the consultation, the FCA clarifies that the following arrangements do not amount to multilateral systems:

- Investment-based crowdfunding
- Bulletin boards
- Technology providers operating general purpose communications systems

- Voice brokers arranging or executing client orders over the telephone without operating a trading system or facility
- Portfolio managers operating internal matching systems

In CP22/18, the FCA is also seeking views on whether the trading venue regime can be made more proportionate for smaller firms, although it will not be making proposals at this stage. The FCA will be receiving views on its proposals until 11 November 2022 and expects to release a policy statement containing the finalised guidance in Q2 2023.

1.3 FCA speech on what firms can expect from the Consumer Duty

On 29 September 2022, FCA Executive Director for Consumers and Competition Sheldon Mills delivered a [speech](#) at the Consumer Protection in Financial Services Summit titled: 'What firms and customers can expect from the Consumer Duty and other regulatory reforms'.

The key takeaways from the speech are the following:

- The FCA does not expect firms to have necessarily fully scoped all work required to embed the Duty by the **October deadline**, but firms' implementation plans should be sufficiently developed to provide their governing bodies (and the FCA) with assurance that the Duty will be fully implemented by July.
- Boards and senior management have a critical role in overseeing their firms' implementation of the Duty. The FCA has strengthened the requirements around governance and accountability to ensure senior managers and executives are held accountable.
- Rising rates mean that consumers will face challenges around debt, mortgage rates, investments and pensions. The FCA urges mortgage lenders to do more to help borrowers switch to a less costly option where that is available.

In his speech, Mr. Mills also touched on what is expected of Firms with respect to the four Customer Outcomes of the Duty:

Consumer Understanding - Customers are making complex choices about debt, mortgages, pensions, investments, and other products, often on a smartphone. Firm must ensure they have the key product information, such as its features and charges, easily accessible and understandable.

Products and Services - Firms should be offering customers products that meet their needs. Customers must not be pushed into high-risk investments, unaffordable high cost credit and unsuitable debt products.

Consumer support - The FCA wants to see competitive markets, where it is as easy to switch, cancel or complain about a product as it is to buy it in the first place. As a result, it expects firms to ensure any exit fees are reasonable.

Price and value - The FCA does not intend to set prices, but it expects firms to satisfy themselves that the prices they charge are reasonable for the benefits.

The FCA expects boards or equivalent management bodies to have agreed their implementation plans - and be able to evidence they have scrutinised and challenged the plans - by 31 October 2022. To discuss how Waystone can help you prepare for the new consumer duty, please [contact us](#).

1.4 FCA releases Handbook Notice 102

On 30 September, the FCA published [Handbook Notice 102](#) detailing recent changes made by its Board to the Handbook, which include:

- Consumer Duty Instrument 2022 – as detailed in [PS22/9](#), the new rules include the addition of a new Principle for Businesses and an extensive set of cross-cutting and outcome based rules in the PRIN section of the Handbook.
- Appointed Representatives Instrument 2022 – as detailed in [PS22/10](#), the new rules will require principals to provide more information on ARs and strengthen their responsibilities. The instrument will come into force starting 29 July 2022.
- Financial Promotions and High-Risk Investments Instrument 2022 – the FCA is making changes in various sections of the Handbook to change its classification of high-risk investments. In particular, it is rationalising rules in COBS 4 under the terms ‘Restricted Mass Market Investments’ and ‘Non-Mass Market Investments’, and is also: strengthening requirements on risk warnings; banning inducements to invest; introducing positive frictions; and improving client categorisation and appropriateness tests.

To discuss how the new rules may impact your firm, please [contact us](#).

2. PRA UPDATES & DEVELOPMENTS

In September, there have been no material updates for WCS Clients from the PRA.

3. EU REGULATORY UPDATES

3.1 GHOS reiterates Basel III implementation to be as fast as possible

On 13 September 2022, the Basel Committee on Banking Supervision (BCBS), the primary global standard setter for the prudential regulation of banks, published a [press release](#) following the meeting by its oversight body, i.e., the Group of Central Bank Governors and Heads of Supervision (GHOS).

The GHOS met on 12 September to reaffirm its expectations on implementing Basel III and to provide direction on key areas of work by the Committee. In its meeting, the GHOS:

- Reiterated its expectation to implement all aspects of the Basel Framework consistently and as fast as possible, with most jurisdictions planning to implement all, or the majority of, the [Basel III](#) standards in 2023 or 2024.
- Reaffirmed the scope of the Committee's work on climate-related financial risks and endorsed the Committee's holistic approach to developing and assessing potential measures related to disclosure, supervision and/or regulation.

- Tasked the Committee with finalising a robust and prudent regulatory framework for crypto assets around the end of this year.

GHOS members also took note of the ongoing work by the Committee to evaluate the impact of Basel III standards but emphasised the importance of focusing on the implementation of outstanding Basel III reforms before considering any policy or supervisory implications.

3.2 ESMA revises Guidelines on MIFID II Suitability Requirements to include sustainable finance

On 23 September 2022, the European Securities and Markets Authority (ESMA) published its [Final Report](#) on Guidelines on certain aspects of the MiFID II suitability requirements.

This Final Report reviews the text of the 2018 ESMA guidelines following the adoption by the European Commission of the changes to the MiFID II Delegated Regulation. In its review, ESMA adds guidelines on sustainability factors, risk and preferences into certain organisational requirements and operating conditions for investment firms. In line with the amendments to the MiFID II Delegated Regulation on the topic of sustainability, firms should:

- Help clients understand the difference between products with and without sustainability features
- Collect information from clients on their preferences in relation to sustainable investment products
- Identify a range of suitable products for clients, it shall identify the product(s) that fulfil the client's sustainability preferences
- Give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client and of any updates of these preferences.

The revised Guidance features extensive clarifications for firms on how to comply with the new sustainability requirements when assessing suitability.

For support with ESG regulations, please contact us.

4. FINANCIAL CRIME

4.1 The Economic Crime and Corporate Transparency Bill enters Commons

On 22 September 2022, there was published on the UK Parliament's website [the Economic Crime and Corporate Transparency Bill 2022-23](#). The Bill was announced during the passage of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#) which was fast-tracked through Parliament in March 2022 in response to the Russian invasion of Ukraine.

The Bill aims at strengthening the UK's response to economic crime, in particular against organised criminals, fraudsters, kleptocrats and terrorists, and delivers a structural refurbishment of Companies House, improving the reliability of its data to inform business transactions and lending decisions across the economy. The main changes introduced by the Bill cover the following areas:

Companies House Reform

- Identity verification will be required for all directors and people with significant control (beneficial owners). Under the new rules, companies will no longer be required to maintain this information in their own registers as it will be held centrally
- The Bill requires that all registered offices shall be at a place where companies can acknowledge and receive documents
- The Bill requires all companies to file a profit and loss account (small companies will no longer be exempted)
- The registrar will be given greater powers to share information and reject documents with inaccuracies.

Limited partnerships

- Reporting arrangements for limited partnerships will be aligned with those for registered companies
- LPs will be required to provide more information about partners at the point of registration, and this shall be submitted by authorised corporate service providers, who are supervised for anti-money laundering purposes
- LPs must update the Registrar on an ongoing basis about the information provided and submit annual confirmation statements

Money Laundering

- The Bill creates new exemptions from money laundering offences to reduce reporting by businesses carrying out transactions on behalf of clients
- The Bill enables certain businesses to share information about economic crime without breaching confidentiality duties
- The Bill expands the Serious Fraud Office's (SFO) pre-investigation stage powers to all SFO cases
- The Bill removes the £25,000 cap on the Solicitors Regulation Authority's powers to impose penalties for economic crime disciplinary matters.

Cryptoassets

- The Bill amends the Proceeds of Crime Act 2002 to explicitly apply criminal and civil asset recovery powers to crypto assets;
- the Bill largely removes the requirement that a person must have been arrested before assets can be seized

- The Bill gives law enforcement search and seizure powers in relation to crypto assets.

Various Government departments have already published [Factsheets](#) on the changes brought forward by the Bill.

For an independent review of your AML and CTF framework, or for advice in relation to AML regulation, please [contact us](#).

4.2 FATF publishes procedures for its Fourth Round of Mutual Evaluations

During September 2022, the following documents were published on the Financial Action Task Force (FATF) website:

- [Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations](#)
- [Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up \(Universal Procedures\)](#)

The FATF announced that it is conducting a fourth round of mutual evaluations for its members based on the FATF Recommendations (2012) and the Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (2013), as amended from time to time.

The published documents set out the latest procedures that are the basis for fourth round of mutual evaluations by the FATF and all other AML/CFT assessment bodies (i.e. FATF-style regional bodies (FSRBs), the IMF and the World Bank).

The FATF conducts reviews of its member countries on an ongoing basis to assess levels of implementation of the FATF Recommendations and provides an analysis of each country's framework for preventing criminal abuse of the financial system.

4.3 JMLSG publishes new consultation on Guidance updates

On 16 September 2022, the Joint Money Laundering Steering Group (JMLSG) [published](#) proposed amendments to Part I of its Guidance on compliance with UK anti money laundering (AML) and counter terrorist financing (CTF) legislation for the financial industry.

The proposed amendments take into account the Money Laundering and Terrorist Financing (Amendment) (High-risk Countries) Regulations 2022 and the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022.

The proposed amendments to the Guidance, available in detail [here](#), make changes on the following topics:

- **High-Risk Third Countries (HRTC) Enhanced Due Diligence (EDD)** – the JMLSG has added guidance aimed at informing the risk-based approach for firms when adjusting the extent of EDD measures to be applied.

- **Due Diligence as relating to Trusts** – the JMLSG has added guidance for Firms on obtaining information about the proof or registration and beneficial ownerships of Trusts.
- **Proliferation financing** – proliferation financing has been added to money laundering and terrorist financing in the core obligations for firms with respect and staff awareness, training alertness (Chapter 7) and to the risk-based approach (Chapter 4).

In the UK, non-compliance with AML and CTF regulation can lead to an unlimited fine and 14 years imprisonment. Please [contact us](#) if you wish to consider an independent review of your AML and CTF systems and controls.

5. ENFORCEMENT ACTIONS

5.1 FCA statement regarding potential enforcement action against Link Fund Solutions Ltd

On 21 September 2022, the FCA published on its website a [statement](#) regarding potential enforcement action against Link Fund Solutions Ltd (LFS). The statement follows a decision [published](#) on 12 September 2022 by the FCA confirming that it had approved the acquisition of LFS by Dye and Durham (D&D).

In its latest statement, the FCA makes known that it has issued LFS with a draft Warning Notice following its investigation on the circumstances leading to the suspension of the LF Woodford Equity Income Fund (WEIF). The draft Warning Notice includes a proposed penalty of £50 million, before any discounts for prompt settlement. In addition, the notice sets out the basis for redress payment LFS could be required to pay of up to £306 million.

In its 12 September statement, the FCA had confirmed that it decided to approve D&D's acquisition of LFS, subject to a commitment by D&D to make funds available to cover any redress payments LFS may be required to make for failings in managing the liquidity of the WEIF, which it confirms could be up to £306 million.

In October 2019, the FCA had suspended dealing in the units of WEIF, the UCITS fund managed by the once appraised Neil Woodford, following an increased level of redemptions that the fund was unable to meet immediately. Under EU rules a UCITS fund is allowed up to 10% of the portfolio to be invested in transferable securities which are not dealt in an 'eligible market'. Due to unexpected redemptions triggered by the WEIF's poor performance, the fund had breached the value limits imposed by UCITS regulation. In October 2019, LFS, the Authorised Corporate Director (ACD) of the WEIF, removed Woodford as the manager and announced its decision to wind-down the fund.

The FCA has confirmed that there are multiple parties still under investigation in relation to the circumstances that led to the suspension of the LF Woodford Equity Income Fund. These investigations continue and they will consider any further failings which may have negatively impacted investors.

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:

Email: compliancesolutions@waystone.com

Website: <https://compliance.waystone.com/>

Tel: London +44 20 7638 9830

or write to us at:

2nd Floor,
20-22 Bedford Row
Holborn, London,
WC1R 4EB, England

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.