

# Regulatory Update

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## 1. FCA UPDATES & DEVELOPMENTS

### 1.1 FCA supports firms through the transition to implementing the Consumer Duty

On 3 February 2023, the FCA published a [press release](#) summarising its initiatives to support Firms in the implementation of the Consumer Duty. These include a series of [regional in-person events](#) for specific groups of small and medium-sized firms, and a series of portfolio and sector-specific “Dear-CEO” [letters](#) including, amongst others:

- [Asset management, custody & fund services and alternatives](#)
- [Consumer investments](#)
- [Contract for difference \(CFD\) providers](#)
- [Payments services and e-money](#)
- [Life insurance](#)
- [Retail banks and building societies](#)

On 21 February 2023, the FCA published further “Dear-CEO” letters for [Debt Advice](#), [Debt Purchasers](#), [Debt Collecting and Debt Administration Services](#), and [Payment Services and e-money](#).

The portfolio and sector-specific letters to firms set out the FCA expectations for implementation, and reflect findings from the [FCA’s review of firm implementation plans](#) published on 25 January 2023.

### 1.2 Speech by FCA CCO Emily Shepperd on How to organise a COO

On 8 February 2022, the FCA published a [speech](#) by Emily Shepperd, Chief Operating Officer and Executive Director of Authorisations, delivered at the Armstrong Wolfe COO Summit 2023 titled: How to organise a COO.

Highlights from the speech are as follows:

- Chief Operating Officers should use the levers of ‘soft’ power such as open communication as much as ‘hard’ power such as data and rules to mitigate non-financial risk
- Diversity and Inclusion is about far more than targets - true inclusion means that people feel free to speak out
- The FCA is an innovator as much as a regulator, embracing change and helping new industries flourish while protecting consumers from harm.

Ms Shepperd concludes her speech by summarising the key points touched upon in her speech: “Test your operational resilience plans. Rally your troops. Deploy soft and hard power. Embrace change. For there has never been a better time to be a disruptor.”

### 1.3 UK sets out plans to regulate cryptoassets

On 1 February 2023, HM Treasury published a [press release](#) on a [Consultation](#) setting out the Government's plans to regulate cryptoasset activities. The consultation paper sets out proposals for the future regime and marks the next phase of the government's approach to regulating cryptoassets.

Proposed scope of cryptoasset activities to be regulated includes, amongst other things:

- Issuance activities (e.g., public offers, admitting a cryptoasset to a cryptoasset trading venue, etc.)
- Payment activities
- Exchange activities (e.g., operating a cryptoasset trading venue)
- Investment and risk management activities (e.g., dealing as principal or agent, arranging deals, advising on and managing cryptoassets)
- Lending, borrowing and leverage activities
- Safeguarding and /or administration (custody) activities
- Validation and governance activities (e.g., mining or validating transactions, or operating a node on a blockchain)

In addition, consultation proposals include strengthening rules for crypto trading platforms and a robust world-first regime for crypto lending.

To address industry concerns about the small number of Financial Conduct Authority (FCA) authorised cryptoasset firms who can issue their own promotions, HM Treasury is also introducing a time limited exemption. Cryptoasset businesses that are registered with the FCA for anti-money laundering purposes will be allowed to issue their own promotions, while the broader cryptoasset regulatory regime is being introduced (see our next Article).

The [Consultation](#) will close on 30 April 2023, after which, the government will consider feedback and work to set out its consultation response. Once legislation is laid, the Financial Conduct Authority will consult on its detailed rules for the sector.

### 1.4 Cryptoasset firms marketing to UK consumers must get ready for financial promotions regime

On 6 February 2022, the FCA published a statement warning all cryptoasset firms marketing to UK consumers, including firms based overseas, that they will soon need to comply with the new UK financial promotions regime.

On 1 February 2023, the Government published a [policy statement](#) on its approach to cryptoasset financial promotions regulation. The policy statement sets out the Government's intention to introduce a bespoke exemption in the Financial Promotion Order for cryptoasset businesses registered with the FCA under the

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs').

Subject to Parliamentary approval, when the regime comes into force there will be 4 routes to communicating cryptoasset promotions to UK consumers:

1. The promotion is communicated by an FCA authorised person (these do not include firms only authorised under the Electronic Money Regulations or the Payment Services Regulations);
2. The promotion is made by an unauthorised person but approved by an FCA authorised person. Legislation is currently making its way through Parliament which, if made, would introduce a [regulatory gateway](#) that authorised firms will need to pass through in order to approve financial promotions for unauthorised persons;
3. The promotion is communicated by a cryptoasset business registered under the MLRs with the FCA; or
4. The promotion otherwise complies with the conditions of an exemption in the Financial Promotion Order.

Promotions that are not made using one of these routes will be in breach of section 21 of the Financial Services and Markets Act 2000 (FSMA), which is a criminal offence punishable by **up to 2 years imprisonment**. The FCA has stated that it will take robust action against firms breaching these requirements.

The FCA will publish final rules for cryptoasset promotions once the relevant legislation has been made.

## 1.5 FCA DP23/3 on Updating and improving the UK regime for asset management

On 20 February 2023, the FCA [published](#) Discussion Paper DP23/3 on Updating and improving the UK regulatory regime for asset management. The FCA is seeking industry feedback in preparation for the HM Treasury's Future Regulatory Framework (FRF) Review as set out in the Financial Services and Markets Bill. The proposals brought forward in DP23/3 include, inter alia:

- Streamlining the regulation of different asset regimes, such as the ones governing UCITS, AIFMs and portfolio managers. The plan is not to consolidate all relevant rules into a single sourcebook, but to make the rules which are common to all asset managers more coherent and consistent.
- Proposals to change the UCITS and NURS regimes to make them more understandable to the retail consumer. Proposals include combining the UCITS and NURS regime, rebranding the NURS regime into "UCITS Plus", or creating a new category of funds, i.e., "basic funds". Proposals are mentioned to address excessive restrictions for UCITS investments in other funds.
- Changes to the AIFMD rules to potentially allow AIFMs who are above the current size threshold of a small UK AIFM to not meet the full requirements of full-scope UK AIFMs, facilitating investments by professional investors. This could be achieved by increasing the full-scope thresholds or by adding new criteria, such as investment strategy or client type.

- Improving the standards required of Authorised Fund Managers (AFMs) that provide fund hosting services, e.g., by setting minimum contractual requirements and clarifying the responsibilities of AFMs and portfolio managers.
- Enhancing the liquidity management rules by, inter alia, incorporating the liquidity stress testing guidelines from ESMA into the Handbook, removing or significantly restricting the “where appropriate” requirement around liquidity stress testing in COLL 6.12.11R(2).
- Detailing clearer regulatory expectations around investment due diligence for all types of asset management activity, similarly to what is required of AIFMs investing in assets of limited liquidity.
- Clarifying the expectations for depositaries around the oversight of the activities of the fund managers, in line with the rules and the fund prospectus. Requirements may touch on systems and controls, resources, actions to be taken when a breach is identified, oversight of the AFM’s liquidity management and stress testing, and oversight of the AFM’s pricing and dealing in units of the fund.
- Restrict the eligible assets regime for UCITS, which sets out the requirements for what a UCITS fund can invest in. For example, by clarifying that the 10% rule for allowing investments that do not meet the eligible markets criteria should not be used in a way that undermines the liquidity of the fund.
- Feedback on proposals to implement the IA’s [‘Direct2Fund’](#) initiative that would allow investors to transact directly with the fund when buying and selling units, cutting out the AFM.
- Views on fund tokenisation to simplify the way units of funds are bought and sold.
- Views on asset tokenisation - for example in the context of holding tokens representing fractional interests in real estate or an infrastructure project - which could be more easily transferable and so be helpful for a fund’s liquidity management.
- Improving the content and readability of the prospectus to improve investor engagement.
- Changes to the rules for managers’ reports and accounts to enable firms to make best use of technology to meet investors’ information needs.

The discussion closes on 22 May 2023. The FCA will consider feedback and publish a feedback statement later in 2023, possibly as part of a consultation paper on some of the discussion topics.

## 1.6 FCA Regulatory Initiatives Grid Dashboard – February 2023

On 28 February 2022, the FCA published the latest version of the [Regulatory Initiatives Grid \(February 2023\)](#). This was delayed from November 2022 to allow Forum members the opportunity to consider the potential implications on the regulatory pipeline and initiatives in the upcoming Grid of the Government’s Edinburgh Reforms, which were announced in December 2022.

The FCA has introduced interactive dashboards in response to feedback to help users find the initiatives that are most relevant to them and allows users to filter initiatives included in the February 2023 Regulatory Initiatives Grid by:

- Sector;
- Lead authority;
- Expected impact on firms;
- Those of interest to consumers and consumer organisations; and
- Whether consultations are currently planned for the initiative during the Grid planning horizon.

The Regulatory Initiatives Grid – February 2023 is also available for download in [PDF](#) format.

## **1.7 FCA publishes initial observations on how firms are implementing the ICARA process**

On 27 February 2023, the FCA published its initial observations on how firms are implementing ICARA. The findings include:

- For firms which are part of investment firm groups, most opted to complete a ‘group ICARA’ process. However, for most of these, there was insufficient consideration of firm-specific risk and harms in the assessment of threshold requirements of individual firms required by MIFIDPRU.
- Among investment firm groups who completed an ICARA process on a ‘consolidated basis’, the FCA observed that only a few of them also operated solo ICARA processes by independently assessing the financial resource requirements of individual firms in the group, as required by MIFIDPRU.
- The assessments made as part of the ICARA process should be cohesive. They should also be fully integrated in the firm’s approach to managing financial resources to mitigate the risk and harms from its operations. This is not happening consistently within the initial group of firms reviewed.
- Wind-down planning assessments remain weak in terms of scope and quantification. This reflects an incomplete understanding of the purpose of the exercise and of guidance previously provided.
- The FCA has seen inconsistent and inaccurate data submitted in regulatory reports. Firms should ensure that all data submitted is accurate and of high quality.

Further information can be found on the [FCA website](#).

## 2. PRA updates

### 2.1 PRA Policy Statement PS1/23 on Remuneration: Unvested pay, Material Risk Takers and public appointments.

On 10 February 2023, there was published on the PRA's website [PS1/23](#) – Remuneration: Unvested pay, Material Risk Takers and public appointments.

The PS is relevant to PRA-authorized banks, building societies, PRA-designated investment firms, including third-country branches, that are subject to the Remuneration Part of the PRA Rulebook (firms). In a previous consultation the PRA had proposed to add a new section to Chapter 4 of Supervisory Statement SS2/17, setting out that:

- Unvested, deferred claims that comprise the variable pay of Material Risk Takers (MRTs) should not be converted from an equity claim into a claim on other instruments (or vice versa) after an award has been made;
- This expectation should apply to all unvested, deferred sums, and not exclude amounts above the regulatory minima; and
- In exceptional circumstances, such as where there are potential conflicts of interest arising from a (proposed) public sector appointment that cannot otherwise be sufficiently mitigated, it may be appropriate for a conversion to occur subject to the PRA's prior non-objection, and on the basis that the relevant retention requirements remain unchanged.

The PRA has made adjustments to the draft Supervisory Statement text in response to feedback received. The new policy will take effect on 10 February 2023.

### 2.2 BoE policy on outsourcing and third-party risk management for FMIs

On 8 February 2023, the Bank of England [published](#) its policy on outsourcing and third-party risk management for Financial Market Infrastructures (FMIs).

The Bank's outsourcing and third party risk management policy for FMIs aims to:

- Facilitate greater resilience and adoption of the cloud and other new technologies as set out in the Bank of England's response to the Future of Finance (FoF) report
- Set out the Bank's requirements and expectations in relation to outsourcing and third party risk management in FMIs
- Complement the Bank's Supervisory Statements on FMI operational resilience.

The policy has been issued in the form of Supervisory Statements (SSs) for each category of FMI, namely: central counterparties (CCPs), central securities depositories (CSDs) and recognised payment system operators (RPSOs) & specified service providers (SSPs).

## 2.3 PRA consults on Remuneration: Enhancing proportionality for small firms.

On 27 February 2023, the PRA published a consultation paper ([CP 5/23](#)) that includes policy proposals to:

- Define small firms in line with the proposed Simplified-regime size threshold, and with reference to selected other Simplified-regime criteria under the 'Strong and Simple' framework; set out in CP5/22 – 'The Strong and Simple Framework: a definition of a Simplified-regime Firm' and chapter 2: Scope and levels of applications of CP16/22 – 'Implementation of the Basel 3.1 standards'
- Remove the requirement for small firms, as defined in this CP, to apply rules on malus, clawback, and buyouts
- Provide clarity on how disclosure requirements apply for all proportionality levels.

The PRA's proposals aim to increase proportionality of the remuneration regime by reducing the regulatory burden on small firms to a level more appropriate to the benefits arising from lowering risks to these firms' safety and soundness and to the UK financial system.

The consultation closes on Tuesday 30 May 2023.

## 3 EU REGULATORY UPDATES

### 3.1 ESMA updates Q&As on the Application of the UCITS Directive

On 3 February 2023, the European Securities and Markets Authority (ESMA) updated its Q&As on the Application of the UCITS Directive.

Questions 5- on Issuer concentration have been updated to include the following:

**Question 5e:** *Article 52(1)(b) of the UCITS Directive requires a UCITS not to invest more than 20% of its assets in deposits made with the same body. Does the term "body" referred to in the aforementioned article mean "credit institution" as mentioned in Article 50(1)(f) of the UCITS Directive or does it include also any other counterparty which is not a credit institution?*

**Answer 5e:** *The term "body" as referred to in Article 52(1)(b) means "credit institution" as mentioned in Article 50(1)(f) of the UCITS Directive. The guidance provided by this Q&A is only applicable in the context of Article 52(1)(b) and should not affect the meaning of the term "body" in other instances of the UCITS Directive.*

## 4 FINANCIAL CRIME

### 4.1 Wolfsberg Group updates Correspondent Banking Due Diligence Questionnaire and Financial Crime Compliance Questionnaire

On 10 February 2023, the Wolfsberg Group - an association of thirteen global banks which aims to develop frameworks and guidance for the management of financial crime risks, particularly with respect to Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies - [released](#) version 1.4 of the [Correspondent Banking Due Diligence Questionnaire](#) (CBDDQ) and version 1.2 of the [Financial Crime Compliance Questionnaire](#) (FCCQ), along with updated supporting Guidance, Glossary and FAQs documents.

The CBDDQ is a template questionnaire provided by the Wolfsberg Group to assist financial institutions in conducting due diligence in cross-border and/or other higher risk correspondent banking relationships. The FCCQ is a similar tool aimed at institutions performing due diligence on other customer types (non-correspondent banking relationships).

The CBDDQ updates include a new section on Fraud and additional questions related to Whistleblower Policy, Virtual Bank License, the approval of Sanctions Policy, and other changes designed to improve the logic, usability and flow of the questionnaire. Commensurate changes were made to the FCCQ to ensure consistency with CBDDQ v1.4.

## 5 ENFORCEMENT ACTIONS

### 5.1 FCA takes action against the use of social media for financial promotions.

On 3 February 2023 the FCA [published](#) on its website its financial promotions data for 2022. The page analyses data for 2022 resulting from action taken against authorised firms breaching financial promotion rules and referrals and investigations into unregulated activity.

The data shows that last year there were 8,582 promotions amended/withdrawn which is an increase of 1398%, compared to 573 in 2021. In relation to unauthorised firms and individuals, the FCA issued 1,882 alerts in 2022, an increase of 34% from 1,410 in 2021. This is despite a decrease of 24% of total reports received in 2022 from the previous year.

One of the main themes identified by the FCA in 2022 was an increase in the use of bloggers and influencers (the so-called fin-fluencers) on social media, such as Instagram, Facebook and YouTube, promoting financial products, particularly investment products, to younger age groups. The FCA reminds industry participants that issuing an illegal financial promotion is potentially a criminal offence and that it has, in the most serious cases, referred fin-fluencers for criminal investigation.

Unauthorised individuals should not advise people on the merits of certain investments, as this will likely be subject to regulations and it could lead to action being taken against them. The FCA has already acted against several social media influencers over the past year.

In one case, the FCA found a director of a regulated firm using their personal profile to promote the advice of unauthorised traders and other financial products. The FCA blocked them from using their personal social media to promote financial services and imposed a requirement on the firm to halt any financial services promotions.

To discuss compliance with the FCA's financial promotion rules please [contact us](#).

## 6 ESG

### 6.1 FCA DP23/1 on Finance for positive sustainable change.

On 10 February 2022, the FCA issued Discussion Paper [DP23/1](#) on Finance for positive sustainable change.

The FCA is encouraging an industry-wide dialogue on firms' sustainability-related governance, incentives, and competence, as part of its commitment to supporting the role of the financial sector in enabling an economy-wide transition to net zero.

The Discussion Paper also includes commissioned articles from experts on firms' sustainability-related governance, incentives, competence and stewardship arrangements. Questions to the industry include, inter alia:

- Should all financial services firms be expected to embed sustainability-related considerations in their business objectives and strategies?
- What steps can firms take to ensure that they have the right skills and knowledge relating to material climate- and sustainability-related risks, opportunities and impacts on their boards?
- What are likely to be the most effective strategies in embedding climate- and sustainability-related considerations across a firm's operations?

[DP23/1](#) is aimed at all regulated firms across the financial sector. Responses to the questions shall be submitted by 10 May 2023. A full list of questions can be found in Annex 1.

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

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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](mailto:compliancesolutions@waystone.com)

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

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.