

# Regulatory Update

UK, December 2022

Issued 20 January 2023



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## 1. FCA UPDATES & DEVELOPMENTS

### 1.1 Chancellor of the Exchequer unveils “Edinburgh Reforms”

On 9 December 2022, Chancellor of the Exchequer Jeremy Hunt unveiled the “[Edinburgh Reforms](#)”, a package of over 30 regulatory reforms setting out the timeline and approach to repealing retained EU financial law and seize the benefits of Brexit.

The work to repeal, and where appropriate replace, retained EU law will focus on delivering reform to areas which provide the most significant boost to UK growth and competitiveness. These include:

- overhauling the UK prospectus regime to make it more attractive for firms to list and raise capital
- reviewing the provision of investment research in the UK and the effects of the EU’s MiFID II unbundling rules, which do not exist in leading markets such as the US
- repealing the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, and consulting on a new direction for retail disclosure (in relation to this, the FCA has issued a [discussion paper](#) in preparation for replacing the PRIIPS regulation)
- launching a Call for Evidence on reforming the Short Selling Regulation
- reforming the ring-fencing regime in response to the recommendations of the Skeoch Review - including freeing retail focused banks from the regime
- changing the remit of the Financial Conduct Authority and Prudential Regulation Authority by including a new secondary competitiveness objective, i.e., a duty to facilitate the international competitiveness of the UK economy and its growth in the medium to long term
- reforming the rules governing Real Estate Investment Trusts, to reduce friction and allow savers to more easily access higher returns
- replacing the EU’s European Long Term Investment Fund (ELTIF) regime by introducing the Long-Term Asset Funds (LTAF) – a new type of fund which aims to bring more capital in assets such as UK infrastructure and low carbon and clean energy
- proposals to establish a UK Central Bank Digital Currency allowing consumers to hold digital pounds directly with the central bank
- reviewing the Senior Managers & Certification Regime
- extending the Investment Management Exemption to cryptoassets to incentivise more overseas investments in the sector
- consulting on bringing Environmental, Social and Governance (ESG) ratings providers into the FCA’s regulatory perimeter and committing to publishing a new green finance strategy in early 2023.

Additional information on the measures announced by Chancellor Jeremy Hunt, including a collection of the documentation underlying the Reforms, can be found at [Financial Services: The Edinburgh Reforms - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms).

## 1.2 FCA Section 165 request for firms with appointed representatives (ARs)

On 8 December 2022, the FCA published a [webpage](#) providing details on the Regulator's Section 165 request for information sent to principal firms with Appointed Representatives (ARs).

The FCA is asking principal firms to provide information on:

- the reasons for any appointments
- the nature of their regulated business
- whether any unregulated business is conducted and, if so, the nature of this business
- anticipated revenue
- the nature of financial arrangements between principal firms and AR(s)
- complaints information and whether the AR is part of a group.

Requests have been sent out by email to each principal firm's Principal User on Connect. Principal firms have until 28 February 2023 to respond.

Waystone Compliance Solutions can support Principal firms to meet their obligations by providing guidance materials for practitioners and advice from our experts. We can also support Principal firms with a RegTech solution to help manage and evidence control over their AR portfolio. For additional information, please see our [Notice for Firms on the FCA's improved Appointed Representatives regime](#).

## 1.3 FCA consults on regulatory gateway for firms who approve financial promotions

On 6 December 2022, the FCA published Consultation Paper [CP22/27](#) on introducing a gateway for firms who approve financial promotions. The FCA is consulting to introduce a requirement for authorised firms that wish to approve financial promotions for other firms to have obtained a specific FCA authorisation for doing so.

Currently, any authorised person can approve financial promotions for unauthorised firms under [Section 21](#) of the Financial Services and Markets Act 2000. As firms are not required to inform the FCA that they approve financial promotions, it is difficult for the FCA to effectively supervise s21 approvers.

In addition, the FCA has limited powers over some financial services market participants where they are not carrying out a regulated activity. For example, issuing non-transferable securities is generally not a regulated activity.

Hence, the FCA is also introducing, amongst others:

- a bi-annual reporting requirement for firms that are given permission to approve financial promotions
- a requirement for Firms that are granted permission to approve financial promotions to notify the FCA when they approve, or amend or withdraw approval of, a financial promotion, within 7 days of doing so.

The proposed rules set out how the FCA intends to implement the regulatory gateway for s21 approvers introduced by the [Financial Services and Markets Bill \(the Bill\)](#). The proposals in CP22/27 remain subject to the passage of the Bill through Parliament and the Bill receiving Royal Assent.

The Treasury has signalled that firms will be able to continue approving financial promotions until their applications have been determined. For information on how Waystone can help with financial promotions, please [contact us](#).

#### **1.4 FCA issues Market Watch 71 on Insider Lists**

On 13 December 2022, the FCA published on its website [Market Watch 71](#). Market Watch is the regulator's newsletter on market conduct and transaction reporting issues. In this edition, the FCA shares its observations about advisory firms' insider lists.

The FCA reiterates the importance of strictly limiting access to inside information to employees who require access to perform their role in order to prevent market abuse, and notes that smaller permanent insider lists are desirable for firms and help ensure the security and integrity of firms' approach to managing their market abuse risk.

In addition, the FCA reminds firms of the requirement within UK Market Abuse Regulation (MAR) to include personal information in insider lists, including National Identifiers, dates of birth and personal telephone numbers. The FCA needs this information to cross reference MiFIR transaction reports, MAR suspicious transaction and order reports and other information sources.

The FCA expects issuers and persons acting on their behalf to respond to its requests for insider lists promptly, specifying that it would expect this to be done "within two days".

#### **1.5 FCA DP22/6 on Future Disclosure Framework**

On 13 December 2022, the FCA published discussion paper [DP22/6](#) on the Future Disclosure Framework. The FCA is collecting high-level views from industry stakeholder on retail disclosures following the Financial Services and Markets (FSM) Bill and the government's intentions to revoke the Packaged Retail and Insurance-based Investment Products (PRIIPs) regulation and to remove the Undertaking for Collective Investment in Transferable Securities (UCITS) disclosure requirements.

As set out in HM's Treasury consultation on [PRIIPs and UK Retail Disclosure](#), the aim is for future disclosure requirements to sit only in the FCA Handbook. The UCITS KIID and the PRIIPs KID, which have been widely criticised for their prescriptive format, will likely be replaced by more flexible disclosure requirements which will be proportionate to the level of risk of the investment products and may be, in most cases, incorporated into firms' existing information documents.

With this Discussion Paper, the FCA is in the early stages of defining the form, content and delivery of alternative disclosure methods and is laying the groundwork for a more flexible, outcomes-based, disclosure regime. The discussion period ends on 7 March 2023. After considering the responses, the FCA will issue a Feedback Statement.

## 1.6 FCA issues Dear CEO letter to CFD providers

On 1 December 2022, the FCA has published a [press release](#) highlighting continuing concerns about problem firms in the Contracts for Difference (CFD) sector. The press release accompanies a [Dear CEO letter](#) issued on the same day by the FCA to CFD providers outlining its expectations and highlighting areas of poor practice seen in firms.

The FCA expects all CEOs of CFD firms to have discussed this letter with their fellow directors and/or Board and to have agreed actions and next steps by the end of January 2023. In the letter, the FCA reminds firms, amongst other things, to consider their obligations under the Consumer Duty, which sets higher standards of consumer protection across financial services and requires firms to act to deliver good outcomes for retail customers. Approximately 80% of customers lose money when investing in CFDs and the FCA believes that many firms are not delivering good customer outcomes.

The Consumer Duty comes into force on 31 July 2023. 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](#).

## 1.7 Regulatory Initiatives Grid update

On 12 December 2022, the FCA published an update on its Regulatory Initiatives Grid [webpage](#). The Regulatory Initiatives Grid is a six-monthly publication setting out the Financial Services Regulatory Initiatives Forum planned regulatory initiatives for the next 24 months.

In its update, the FCA states that the sixth edition of the Grid, which was due to be published in November, has been postponed to the new year as the Forum is taking some additional time to collectively consider any necessary changes to planned or new initiatives following the Government's announcement of the Edinburgh Reforms earlier in December.

## 2. PRA UPDATES & DEVELOPMENTS

### 2.1 PRA speech on Implementing Basel 3.1 in the UK

On 7 December 2022, Phil Evans, Director of Prudential Policy at the Bank of England, gave a [speech](#) at UK Finance on the UK implementation of Basel 3.1 standards following an [earlier consultation](#) paper by the Bank in November 2022. 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 his overview of the PRA's consultation paper [CP 16/22](#), Mr. Evans explains how the landmark package proposed by the PRA aligns with international standards and why, in his view, there is no trade-off between maintaining high standards and maintaining the UK's global competitiveness.

The speech also provides details on some of the PRA's proposals regarding the implementation of the Basel 3.1 standards on credit valuation adjustment (CVA) risk and changes to the Standardised Approach (SA) for calculating CVA capital requirements.

The PRA expects the new rules to be implemented from 1 January 2025, subject to feedback on the consultation. The full transcript of Mr. Evans speech can be found [here](#).

## 2.2 PRA and FCA to remove 'bonus cap' for dual-regulated firms

On 9 December 2022, the PRA and the FCA published a joint Consultation Paper [CP15/22](#) (FCA [CP22/28](#)) on Remuneration: Ratio between fixed and variable components of total remuneration ('bonus cap'). Earlier in September, the former Chancellor Kwasi Kwarteng had announced the Government's intention to remove the bonus cap and the Government have since confirmed this.

The bonus cap is part of the regulators' remuneration rules, which transposed EU Capital Requirements Directive (CRD) IV in 2014 in line with the UK's legal obligations as an EU member state.

The proposed rule changes aim at deleting the existing limits on the ratio between fixed and variable components of total remuneration for dual-regulated firms. The aim, according to the PRA, is to strengthen the effectiveness of the remuneration regime by removing the unintended consequences of the bonus cap, particularly the growth in the proportion of the fixed component of total remuneration, which reduces a firm's ability to adjust costs to absorb losses.

The proposals in the CP would result in the removal of the current bonus cap requirements, through:

- changes to the Remuneration Part and the Disclosure (CRR) Part of the PRA Rulebook
- changes to Senior Management Arrangements, Systems and Controls (SYSC) 19D: Dual-regulated firms Remuneration Code of the FCA's Handbook
- updates to the PRA's Supervisory Statement (SS)2/17 'Remuneration'.

The proposed changes should take effect for firms on the first performance year starting after the publication of the Policy Statement (for most firms, 2024/2025 performance year).

## 3. EU REGULATORY UPDATES

### 3.1 European Commission reforms Clearing, Insolvency and Listing to boost the CMU

As part of an initiative to develop the EU's Capital Markets Union (CMU) and reinforce the EU's open strategic autonomy, on 7 December 2022, the European Commission published a set of proposals for directives and regulations amending the EU's rules on clearing, corporate insolvency and listing:

#### Clearing

The EU is overly reliant on non-EU central counterparties (CCPs) for some derivatives deemed systemic by ESMA. For instance at the end of 2020, one of the UK-based CCPs cleared more than 90% of the volume



of Over-The-Counter Interest Rates Derivatives denominated in euro. The proposals, which bring forward amendments to EMIR, CRR, UCITSD and CRD (amongst others), aim at:

- reducing excessive exposures of EU market participants to CCPs in third countries, in particular, the proposal requires all relevant market participants to hold active accounts at EU CCPs for clearing at least a portion of derivatives identified as substantially systemic by ESMA
- enabling central counterparties (CCPs) – which provide clearing services – to expand their products quicker and easier, and by further incentivising EU market participants to clear and build liquidity at EU CCPs
- strengthening the EU supervisory framework for CCPs for example, by increasing the transparency of margin calls, so that market participants (including energy firms) are in a better position to predict them.

## Insolvency

The Commission has brought forward a proposal for a new Insolvency Directive to harmonise specific aspects of insolvency proceedings across the 27 EU member states, which are often mentioned as a significant obstacle to the further development of the Capital Markets Union.

## Listing

Proposals aim at simplifying and improving listing rules, in particular for SMEs, by making changes to:

- simplify the documentation that companies need to list on public markets (including the prospectus), and streamline the scrutiny processes by national supervisors
- simplify and clarify some market abuse requirements
- help companies be more visible to investors, by encouraging more investment research especially for small and medium sized companies (amendments to MiFID II)
- allow company owners to list on SME growth markets using multiple vote share structures, so that they can retain sufficient control of their company after listing, while protecting the rights of all other shareholders.

The six respective legislative proposals have been submitted to the European Parliament and the Council for adoption.

## 3.2 ESMA publishes technical standards on cross-border activities for UCITS and AIFs

On 21 December 2022, ESMA published its [final report](#) on draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS.

ESMA has submitted draft Implementing Technical Standards (ITS) and Regulatory Technical Standards (RTS) to the European Commission for adoption. The RTS specify the information to be provided by management companies and AIFMs wishing to carry out their activities in host Member States. The ITS



contain the templates to be used by management companies, UCITS and AIFMs to notify their intention to carry out their activities in host Member States and specify the procedure for the communication of information between competent authorities as regards these notifications.

The Commission is to adopt the RTS and the ITS within three months from submission in the form of a Commission Delegated Regulation and a Commission Implementing Regulation. The regulations will then be subject to the non-objection of the European Parliament and of the Council.

### **3.3 ESMA report on NCAs handling of UK relocated entities**

On 8 December 2022, ESMA published its [Peer Review Report](#) on National Competent Authorities' (NCAs) handling of firms' relocation to the European Union (EU) in the context of the UK's withdrawal from the EU.

One key concern for ESMA following BREXIT was to ensure a level playing field among jurisdictions in the context of relocation of entities and activities from the UK to the EU. The peer review was launched to assess how NCAs met the relevant requirements set in MiFID framework and clarified in the [ESMA Opinions](#) when authorising relocating entities and activities from the UK to the EU.

The key findings from the report are as follows:

- NCAs allowed in certain cases for an extensive use of outsourcing/delegation arrangements
- Several firms relocated with limited technical and human resources in the EU. In particular, NCAs applied different interpretations of proportionality when it came to substance requirements. This led in certain cases to some smaller firms relocating with only very minimal set-ups.

The report contains recommendations for NCAs relating to the relocation of MiFID firms, trading venues and fund managers. NCAs are encouraged to improve their assessment of the adequacy of the internal control function, the extend of outsourcing and delegation, and the appropriateness of governance arrangements - to ensure a strong set up of the EU entity already at the authorisation stage.

### **3.4 ESMA supervisory briefing on MiFID II cross-border activities**

On 14 December 2022, ESMA published a [supervisory briefing](#) on the supervision of cross-border activities of investment firms under MiFID II. It aims at ensuring convergence across the European Union (EU) in the supervision of the cross-border activities of investment firms and to tackle instances of cross-border activities provided to the detriment of investors' interests.

The briefing covers the following areas:

- authorisation of firms with cross-border plans
- processing of passport notifications and their impact on the supervisory approach applied to firms
- arrangements in place to carry out ongoing supervisory activities
- carrying out of ongoing supervision

- carrying out of investigations and inspections.

Each element refers to the relevant legislation and provides examples of the sort of questions that NCAs could ask themselves and firms to test whether the supervision of cross-border activities of investment firms in their jurisdiction is adequate.

## 4. FINANCIAL CRIME

### 4.1 EU Council agrees its position on the Commission's AML/CTF proposals

On 7 December 2022, the European Council published a press release titled 'Anti-money laundering: Council agrees its position on a strengthened rulebook'.

In the press release it is stated that the Council has agreed its position on an anti-money laundering (AML) regulation and a new directive (AMLD6). Together with the proposal for a recast of the transfer of funds regulation, on which an agreement has already been reached with the European Parliament, these will form the new EU AML rulebook once adopted.

The new AML/CFT rules aim at closing loopholes used by money launderers in existing rules by bringing within scope the entire crypto sector, obliging all crypto-asset service providers (CASPs) to conduct due diligence on their customers. In addition, third-party financing intermediaries, persons trading in precious metals, precious stones and cultural goods, will also be subject to the obligations of the regulation, as will jewellers, horologists and goldsmiths.

The new EU AML/CTF rules will be extended to include, inter alia:

- an EU-wide maximum limit of €10,000 for cash payments
- a requirement for CASPs to apply customer due diligence measures when carrying out transactions amounting to €1,000 or more
- the listing by the EU of the FATF "black list" and a "grey list" of third countries
- the clarification of beneficial ownership's two components – ownership and control – which need to be analysed in order to assess how control is exercised over a legal entity.

Now that the Council has agreed its position on the anti-money laundering regulation and directive, it is ready to start triologue negotiations with the European Parliament in order to agree on a final version of the texts.

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 fines Santander UK £107.7 million for repeated anti-money laundering failures

On 9 December 2022, the FCA published its final notice to Santander UK fining the bank £107.7 million for repeated failures in its anti-money laundering controls affecting its Business Banking.

The failures relate to the period between 31 December 2012 and 18 October 2017, when Santander had failed to properly monitor the money customers had told them would be going through their accounts compared with what actually was being deposited. In one case, a new customer opened an account as a small translations business with expected monthly deposits of £5,000. Within six months it was receiving millions in deposits, and swiftly transferring the money to separate accounts. In addition, Santander failed to promptly deal with 'red flags' associated with suspicious activity, such as automated monitoring alerts, allowing £298 million to pass through these accounts before closing them.

Santander has agreed to a 30% reduced penalty with the FCA. Other banks fined for poor AML systems in the past year include [HSBC Bank plc £63.9 million](#), and its investigation led to [NatWest being fined £264.8 million](#).

With the FCA continuing to sharpen its focus on AML effectiveness in regulated firms, please [contact us](#) if you wish to consider an independent review of your AML systems and controls.

## **5.2 FCA fines three broker firms £4,775,200 for failures relating to the detection of market abuse**

On 9 December 2022, the FCA issued a [press release](#) stating that it has fined three inter-dealer broker firms specialised in exchange traded and OTC financial products and derivatives £4,775,200 for failures relating to the detection of market abuse.

The three firms, namely BGC Brokers LP, GFI Brokers Limited and GFI Securities Limited, have been fined a total of £4,775,200 for failing to ensure they had appropriate systems and controls in place to effectively detect market abuse. The firms failed to properly implement the Market Abuse Regulation trade surveillance requirements (MAR - Article 16(2)) and, as a consequence, increased the risk of potentially suspicious trading going undetected.

The FCA has stated that the firms had manual surveillance, automatic surveillance and communications surveillance processes, yet these were deficient and therefore collectively inadequate in identifying potential market abuse by market participants.

For advice or an independent review of your market abuse systems and controls, please [contact us](#).

## **5.3 FCA publishes Decision Notices against three bond traders for market manipulation**

On 7 December 2022, the FCA [published](#) on its website Decision Notices given to Diego Urra, Jorge Lopez Gonzalez and Poojan Sheth - three Mizuho International Plc bond traders - for market abuse.

The FCA considers that the traders placed large misleading orders for BTP Futures that they did not intend to execute, giving false and misleading signals as to the supply and demand of Italian Government Bond futures (BTP Futures) between 1 June 2016 and 29 July 2016. At the same time, they placed small orders which they did intend to execute on the opposite side of the order book.

The FCA has imposed fines for a total of £395,000 to the three individuals and has banned them from performing any functions in relation to regulated activity. The three traders have referred the Decision Notices to the Upper Tribunal where they and the FCA will each present their cases.

## 5.4 PRA and FCA fine TSB £48.65m for operational resilience failings

On 20 December 2022, FCA and the PRA [fined](#) TSB Bank plc (“TSB”) £29,750,000 and £18,900,000, respectively, for operational risk management and governance failures, including management of outsourcing risks, relating to technical failures experienced in April 2018 after an IT system migration caused customers being unable to access banking services, including branch, telephone, online and mobile banking.

In the FCA’s view, the Bank failed to manage the operational risks arising from its IT outsourcing arrangements with its critical third-party supplier, causing harm to a significant proportion of TSB’s client base - including vulnerable customers.

Sam Woods, Deputy Governor for Prudential Regulation and CEO of the PRA, has stated:

'The PRA expects firms to manage their operational resilience as well as their financial resilience. The disruption to continuity of service experienced by TSB during its IT migration fell below the standard we expect banks to meet.'

TSB has agreed to a 30% reduced penalty with the Regulators from an initial total amount of £69,500,000.

## Waystone Compliance Solutions

Waystone Compliance Solutions offers 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 and covering the UK, Middle East, United States and Asia.

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.

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.