

Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 HM Treasury Call for Evidence on the UK Investment Research Review

On 3 April 2023, HM Treasury published a [Call for Evidence](#) on the UK Investment Research Review. The review is part of the [Edinburgh Reforms](#) announced by Chancellor of the Exchequer Jeremy Hunt on 9 December 2022 to “seize the benefits of Brexit by repealing burdensome pieces of retained EU law”.

The Investment Research Review aims at tackling low levels of investment research, in particular for high growth sectors such as technology and life sciences, that can make it harder to value companies and, therefore, raise capital and hamper the attractiveness of the UK as a place to list.

The Review will examine the link between levels of research and the attractiveness of the UK as a destination for companies to access capital, both in private and public markets. The call for evidence closed on 24 April 2023. The consultative process will then entail a series of discussions with interested parties and conclusions will be provided to HM Treasury in the form of a report.

1.2 FOS publishes Feedback to consultation on temporary changes to outcome reporting

On 3 April 2023, the Financial Ombudsman Service (FOS) published a [Feedback Statement](#) to its March 2023 [consultation](#) on temporary changes to outcome reporting in its business-specific complaints data.

In November 2021, as part of a temporary initiative, the FOS amended the way it recorded the outcomes of certain complaints that were proactively resolved by respondent businesses. This led to a strong increase by financial businesses in settlement offers to consumers to resolve consumer complaints.

In its March 2023 consultation, the FOS proposed to record complaints as “proactively settled” when a fair and reasonable offer from a business is obtained by the FOS within 14 days of the FOS requesting the business’ complaints file and the consumer accepts the offer. If it is declined, the FOS will investigate the complaint as normal.

The FOS received responses to its March 2023 consultation from 56 stakeholders - which are mostly welcoming of the proposal and are summarised in the Feedback Statement - and has decided to proceed with a slightly modified initiative; the timeline for businesses to provide a fair and reasonable settlement offer to the FOS is extended to 21 days, but the FOS must be clearly informed within 14 days that an offer is coming.

The trial will run for the 2023/24 financial year and only applies to new cases for which the FOS has requested - or will request - a complaints file after 17 March 2023.

1.3 FCA consults on regulatory fees and levies for 2023/2024

On 5 April 2023, the FCA published Consultation Paper [CP23/7](#) on Regulatory fees and levies: policy proposals for 2023/24. The FCA is consulting on the rates for its regulatory fees and levies, the Ombudsman Service general levy and levies collected on behalf of government departments for the for the 2023/2024 financial year.

CP23/7 explains how the FCA propose to recover the costs of carrying out its work, covering:

- its annual funding requirement (AFR) and its allocation across fee-blocks
- details of the FCA periodic fees for authorised firms
- FCA fees for other bodies
- the new structure of application fees it introduced in January 2022
- how it handles the revenue from financial penalties imposed on firms.

Any comments should be forwarded to the Regulator by 11 May 2023.

1.4 FCA publishes business plan 2023/2024

On 5 April 2023, the FCA published its [Business Plan 2023/2024](#) detailing the work it will do over the next 12 months to help deliver the commitments in its [Strategy for 2022-2025](#).

In financial year 2023/204, the FCA will be focusing its work in the following areas:

Focus 1: Reducing and preventing serious harm

- dealing with problem firms
- improving the redress framework
- reducing harm from firm failure
- improving oversight of Appointed Representatives
- reducing and preventing financial crime
- delivering assertive action on market abuse.

Focus 2: Setting and testing higher standards

- putting consumers' needs first
- enabling consumers to help themselves
- a strategy for positive change: environmental, social and governance (ESG) priorities
- minimising the impact of operational disruptions.

Focus 3: Promoting competition and positive change

- preparing financial services for the future

- strengthening the UK’s position in global wholesale markets
- shaping digital markets to achieve good outcomes.

In the Business Plan, particular focus is given to ensuring the Consumer Duty is embedded effectively and updating the regulatory framework under the Financial Regulatory Framework (FRF) (which includes, amongst other things, changes involving MiFID/MiFR, Prospectus Regulation – including a new public offer regime, Securitisation Regulation and Short Selling Regulation - and changes to the asset management regulation). The FCA expects to invest £5.3m and £12.7m in these projects respectively.

1.5 FCA Dear CEO letter to CFD Firms on Consumer Duty

On 6 April 2023, the FCA published a [Dear CEO](#) letter on Implementing the Consumer Duty in the Contracts for Difference (CFD) Portfolio. The letter provides a summary of the key aspects of the Duty that CFD firms need to focus on while implementing the new rules.

The FCA appears to be particularly concerned with CFD firms not delivering good outcomes to consumers. In the letter it is mentioned that:

- firms should be able to demonstrate – and be prepared to provide evidence of – how they are monitoring whether good consumer outcomes are being delivered
- the FCA expects CFD firms to take action where they identify good consumer outcomes are not being delivered
- CFD firms should also consider the amounts of money made or lost by retail consumers in addition to their already existing requirement to calculate and publish the percentage of customers that lose money when trading CFDs with them
- the FCA would not consider it a good outcome if no customers make money.

Waystone has 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](#).

1.6 FCA Market Watch 73

On 26 April 2023, the FCA published [Market Watch 73](#), which focuses on its observations and findings from its recent market abuse peer review into firms that offer Contracts for Difference and spread bets. This edition should be read in conjunction with [Market Watch 69](#) and the FCA’s December 2022 portfolio letter: [Our Contracts for Difference \(CFD\) Strategy](#).

1.7 FCA publishes its webpage on UK EMIR

On 26 April 2023, the FCA updated its [webpage](#) on UK EMIR Reporting Rules: Final Validation Rules and Schemas. On 24 February 2023 it published a joint [FCA/Bank of England Policy Statement \(PS 23/2\)](#) alongside final Technical Standards and new rules for Trade Repositories (TRs) in relation to changes to the derivatives reporting framework under UK EMIR.

The final Technical Standards and new rules for TRs will be applicable from 30 September 2024 (with the exception of the amended Technical Standards that relate to the registration of TRs which came into force on 24 February).

Alongside the Policy Statement and final rules, the FCA also published draft UK EMIR Validation Rules and XML schemas and invited comments from stakeholders. The FCA considered the feedback it received and made minor amendments to the draft versions where appropriate.

The FCA has published final versions of the UK EMIR Validation Rules and XML schemas on its [UK EMIR reporting webpage](#). The documents will be applicable from 30 September 2024.

1.8 FCA published Handbook Notice No 109

On 28 April 2023, the FCA published [Handbook Notice No 109](#), which states that on 27th April 2023, the Board of the FCA made the relevant changes to the Handbook as set out in the following instruments:

- Financial Resilience Reporting Instrument 2023 – changes effective 1 January 2024
- Claims management Form Guidance and Numbering Instrument 2023 – changes effective 28 April 2023
- Technical Standards (Markets in Financial Instruments Transparency) Instrument 2023 – changes effective 28 April 2023 and 29 April 2024
- Fees (Payment Systems Regulator) Instrument (No1) 2023 – changes effective 28 April 2023.

1.9 FCA puts banks on alert in fight against money laundering via the Post Office

On 24 April 2023, the FCA [announced](#) a series of measures designed to reduce the risk of money laundering via the Post Office. The regulator brought together partners including the National Economic Crime Centre (NECC), industry and government to strengthen controls while seeking to ensure that legitimate customers can continue to use the Post Office for everyday banking.

The measures set out for banks today include:

- a move towards card-based transactions and away from paying-in slips, where possible, to allow enhanced monitoring
- upskilling staff to spot patterns of suspicious activity
- enhancing monitoring capabilities in banks which allow them to identify suspicious activity
- reducing cash deposit limits at the Post Office, subject to customer arrangements, to below the existing limit of £20,000 per transaction - banks should take a data-led approach and consider whether a tailored offer is appropriate
- reducing the time taken to submit Suspicious Activity Reports to the National Crime Agency (NCA), enabling them to take timely action

- improving intelligence sharing so that information is passed on to other firms, law enforcement and the FCA on a regular basis.

The FCA expects banks and the Post Office to keep their controls, including those newly introduced, under review to ensure they are proportionate to the risk and suitable for their customer base, using data to refine measures where needed as the money laundering risks evolve. The FCA will test the safeguards put in place and this work will consider whether firms have taken steps to protect access to cash at the Post Office for legitimate customers.

1.10 AFME and UK Finance publish joint response to the Investment Research Review Call for Evidence

On 25 April 2023, the Association for Financial Markets in Europe (AFME) and UK Finance published a [joint response](#) to HM Treasury's Call for Evidence on the UK Investment Research Review. The joint response addresses the following main themes:

- research is only one of many factors which determine the UK's competitiveness
- future regulatory changes should reflect the uniquely global nature of investment research
- members have observed that MiFID II has impacted the research market
- allowing broader optionality for research payments would improve the UK's position
- non-MiFID regulatory drivers also play a role, such as MAR and the rules on corporate access
- investors value independence.

1.11 FCA publishes speech on how regulation can help the UK lead in Fintech

On 26 April 2023, the FCA published a speech by Emily Shepperd, its Chief Operating Officer and Executive Director of Authorisations, delivered at City Week 2023. The speech covers how regulations can help the UK lead Fintech and includes the following topics:

- regulators can help firms innovate by setting firm foundations on which they can grow; the sooner firms gain control of regulatory issues, the sooner they can thrive and grow.
- the FCA has helped firms foster innovation through its Sandboxes, Innovation Pathways and Early and High Growth Oversight schemes
- the UK remains the most attractive destination for financial technology investment in Europe and is globally second only to the United States.

2. PRA UPDATES

2.1 PRA & FCA survey on critical third parties (CTPs) regime

On 11 April 2023, the Bank of England [published](#) on its website a press release stating that the FCA and the PRA issued a [survey](#) to aid analysis into the costs and benefits of a potential critical third-party regime in the UK.

In discussion paper [DP 22/3](#) of 21 July 2022 on 'Operational resilience: Critical third parties to the UK financial sector', the UK's supervisory authorities had set out potential measures to oversee and strengthen the resilience of services provided by critical third parties (CTPs) to the UK financial sector.

The new survey, intended for service providers to the UK financial sector, asks respondents to provide cost estimates for implementing and ensuring ongoing compliance with potential minimum resilience standards along the lines of those set out in DP3/22.

Responses to the third-party survey should be provided by 17 May 2023.

2.2 PRA fees and levies consultation

On 13 April 2023, the PRA published consultation paper [CP7/23](#) on Regulated fees and levies: Rates proposals 2023/24.

The consultation sets out proposals for the PRA's fees for 2023/24, which would make amendments to the Fees Part of the PRA Rulebook (Appendix 1).

3. EU REGULATORY UPDATES

3.1 ESMA publishes official translations to its Guidelines on MiFID II suitability requirements

On 3 April 2023, the European Securities and Markets Authority (ESMA) published [official translations](#) to the latest version of its Guidelines on certain aspects of the MiFID II suitability requirement. The Guidelines apply in relation to Article 25(2) of MiFID II and Articles 54 and 55 of MiFID II Delegated Regulation and apply to the provision of investment advice and portfolio management.

The latest version of the Guidelines, first [published](#) in September 2022, builds on the text of the 2018 ESMA guidelines, which have been reviewed to consider:

- the adoption by the European Commission of the [changes to the MiFID II Delegated Regulation](#) to integrate sustainability factors, risk and preferences into organisational requirements and operating conditions for investment firms
- the good and poor practices identified in ESMA's [2020 Common Supervisory Action \(CSA\)](#) on suitability - these good and poor practices will give practical guidance to firms in some areas where lack of convergence was identified
- the amendments introduced through the [Capital Markets Recovery Package](#) to Article 25(2) of MiFID II.

The Guidelines will apply six months from the date of publication of the official translations (i.e., from 3 October 2023).

3.2 ESMA publishes official translations to Guidance on MiFID II remuneration requirements

On 3 April 2023, ESMA published [official translations](#) to its Guidelines on certain aspects of the MiFID II remuneration requirements. An [Official Report](#) on the Guidelines had been published on 31 March 2022, following a July 2021 consultation.

These Guidelines build on the text of the 2013 Guidelines, which have been substantially confirmed (albeit clarified and refined where necessary). In addition, they take into account new requirements under MiFID II and the results of supervisory activities conducted by national competent authorities (NCAs) on the topic.

The Guidelines will apply six months from the date of publication of the official translations (i.e., from 3 October 2023).

4. FINANCIAL CRIME

4.1 Wolfsberg Group updates Anti-Bribery and Corruption Compliance Programme Guidance

On 17 April 2023 the Swiss-based Wolfsberg Group, an association of 13 global banks which aims to develop frameworks and guidance for the management of financial crime risks, published the updated version of its [Anti-Bribery and Corruption \(ABC\) Compliance Programme Guidance](#), which was originally published in 2017 building on the Group's 2011 Anti-Corruption Guidance paper.

Updates to the Guidance on ABC compliance programmes include, amongst other things:

- learnings from enforcement actions since 2017
- updates to the red flags section
- expansions to the section on customer and transaction corruption risks
- a new section on identifying, reporting, and mitigating emerging Bribery and Corruption risks.
- additional guidance for post-acquisition due diligence
- inclusion of guidance for financial institutions to include a holistic risk assessment and management as part of their control frameworks.

An Executive Summary by the Wolfsberg Group accompanying the updated Guidance can be found [here](#).

The Wolfsberg Group also published guidance on the overview of the elements of an ABC Compliance Programme including:

- a firm-wide policy
- governance, roles and responsibility
- risk assessment
- establishment of a control environment
- training and awareness
- monitoring and testing for compliance with controls.

A copy of the guidance by the Wolfsberg Group can be found [here](#).

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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.

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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.