

Regulatory Update

UK, November 2022

Issued 13 December 2022



Table of Contents

1. FCA UPDATES & DEVELOPMENTS	3
1.1 FCA Quarterly Consultation No 38: CP22/26 including amendments to Consumer Duty	3
1.2 Financial Services and Markets Bill will not introduce Intervention Power.....	4
1.3 FCA consults on new 'core investment advice' regime	4
1.4 FCA's key priorities for the financial advice industry	5
2. PRA UPDATES & DEVELOPMENTS	6
2.1 Consultation on the UK implementation of Basel 3.1 standards.....	6
3. EU REGULATORY UPDATES	6
3.1 ECB thematic review sets deadlines for banks to deal with climate risks	6
3.2 ESMA consultation on guidelines for the use of ESG or sustainability-related terms in funds' names	7
4. FINANCIAL CRIME	8
4.1 FCA issues Final Notice to former CEO for anti-money laundering failings.....	8
5. ENFORCEMENT ACTIONS	9
5.1 FCA fines Julius Baer £18m and publishes decision notices for three individuals	9
CCL Compliance is now Waystone Compliance Solutions	10
Consultancy Services & Support	10

1. FCA UPDATES & DEVELOPMENTS

1.1 FCA Quarterly Consultation No 38: CP22/26 including amendments to Consumer Duty

On 2 December 2022, the FCA published Consultation Paper [CP22/26](#), Quarterly Consultation No 38, containing proposals on miscellaneous amendments to the FCA Handbook.

The FCA is proposing minor amendments to the Handbook in following areas:

- The TC sourcebook, including updates to the qualifications table in TC App 4.1;
- Removal of USD LIBOR derivative products from the scope of the derivatives trading obligation (DTO);
- Moving the Finalised Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 from its position as a static document on the website into the FCA Handbook;
- Changes to MIFIDPRU to provide clarification, and to SYSC, COND, MIFIDPRU, IPRU-INV and SUP to remedy errors;
- Changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022;
- Changes to the PROD rules to disapply certain requirements where products are available for distribution to customers resident outside the UK (where the state in which the risk is situated is outside the UK); and
- Changes to the Consumer Duty rules and guidance.

In relation to the **Consumer Duty**, the FCA is proposing changes to address areas where certain rules require clarification, including:

- Clarifications for authorised firms approving financial promotions on behalf of unauthorised third parties. Clarifications have been added to specify how the Duty applies where a firm is only approving or communicating a financial promotion;
- Clarifications on the application of the consumer understanding and consumer support outcomes, including clarifications for Firms in the temporary marketing permissions regime (TMPR);
- Clarifications on the 'closed product' definition, confirming that products and services should be regarded as closed where they are not being marketed or sold to new customers, or available for renewal by existing customers; and
- Clarifications on the exclusions from the Duty for [non-retail financial instruments](#). The FCA specifies that this exclusion applies only for purely wholesale activities and is not applicable to firms in a distribution chain selling investment funds to retail customers (for example - an adviser of high net

worth retail customers would be wrong in thinking that advice is out of scope of the Duty because it relates to a fund with a minimum investment above £50,000).

Waystone have prepared a comprehensive series of **Regulatory Guides** that will guide you through the complexity of the Consumer Duty. For more information about our advisory support, please [contact us](#).

1.2 Financial Services and Markets Bill will not introduce Intervention Power

In early November 2022, the Financial Services and Markets Bill (the Bill) as amended in Public Bill Committee was [published](#) on the Parliaments website. On 23 November Andrew Griffith, Economic Secretary to the Treasury, wrote a [letter](#) to Dame Angela Eagle, Interim Chair of the Treasury Committee.

In the letter it was stated that the government would not be bringing forward an amendment to the Bill to introduce the widely discussed Intervention Power enabling the Treasury to direct a regulator to make, amend or revoke rules for matters of significant public interest.

The letter comes as a response to a previous [letter](#) by Dame Angela Eagle to Mr. Griffith requesting confirmation that the government would not be introducing the amendment in the House of Lords.

In her letter Dame Angela Eagle stated that ‘if it was the Government’s intention to acquire such a power it should have included it in the Bill at its introduction’, and that the Treasury’s approach to Parliamentary scrutiny in this case had been “decidedly sub-optimal”.

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

1.3 FCA consults on new ‘core investment advice’ regime

On 30 November 2022, the FCA published Consultation Paper [CP22/24](#) on broadening access to financial advice for mainstream investments. The FCA aims at making advice more accessible for consumers as findings show that over 4.2 million people hold £10,000 or more of investable assets mostly or entirely in cash.

The proposed rules create a new ‘core investment advice’ regime aimed at allowing firms to provide mass-market consumers greater access to simplified advice on investing in mainstream products. In summary, the proposed rules bring forward the following changes:

- The introduction of a new definition of ‘core investment advice’ in Handbook Glossary, as opposed to holistic financial advice;
- Limiting the provision of core investment advice to a sub-set of products within the Stocks and Shares (S&S) ISA wrappers;
- Limiting the possible investments advisers can recommend under the new regime by excluding high-risk investments, in particular Restricted Mass Market Investments (RMMIs) and Non-Mass Market Investments (NMMIs);

- New non-Handbook guidance to outline how firms can undertake a streamlined suitability assessment to reflect the reduced complexity of this advice;
- A reduction of the existing qualification requirements to advise on mainstream investments; and
- Allowing consumers to pay for transactional advice in instalments.

Firms will be required to hold 'advising on investments' permission by the FCA to offer core investment advice. In addition, firms wishing to undertake core investment advice will be subject to a specific notification requirement under SUP 15.

Authorised firms offering core investment advice will still be subject to SM&CR and Consumer Duty rules. For advice on any of the above matters, please [contact us](#).

1.4 FCA's key priorities for the financial advice industry

On 2 November 2022, there was published on the FCA website a speech by Therese Chambers, FCA Director of Consumer Investments, delivered at the Festival of Financial Planning in Birmingham.

The key takeaways from the speech are the following:

- **The Consumer Duty** – the FCA expects firms to understand how the Duty impacts their business and to plan and prepare carefully for its introduction. A key change is the introduction of the Consumer Principle – Firms must act to deliver good outcomes for retail customers – which imposes a higher standard of care than the principle of 'Treating Customers Fairly'. The speech also provides a summary of the new obligations for firms in relation to the Four Outcomes.
- **Upcoming policy work** – the speech mentions recent FCA policy work on the core investment advice regime ([CP22/24](#)), a simplified advice regime for investment into mainstream stocks and shares ISAs, and the financial promotion rules on high-risk investments, for which a [policy statement](#) was published in August.

In her conclusion, Theresa Chambers defines the Consumer Duty as a 'gamechanger' for firms and the FCA. She also states that the regulator will be focusing on customer outcomes rather than technical compliance with the rules and reminds firms that they will be required to provide evidence that they have delivered good customer outcomes, and to demonstrate that they have not facilitated poor customer outcomes.

Waystone has prepared a comprehensive series of **Regulatory Guides** to steer you through the complexity of the Consumer Duty. For more information about our advisory support, please [contact us](#).

2. PRA UPDATES & DEVELOPMENTS

2.1 Consultation on the UK implementation of Basel 3.1 standards

On 30 November 2022, the [PRA](#) and [HM Treasury](#) published consultation papers on the 'Implementation of the Basel 3.1 standards'. The Basel III reforms were introduced by the BCBS following the 2008 financial crisis and are aimed at increasing the quantity and quality of capital in the financial system and improving the accuracy of risk measurement by firms. The Basel 3.1 standards are the final set of Basel III reforms that remain to be implemented in the UK and relate to how banks measure risk on their balance sheets.

In its consultation, HM Treasury discusses the legislative changes necessary to facilitate the PRA's implementation of the standards. This includes amending the CRR in several ways, including revoking certain articles of the CRR for them to be replaced with the PRA's proposed rules.

Published on the same day, the PRA's CP16/22 sets out the PRA's proposed rules with respect to the implementation of the Basel 3.1 standards, and consists of the following:

- A revised standardised approach (SA) for credit risk;
- Revisions to the internal ratings based (IRB) approach for credit risk;
- Revisions to the use of credit risk mitigation (CRM) techniques;
- Removal of the use of internal models (IMs) for calculating operational risk capital requirements and a new SA to replace existing approaches;
- A revised approach to market risk;
- The removal of the use of IMs for credit valuation adjustment (CVA) risk, replaced by new standardised and basic approaches; and
- The introduction of an aggregate 'output floor' to ensure total risk-weighted assets (RWAs) for firms using IMs and subject to the floor cannot fall below 72.5% of RWAs derived under SAs, to be phased in over five years.

The proposals also revise certain areas of the Basel III standards already implemented in the UK and would have consequential impacts on the UK implementation of the leverage ratio and elements of the liquidity and large exposures frameworks. The consultation closes on Friday, 31 March 2023.

3. EU REGULATORY UPDATES

3.1 ECB thematic review sets deadlines for banks to deal with climate risks

On 2 November 2022, the European Central Bank (ECB) published the results of its 2022 [thematic review](#) on climate-related and environmental risks. On the same day, the ECB published a compendium of [good practices](#) observed in its thematic review.

The thematic review aimed at checking whether banks adequately identify and manage climate and environmental risks, and looked at banks' risk strategies, governance and risk management processes.

Results show that banks are still far from adequately managing climate and environmental risks. Even though 85% of banks now have in place at least basic practices in most areas, they are still lacking more sophisticated methodologies and granular information on climate and environmental risks.

Each significant institution has received a feedback letter setting out any shortcomings in its practices vis-à-vis the supervisory expectations, as set out in 2020 in the [ECB's Guide on climate-related and environmental risks](#). The feedback letters set out remediation timelines for each shortcoming. In particular, the ECB expects institutions to reach, as a minimum, the following milestones:

- By the end of March 2023, to have in place a sound and comprehensive materiality assessment, including robust scanning of the business environment;
- By the end of 2023, to manage C&E risks with an institution-wide approach covering business strategy, governance and risk appetite, as well as risk management, including credit, operational, market and liquidity risk management; and
- By the end of 2024, to be fully aligned with all supervisory expectations, including having in place a sound integration of C&E risks in their stress testing framework and ICAAP.

Supervisors are already including bank-specific climate and environmental findings in their Supervisory Review and Evaluation Process (SREP). Banks are reminded that, where applicable, findings may impact their SREP scores and, as a consequence, their Pillar 2 capital requirements.

3.2 ESMA consultation on guidelines for the use of ESG or sustainability-related terms in funds' names

On 18 November 2022, the European Securities and Markets Authority (ESMA) published a [consultation paper](#) on draft guidelines on the use in funds' names of ESG or sustainability-related terms.

ESMA is seeking stakeholders' feedback on the introduction of quantitative thresholds for the minimum proportion of investments sufficient to support the ESG or sustainability-related terms in funds' names. These are as follows:

- A quantitative threshold (80%) for the use of ESG related words;
- An additional threshold (50%) for the use of "sustainable" or any sustainability-related term only, as part of the 80% threshold;
- Application of minimum safeguards consisting of exclusion criteria to all investments for funds using such terms; and
- An extension of the thresholds to specific types of funds such as index and impact funds.

Verena Ross, ESMA Chair, has stated that: "the objective is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims while providing both NCAs and asset managers with clear and measurable criteria to assess names of funds including ESG or sustainability-related terms."

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

4. FINANCIAL CRIME

4.1 FCA issues Final Notice to former CEO for anti-money laundering failings

On 18 November 2022, the FCA published a [Final Notice](#) to Mohammed Ataur Rahman Prodhan.

In 2012, Mr. Prodhan was CEO and the senior manager responsible for AML systems and controls at the UK subsidiary of Sonali Bank Ltd. Sonali Bank UK Limited (SBUK) was authorised to accept deposits and provided banking services to the Bangladeshi community in the UK.

During the Relevant Period (7 June 2012 to 4 March 2014), Mr. Prodhan, who had delegated the responsibility for AML systems and controls to the bank's MLRO, failed to:

- Carry out any independent checks to ensure that the bank's systems and controls were working effectively;
- Hold sufficiently regular meetings with the MLRO; and
- Act or challenge the bank's Internal Auditors' report and MLRO reports which highlighted, amongst other things:
 - a lack of evidence to demonstrate that SBUK had identified and considered the conduct risks to which it was exposed
 - that SBUK's risk register was not reflective of the risks faced and provided little analysis on the effectiveness of systems and controls and analysis of risks
 - a lack of any demonstrable link to the tasks listed in SBUK's compliance monitoring plan
 - deficiencies of the AML transaction monitoring process, in particular a lack of SARs being referred in the trade finance part of the business, which was described as "surprising".

The FCA found Mr. Prodhan guilty of misconduct for breaching Statement of Principle 6 (exercising due skill, care and diligence in managing the business of the firm for which he was responsible) and knowingly concerned in SBUK's breach of Principle for Business 3 (a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems).

The FCA has replaced the financial penalty of £76,400 imposed on Mr Prodhan with a public censure due to him being retired in Bangladesh and other special circumstances. Mr Prodhan has withdrawn his referral to the Upper Tribunal and agreed to accept a public censure.

We provide our clients with assurance reviews of their company's AML systems and controls, so that senior management receive a clear, independent view of the effectiveness of their AML framework. To discuss how we can support you, please [contact us](#).

5. ENFORCEMENT ACTIONS

5.1 FCA fines Julius Baer £18m and publishes decision notices for three individuals

On 30 November 2022, the FCA [published](#) a Decision Notice against investment advisory and wealth management firm Julius Baer International Limited (JBI) for failing to conduct its business with integrity, failing to take reasonable care to organise and control its affairs and failing to be open and cooperative with the FCA.

The FCA has also banned three former JBI employees: Gustavo Raitzin (Regional Head), Thomas Seiler (Sub-Regional (Market) Head and non-executive director) and Louise Whitestone (relationship manager on JBI's Russian and Eastern European Desk) for their involvement in the events.

During the relevant period, Bank Julius Baer (BJB) paid finder's fees to Mr Dimitri Merinson, an employee of Yukos Group companies, for introducing Yukos Group companies to Julius Baer. This was done on the understanding that the Yukos Group companies would then place large cash sums with Julius Baer from which the bank could generate significant revenues.

In particular, Yukos Group companies were charged far higher than standard rates for uncommercial FX transactions for which Mr Merinson received over \$3 million in commissions.

The FCA has found that JBI failed to have adequate policies and procedures in place to manage the relationships with finders, including the risks arising from these relationships. Moreover, in 2012 JBI suspected that a potential fraud had been committed but did not report these matters to the FCA as required until July 2014.

The three individuals have referred their Decision Notices to the Upper Tribunal and any findings in the individuals' Decision Notices are therefore provisional. Julius Baer International has partially agreed liability and has qualified for a 15% to 30% discounted fine of £18,022,500.

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/>

Consultancy Services & Support

- [Regulatory Technology – CORE](#)
- [Compliance Advisory](#)
- [Assurance Reviews](#)
- [Compliance Remediation](#)
- [Compliance Support Services](#)
- [Documentation](#)
- [Financial Crime Prevention](#)
- [Corporate Governance](#)
- [Risk Management](#)
 - [FCA Authorisation](#)
 - [Prudential Rules & Regulatory Reporting](#)

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.