

Regulatory Update

UK, Summer 2023

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1. FCA UPDATES & DEVELOPMENTS

1.1 HM Treasury publishes outcome of Investment Research Review

On 10 July 2023, HM Treasury published the outcome of the [Investment Research Review](#), which was launched on 9 March 2023, to consider levels of financial services investment research in the UK and its contribution to UK capital markets competitiveness.

The report makes the following seven recommendations to the government, FCA and industry:

1. Introduce a Research Platform to help generate research. This will provide a central facility for the promotion, sourcing and dissemination of research on publicly traded companies – potentially open to all, but in particular, for smaller cap companies. It is expected that the Research Platform would be implemented in the medium term.
2. Allow additional optionality for paying for investment research, so that buy-side firms have the option of being able to pay for research either: (i) out of their own resources; (ii) by making a specific charge directly to their clients in respect of the costs of research; or (iii) by combining the cost of research with execution charges. The recommendation being that this should be implemented as soon as practicable.
3. Allow greater access to investment research for retail investors.
4. Involve academic institutions in supporting investment research initiatives.
5. Support issuer-sponsored research by implementing a code of conduct. The industry should collaborate to support the creation and adoption of a voluntary code of conduct for issuer-sponsored research, to add structure to the issuer-sponsored research market and enhance the integrity of issuer-sponsored research as a potential useful source of information in its own right. It is thought that this could be provided by one of the relevant trade bodies in the short-term.
6. Clarify aspects of the UK regulatory regime for investment research and consider introducing a bespoke regime.
7. Review the rules relating to investment research in the context of IPOs. Consideration should be given to connected analyst research produced in connection with an IPO being made available on a similar basis to the company's prospectus, so that all investors can access the same information. The limitation on connected analysts being allowed to meet with potential IPO candidates prior to an investment bank being mandated on an IPO transaction contained in the FCA rules should be reconsidered.

The Investment Research Review and its recommendations were welcomed and accepted in Chancellor Jeremy Hunt's Manion House [speech](#), also published by HM Treasury on 10 July 2023.

The FCA published a [statement](#) that it supports high regulatory standards in the UK and is carefully considering the report. It will start engaging immediately with market participants. This engagement will inform the content of any consultation proposals. Subject to this feedback, the FCA intends to consult on an accelerated timetable on potential regulatory changes that could introduce more options on how to pay for investment research so as to achieve an outcome of improving investor research into markets while providing value for money to institutional and retail investors.

The FCA will also take feedback from the market on the timing of any rule changes, driven by market need and firms' operational capacity to absorb changes. Subject to this detailed consultation feedback and FCA Board approval, the FCA aims to make relevant rules in H1 2024.

1.2 FCA publishes results of Liquidity Management multi-firm review

On 6 July 2023, the FCA published their detailed findings and good practice from their [multi-firm review of liquidity management frameworks](#). The FCA has also written to the sector in a companion [Dear CEO Letter](#). The review is of interest to asset managers, authorised fund managers, and investment and portfolio managers. The findings include good practice on governance, liquidity stress-testing, redemption process, liquidity management tools, and valuation process.

The FCA expects firms to review their liquidity management arrangements and make any necessary enhancements in line with the following:

- governing bodies to be composed of members with sufficient expertise, who receive timely an appropriate management information about risk, and who actively oversee issues, such as liquidity risk, within the firm
- robust governance arrangements to effectively oversee liquidity risks, this should include established lines of responsibility and escalation procedures to enable the firm to respond adequately to volatile market conditions with effective liquidity risk management processes.
- oversight of liquidity management tools and consistent processes for deciding when and how to use them
- ensure exiting and remaining investors are treated fairly when considering the costs of redemption and consider the mix of assets that may be employed to meet redemption requests
- work with service providers to ensure that operational systems and processes are fit for purpose, can be executed at pace, and can be scaled to handle additional demand when needed
- consistently use liquidity stress testing and employ liquidity management tools appropriately.

1.3 HM Treasury response to UK Short Selling Regulation call for evidence

On 11 July 2023, HM Treasury published its [response](#) to the call for evidence on the UK Short Selling Regulation. The Treasury will give the Financial Conduct Authority (FCA) rule-making powers to deliver the firm-facing aspects of the new UK short selling regime. The FCA will take the view of the Treasury and these comments into account when it consults on the short selling regime that will replace the current Short Selling Regulation.

The Treasury is also making two key changes to improve the UK's short selling regulatory framework:

- replacing the current public disclosure regime based on individual net short positions with an aggregated net short position disclosure regime
- increasing the current disclosure threshold for net short position reporting to the FCA from 0.1% to 0.2%.

The Treasury believes that these changes will ensure that the UK's regulatory framework for short selling supports effective market functioning, with appropriate protections for investors and without placing a disproportionate burden on industry.

HM Treasury also published a consultation on the Short Selling Regulation relating to sovereign debt and credit default swaps, which closed on 7 August 2023. The consultation sought views on the Treasury's proposal to delete the aspects of the regime related to sovereign debt and credit default swaps as part of the work to replace the SSR with a UK-tailored regulatory regime.

1.4 HM Treasury publishes Policy Note and near final draft Statutory Instrument on the Public Offers and Admissions to Trading Regulations 2023

On 11 July 2023, HM Treasury [published](#) a near final [draft](#) of the Public Offers and Admissions to Trading Regulations 2023, along with an accompanying [policy note](#). The new instrument will deliver the following reforms when it replaces the existing Prospectus Regulation:

- **A new public offers architecture.** Under the new regime, there will be a general prohibition on public offers of securities. There will then be a number of exceptions from this prohibition. The principal exceptions will apply to offers where securities are admitted to trading on UK regulated markets or multilateral trading facilities (MTFs), and a new regime for public offers that do not take place on such markets.
- **Admissions to trading on regulated markets.** The FCA will be given enhanced rulemaking responsibilities regarding admissions of securities to trading on UK regulated markets. This will allow the FCA to specify when a prospectus is required and what it should contain, and to address the manner and timing of validation and publication. FCA rulemaking responsibilities will also cover other matters that currently sit in the Prospectus Regulation.
- **Admissions to trading on MTFs operating primary markets.** The FCA will have rulemaking powers over 'primary MTFs' (i.e. MTFs which operate as primary markets and allow companies to issue new capital rather than only trade existing instruments). These powers will allow the FCA to require the issuance of an 'MTF admission prospectus' by those admitted to trading on primary MTFs that are open to retail investors (i.e. non-professional investors).
- **Forward-looking statements.** The reformed regime establishes a different liability threshold (based on fraud or recklessness) for certain categories of forward-looking statements in prospectuses or MTF admission prospectuses, with the FCA specifying the categories of forward-looking information in scope. This SI retains the negligence-based threshold to determine liability for false, misleading, or omitted information that is not forward-looking information.
- **Offers of securities not admitted to trading.** The new regime will continue to allow companies to offer securities to the public without having them admitted to a securities market. A prospectus will no longer be required for any such offers. Instead, offers of securities above a £5 million threshold will need to be made through a public offer platform, to be achieved through the creation of a new regulated activity covering this.

1.5 FCA publishes new webpages on regulatory hosting services and appointed representatives

On 11 July 2023, the FCA published the following webpages:

- [Regulatory hosting services](#) with information for principal firms operating as regulatory hosts
- [How to report Appointed Representatives data – information for principal firms](#) with information about the data principal firms must report to the FCA about their appointed representatives.

1.6 FCA publishes statement on its secondary international competitiveness and growth objective

On 14 July 2023, the FCA published a [statement](#) on its secondary international competitiveness and growth objective. The statement sets out its view of how its work to support the ‘key drivers’ of productivity will support delivery of the secondary objective and explains how it plans to report on its progress in facilitating the new objective in future. It also explains its approach to updating key processes and documents in light of this change.

1.7 FCA publishes new webpage: repeal and replacement of retained EU law

On 14 July 2023, the FCA published a new webpage: [Repeal and replacement of retained EU law](#). This webpage provides information about the repeal and replacement of retained EU law with the FCA’s rules under the Financial Services & Markets Act 2023, including key documents, next steps and the FCA’s core principles for managing this work.

1.8 FCA publishes its Rule Review Framework

On 14 July 2023, the FCA published its [Rule Review Framework](#). The Framework explains how the FCA plans to monitor and review how its rules are working in practice. This is in line with the obligation introduced by the Financial Services and Markets Act 2023. This Framework applies to all FCA rules, which are found in the Handbook.

The FCA is publishing a draft of this Framework to invite comments and input from all stakeholders before it is finalised.

1.9 FCA publishes guidance on financial promotions on social media

On 17 July 2023, the FCA published [Guidance Consultation GC23/2: Financial promotions on social media](#).

As part of the consultation, amongst other guidance around unauthorised influencers, high risk investments, and the consumer duty, the FCA provides guidance on emerging marketing trends on social media such as affiliate marketing. The FCA stresses that firms should be monitoring the communications of those using their affiliate links to ensure good outcomes for consumers. The FCA also looks to address the harm that can occur where UK consumers interact with financial promotions which direct them to a non-UK entity while the UK consumer still believes they are engaging with an FCA regulated firm. The FCA suggests techniques firms can use to mitigate this risk, as well as stressing to firms that any communication capable of having an effect within the UK will be subject to the rules.

The consultation ended on 11 September 2023 and the FCA aims to finalise the guidance later in 2023.

1.10 PRA and FCA update the Regulatory Initiatives Grid

On 17 July 2023, the PRA and the FCA published an [update](#) on the [Regulatory Initiatives Grid](#) following Royal Assent of the Financial Services and Markets Act 2023 (FSMA 2023). FSMA 2023 introduces new secondary objectives for the FCA and PRA to facilitate international competitiveness and economic growth, broadening their responsibilities as regulators, and allowing them to better tailor rules to the needs of the UK.

A full update of the Grid is planned for the last quarter of 2023, where the PRA and the FCA will update on all changes for all initiatives as usual.

1.11 FCA publishes final rules and guidance on broadening retail access to the long-term asset fund

On 29 June 2023, the FCA published [Policy Statement 23/7: Broadening retail access to the long-term asset fund](#). The Long-Term Asset Fund (LTAF) is a new category of authorised open-ended fund. The FCA are proceeding with final rules generally as consulted in CP22/14 which recategorises a unit in an LTAF from a Non-Mass Market Investment (NMMI) to a Restricted Mass Market Investment (RMMI).

This means that distribution will be extended so that retail investors, as well as self-select DC pension schemes and Self-Invested Personal Pensions (SIPPs) will be able to invest into an LTAF.

The FCA are also consulting in chapter 4 on whether excluding Financial Services Compensation Scheme (FSCS) cover for the LTAF would be appropriate, as a first step toward change before the broader consideration of FSCS coverage for higher risk investments as part of the Compensation Framework Review.

1.12 FCA publishes Policy Statement on regulated fees and levies

On 4 July 2023, the FCA published [Policy Statement 23/10: FCA regulated fees and levies 2023/24](#). The FCA confirms that it is freezing minimum fees, flat rate fees and application fees. This is intended to encourage competition and support firms who are facing inflationary pressures, especially the 17,000 smallest fee-payers who pay minimum fees only. The FCA expects to resume its policy of inflationary increases from next year.

1.13 FCA publishes letter to cryptoasset firms on the financial promotions regime

On 4 July 2023, the FCA published a [letter](#) addressed to cryptoasset firms marketing to UK consumers, saying they must get ready for the financial promotions regime by 8 October 2023. When the regime comes into force on 8 October 2023, there will be four routes to lawfully communicate cryptoasset promotions to UK consumers:

1. The promotion is communicated by an authorised person.
2. The promotion is made by an unauthorised person but approved by an authorised person.

3. The promotion is communicated by a cryptoasset business registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).
4. The promotion otherwise complies with the conditions of an exemption in The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (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 2000), which is a criminal offence punishable by up to 2 years imprisonment, an unlimited fine, or both. The FCA states it will take robust action against persons illegally promoting to UK consumers. This may include, but it is not limited to, placing firms on its warning list, taking steps to remove or block any illegal financial promotions such as websites, social media accounts and apps, and enforcement action.

1.14 HM Treasury publishes policy note and near-final draft Statutory Instrument on the Securitisation Regulations 2023

On 11 July 2023, HM Treasury published a [policy note](#) alongside a near-final [draft](#) of the Securitisation Regulations 2023. The statutory instrument creates a new framework for the regulation of securitisation, replacing the EU Securitisation Regulation and related legislation. Since a previous illustrative version of this SI was published as part of the Edinburgh Reforms, the government has finalised outstanding issues and refined the provisional drafting included in the illustrative SI. In particular, the following changes from that version should be noted:

- **Scope of institutional investor as relating to AIFMs.** This SI narrows the scope of the definition of ‘institutional investor’, so that UK due diligence requirements only apply to UK AIFMs.
- **FCA direction power for Designated Activities Regime activities.** This SI gives the FCA a power of direction for authorised and unauthorised firms who engage in designated activities related to securitisation.
- **Ban on the establishment of Securitisation Special Purpose Entities (SSPEs) in certain overseas jurisdictions.** The ban on establishing SSPEs in high-risk or noncooperative jurisdictions has been clarified so that it applies to providers of securitisations. It has also been clarified so that institutional investors are prohibited from investing in securitisations with SSPEs established in the jurisdictions in question.
- **Framework for recognising STS¹-equivalent non-UK securitisations.** This SI modifies the STS securitisation equivalence regime to adapt it to a model appropriate for the regulation of securitisation under the Smarter Regulatory Framework.
- **TPV² and SR³ Standardisation.** This SI renames the process for TPV ‘authorisation’ as ‘registration’ in line with SR registration, to distinguish from authorisation under Part 4 of FSMA 2000.
- **Restatement and reforms to due diligence requirements for OPS.** This SI restates due diligence requirements which apply to OPS and makes reforms to clarify them.

¹ Simple, Transparent, and Standardised

² Third-Party Verifier

³ Securitisation Repositories

- **Repeal of the re-securitisation permissions process.** The power and process for the FCA and PRA to grant firms permission to issue re-securitisations will be repealed without replacement in this SI. HM Treasury intends to provide the regulators with certain powers to modify or disapply rules under s.138BA of FSMA 2000, which may be used as a replacement for this process as well as other purposes. The regulators may publish further material on how they expect to exercise these powers.
- **Repeal of Article 30 of the EU Securities Regulation.** Specific obligations on the regulators in retained EU law, including to review compliance and monitor risks, are repealed without replacement.

1.15 FCA consults on proposed securitisation rules

On 7 August 2023, the FCA published a consultation paper [CP23/17: Rules relating to Securitisation](#), which sets out the FCA's proposed rules to replace the firm-facing provisions from the UK Securitisation Regulation (UK SR) which are being transferred into the Handbook. The consultation also covers rules to:

- clarify what kind of information UK institutional investors require to fulfil their due diligence obligations
- amend and clarify risk retention provisions, with particular reference to changes to facilitate non-performing exposures (NPE) securitisation
- make a number of clarificatory changes to other areas of the regulation based on market feedback, such as the geographical scope of the UK SR and the criteria for homogeneity in STS securitisations.

Comments are due by 30 October 2023.

1.16 HM Treasury publishes policy paper 'Building a Smarter Financial Services Regulatory Framework: Delivery Plan'

On 11 July 2023, HM Treasury published a [policy paper](#): 'Building a Smarter Financial Services Regulatory Framework: Delivery Plan'. The plan sets out how the government is delivering a Smarter Regulatory Framework for the UK by replacing retained EU law on financial services. As part of the Edinburgh Reforms, HM Treasury published the policy statement Building a Smarter Financial Services Framework for the UK which sets out the government's policy approach. This follow-up paper describes how HM Treasury will deliver this approach in practice.

Delivering a Smarter Regulatory Framework means replacing REUL (retained EU law) with a mixture of legislation introduced by the government and approved by Parliament and regulator rules, in line with the balance of responsibilities in the FSMA model. Under this model, the regulators generally set the rules that apply to firms within a framework set by government and Parliament.

Therefore, industry should generally expect firm-facing provisions to be set through regulator rulebooks. This will make it easier for financial services firms to understand what requirements apply to them. This process has already begun, for example where the regulators took on responsibility for making and amending binding technical standards during the 'onshoring' process.

Government legislation will focus on setting the framework within which the regulators will exercise their responsibilities.

1.17 FCA publishes engagement paper on primary MTFs

On 13 July 2023, the FCA published [Primary multilateral trading facilities – Engagement Paper 6](#). The paper sets out the FCA’s initial considerations regarding:

- the circumstances in which MTFs operating as primary markets should require the publication of an MTF admission prospectus
- who should be responsible for such a document
- the circumstances in which a supplementary prospectus should be required
- how and when withdrawal rights should be exercised
- the requirements around the communication of advertisements.

This paper is part of the FCA series of Engagement Papers on the draft Public Offers & Admissions to Trading Regime. Feedback on these papers will inform further development of the FCA’s proposed rules, which they will consult on formally during 2024.

1.18 FCA publishes Market Watch 74

On 25 July 2023, the FCA published [Market Watch 74](#), which covers some of the FCA’s recent supervisory observations, covering RTS 22 transaction reporting and the submission of financial instrument reference data under RTS 23. These will be of interest to investment firms, credit institutions, trading venues, systematic internalisers (SIs), and approved reporting mechanisms (ARMs).

The FCA states that Transaction Reports continue to play a key role in its ability to conduct effective market oversight. There has been a trend of improved data quality since 2018, however, issues persist, with some firms not paying sufficient attention to the FCA’s warnings on the importance of reporting transactions to it in a complete, accurate and timely manner.

The FCA may conduct further work on the areas covered in its Market Watch articles to ensure appropriate remedial actions are undertaken by firms. Firms should continue to submit errors and omissions notifications for any issues of which they become aware.

Of Particular Note: FCA publishes observations on Identification of Investment and Execution Decision Makers in Transaction Reports

In its Market Watch 74, the FCA describes its observations on the identification of investment and execution decision makers.

Where more than one person or algorithm is involved in an investment or execution decision, the person or algorithm taking primary responsibility for the decision should be identified in the transaction report. Article 8(2) and Article 9(4) of RTS 22 require firms to establish pre-determined criteria for determining who is primarily responsible for making investment and execution decisions.

The FCA identified a range of practices from firms where a natural person is assigned responsibility for an investment or execution decision. Some identify the individual trader, investment manager or portfolio manager making the investment or execution decision at a transaction level. Others have identified a head of desk, head of trading, or other senior manager overseeing a team responsible for making investment and execution decisions.

The FCA's market monitoring capabilities are best supported by granular information on individuals or algorithms making specific investment or execution decisions. It recognises that in some scenarios, judgement may be needed to determine primary responsibility. However, firms should consider whether it is appropriate to assign primary responsibility to senior management within the firm who oversee investment or execution decisions but have limited practical involvement in those decisions at a transaction level.

1.19 HM Treasury consults on banning cold calling for consumer financial services and products

On 2 August 2023, HM Treasury published a [consultation paper and call for evidence](#) on banning cold calling for consumer financial services and products. The government intends to ban cold calling for all financial services and products. This ban will fill the gaps that exist in the current prohibitions and ensure that:

- consumers will know that no legitimate firm will contact them to market financial services or products, in an unsolicited manner
- consumers feel empowered to terminate and report as a scam any financial services cold call that they receive
- legitimate businesses have a clear set of restrictions to follow when marketing financial products
- enforcement action can be taken against UK firms which continue to cold call consumers to market financial products and services
- scammers have no opportunity to claim they are acting outside the prohibition by changing the financial product they focus on.

The consultation will be open for 8 weeks, closing on 27 September 2023. The government will then assess the responses. The government is requesting responses from a wide range of interested stakeholders to ensure future policy decisions are well informed. Alongside this, HM Treasury is launching a call for evidence to collect information and data that will allow more accurate estimates of the impacts to be made.

1.20 FCA publishes CEO Letter: Our supervisory strategy for Principal Trading Firms

On 4 August 2023, the FCA published a [Dear CEO Letter](#): Our supervisory strategy for Principal Trading Firms (PTFs), which details its view of the most important risks arising from PTFs, what it thinks drives those risks, its expectations of firms, and its supervisory focus for the next two years.

One of issues the letter addresses is market abuse as an inherent driver of harm among all firms in the portfolio. Inadequate controls, poor market abuse policies, and ineffective or poor leadership from the top could result in instances of market manipulation and disruption. PTFs which have a relatively large trading footprint, and those that utilise algorithmic trading strategies, pose a heightened risk of harm due to these factors.

The FCA observed that some firms are not sufficiently familiar with the requirements and have weaknesses in their governance and control infrastructure. For a minority of firms in the portfolio, being regulated by the FCA requires a mindset change.

The FCA's supervisory strategy will focus on:

- algorithmic trading controls
- financial resilience
- avoiding market disruption arising from commodity market volatility
- operational resilience
- Brexit impacts.

The FCA expects firms and Boards to discuss the contents of this letter, consider how the risks apply to their business, and take action to manage them effectively, by the end of September.

1.21 FCA publishes Primary Market Bulletin 45

On 10 August 2023, the FCA published [Primary Market Bulletin 45](#). This issue covers the following items:

- International Sustainability Standards Board: IFRS S1 and S2
- audit of financial statements by third country audit firms – suspensions of listings
- application of the FCA's transitional provisions in relation to minimum market capitalisation for shell companies
- multi-factor authentication for our systems.

1.22 FCA publishes findings from review of Authorised Fund Managers' assessments of fund value 2023

On 10 August 2023, the FCA published its findings from its review of [Authorised Fund Managers \(AFMs\) use for assessments of value \(AoVs\)](#) for the funds they operate. This is a follow up to the feedback given from the first review in July 2021. A summary of the Key Findings and Next Steps are as follows:

- Most firms are making fewer assumptions within their analysis that they cannot evidence as reasonable and are presenting higher quality management information to AFM Boards and AoV committees.
- Outlier firms in the review were typically firms who were not able to support their assumptions and assessments with sufficient evidence.
- The FCA expects firms to be able to substantiate any claims they make.
- The FCA found continuing maturity in AoV processes that resulted in many firms taking remedial action when poor value was identified including some reductions in fund fees, typically by a few basis points. Overall, this amounted to savings for fund investors of millions of pounds. The FCA also saw some firms move investors in pre Retail Distribution Review (RDR) share classes to 'clean' classes with no trail commission. The savings for these investors were even more significant.
- While the FCA found firms had a better understanding for the need to justify fees, most remedial action did not involve cutting funds' fees. Where fees were cut, the share class fee reductions were almost always driven by adverse comparable market rates findings rather than other considerations. This suggests that fund managers continue to 'cluster' around price points identified in its [Asset](#)

[Management Market Study Final Report \(AMMS\)](#) in June 2017 as a market failure. Some firms cited erroneous operational or regulatory barriers to reducing fees.

- AFM Boards or their committees sometimes reached conclusions that did not take into account improved management information.
- Tensions between a fund's profitability for a firm and assessing the fund's value for money for investors appear to be influencing AoV decision making and outcomes. This is a conflict for AFM Boards to be aware of and to manage.
- Firms that fail to make reasonable decisions to deliver good outcomes will likely fall short of the standards expected to comply with the FCA's rules. This finding is particularly important given the role of an AFM Board is to oversee its funds in the best interests of fund investors. The Board and Senior Management Function (SMF) holders remain accountable for achieving this aim, with independent directors playing an important role in providing independent perspectives, and the Senior Manager allocated SYSC 24.2 Prescribed Responsibility ZA being accountable for the entity's compliance with AoV rules.

Next steps:

- the FCA will continue to engage with those firms with significant AoV deficiencies, using its regulatory tools as appropriate
- each AFM should consider the FCA's findings and assess the quality of analysis, decision-making and governance of its AoV processes to assure compliance with COLL 6.6.20R and COLL 8.5.17R, and AFMs should consider whether they are taking appropriate action to address identified value concerns
- firms might also consider whether steps can be taken to simplify the annual AoV report and, where necessary, the AFM should implement appropriate changes.

1.23 FCA sets out expectations for UK cryptoasset businesses complying with the Travel Rule

On 1 September 2023, the FCA updated its [webpage](#) setting out its expectations for cryptoasset businesses that need to comply with a change in money laundering legislation. From 1 September 2023, cryptoasset businesses in the UK will be required to collect, verify and share information about cryptoasset transfers, known as the 'Travel Rule'.

The FCA expectations for firms include:

- take all reasonable steps and exercise all due diligence to comply with the Travel Rule
- remain responsible for achieving compliance with the Travel Rule, even when using third-party suppliers
- fully comply with the Travel Rule when sending or receiving a cryptoasset transfer to a firm that is in the UK, or any jurisdiction that has implemented the Travel Rule
- regularly review the implementation status of the Travel Rule in other jurisdictions and adapt business processes as appropriate.

The FCA also sets out expectations for sending or receiving a cryptoasset transfer from a jurisdiction without the Travel Rule.

2. PRA

2.1 PRA consults on proposed changes to pillar 3 remuneration disclosure

On 19 July 2023, the PRA published [Consultation Paper CP14/23 – Pillar 3 remuneration disclosure](#), which sets out the PRA's proposals to enhance proportionality of Pillar 3 remuneration disclosure requirements, by reducing the number of remuneration disclosures required for many smaller banks and building societies.

The policy proposals in this CP would result in the following changes to the Disclosure (CRR) Part (Appendix 1):

Simpler-regime Firms

- for listed firms, introduction of a requirement to disclose parts of the UK REMA template corresponding to paragraphs (a) to (d) of Article 450(1) of the Disclosure (CRR) Part as well as the UK REM 1 template
- for non-listed firms, exclusion from the requirement to disclose any information on remuneration.

Small remuneration firms, that are not eligible to be Simpler-regime Firms

- for listed firms, modify the remuneration disclosure requirements under Article 433c ('Other') to only disclose parts of the UK REMA template corresponding to paragraphs (a) to (d) of Article 450(1) of the Disclosure (CRR) Part as well as the UK REM 1 template
- for non-listed firms, modify the remuneration disclosure requirements under Article 433c ('Other') to exclude the requirement to disclose any information on remuneration.

Small and non-complex institution transitional firms

- for listed firms, modify the transitional requirements to only disclose parts of the UK REMA template corresponding to paragraphs (a) to (d) of Article 450(1) of the Disclosure (CRR) Part as well as the UK REM 1 template
- for non-listed firms, modify the transitional requirements to exclude the requirement to disclose any information on remuneration.

The Consultation closed on 20 September 2023.

2.2 PRA consults on the general requirements for securitisation

On 27 July 2023, the PRA published its [Consultation Paper CP15/23 – Securitisation: General Requirements](#). The CP proposes the following targeted adjustments to these requirements:

- Clarification of the person scope of the requirements on manufacturers and an adjustment to the person scope of SS10/18: These proposals would advance the safety and soundness of PRA-authorized investors in securitisations by clarifying that all PRA-authorized manufacturers in securitisations who are established in the UK are subject to relevant requirements and by setting out supervisory expectations for all such manufacturers.
- A more principles-based approach to due diligence obligations on PRA-authorized institutional investors in relation to disclosures by manufacturers: This could make these requirements more proportionate and facilitate international competitiveness.

- Clarification of provisions on delegation of due diligence: Clarifying that in certain circumstances only the managing party and not the delegating party would be subject to due diligence requirements. This could make them more proportionate and facilitate international competitiveness.
- Changes to risk retention requirements in non-performing exposures (NPE) securitisations: This would facilitate the use of NPE securitisations by PRA-authorized persons to reduce their credit risk, thus promoting their safety and soundness, and facilitating competitiveness and growth in the medium to long term.
- Clarification of timelines for manufacturers making available certain information: This could assist PRA-authorized institutional investors with managing their due diligence process more effectively.
- A new SoP⁴– Permission for resecuritisations: This would increase transparency by indicating that the PRA would usually envisage using section 138BA of FSMA to grant permissions for resecuritisations only in circumstances broadly similar to those in which the PRA could currently grant permissions for resecuritisations under the Securitisation Regulation.
- Other smaller changes to risk retention requirements: Some of these changes are intended to make these requirements clearer, including by further specifying their content. Other changes would make these requirements more proportionate.

The CP also addresses the distinction between public and private securitisations and the associated transparency requirements to seek views and evidence from respondents. The PRA may consult on proposals in this area in a future CP.

Responses are requested by 30 October 2023.

3. EU REGULATORY UPDATES

3.1. ESMA issues supervisory briefing on understanding the definition of advice under MiFID II

On 11 July 2023, ESMA issued a [supervisory briefing](#) on understanding the definition of advice under MiFID II, which sets out the expectations in relation to investment firms, including credit institutions, UCITS management companies and AIFMs, providing advice to clients. The supervisory briefing covers the following aspects:

- The provision of personal recommendations and whether other forms of presenting information such as “investment research”, filtering, general recommendations, generic advice, presenting multiple products or access to model investment portfolios could constitute investment advice.
- The presentation of a recommendation as suitable for a client or based on the client’s circumstances, including advice given by a portfolio manager to a client to the effect that the client should give or alter a mandate to the portfolio manager, making recommendations which are clearly unsuitable in light of knowledge about the client, definitions of a “person’s circumstances” and when recommendations will be viewed as based on a view of a person’s circumstances.
- Perimeter issues around the definition of personal recommendation, including disclaimers to the client and failing to use known client information in an attempt to try avoiding the qualification as investment advice.

⁴ Statement of Policy

- Issues around the form of communication, including whether the Internet or apps are always a “distribution channel”, use of social media posts, messages to multiple clients, distinguishing corporate finance and investment advice and whether these are mutually exclusive.

3.2. ESMA report on marketing requirements and marketing communications under the Regulation on cross-border distribution of funds

On 3 July 2023, ESMA published a [report](#) on marketing requirements and marketing communications under the Regulation on cross-border distribution of funds, which provides an overview of national laws, regulations and administrative provisions governing marketing requirements for UCITS and AIFs in all Member States. Key findings include:

- a greater level of harmonisation has been reached in areas where national divergences existed, e.g. regarding pre-marketing or the de-notifications of arrangements made for the marketing of UCITS and AIFs
- following the entry into force of the Regulation, many National Competent Authorities included the review of marketing communications in their supervisory process.

The next iteration of the report will be submitted to the European Parliament, the Council and the Commission in two years.

4. FINANCIAL CRIME

4.1 UK Government propose enhancements to corporate reporting obligations and material fraud reporting obligations

On 19 July 2023, the UK Government published the [Corporate Reporting: The Draft Companies \(Strategic Report and Directors' Report\) \(Amendment\) Regulations 2023](#). The regulations will, if approved by Parliament, create the following new corporate reporting requirements for very large UK companies (defined in the regulations as companies with 750 employees or more, and an annual turnover of £750 million or more):

- an annual resilience statement, to be included in the strategic report, in which companies in scope must explain the steps they are taking to build or maintain their business resilience over the short, medium and long term
- an annual distributable profits figure, to be included as a note to the accounts, and an annual distribution policy statement, to be included in the directors' report
- an annual material fraud statement, to be included in the directors' report, providing a summary by the directors of:
 - their assessment of the risks of material fraud occurring at the company (that is, fraud on a scale or of a nature that could influence the investment decisions of shareholders)
 - the main measures in place and any new steps taken to prevent and detect material fraud
- a triennial audit and assurance policy statement, to be included in the directors' report.

The regulations will come into force, if approved by Parliament, on 1 January 2025. In the first year, the regulations will apply only to UK companies with equity share capital admitted to trading on a UK regulated market. One year later, the regulations will extend to other companies above the threshold. So very large private companies, non-traded plcs and companies with shares admitted to trading on a multi-lateral trading facility such as AIM will need to comply with the regulations in respect of financial years which begin on or after 1 January 2026.

The Financial Reporting Council (FRC) plans to consult separately on detailed non-statutory guidance to companies about good practice in complying with the new reporting statements required by the regulations. The FRC is expected to publish draft guidance for consultation on its website by the end of 2023 or early 2024.

4.2 European Commission adopts delegated regulation adding Cameroon and Vietnam to the list of high risk third countries

On 22 August 2023, the European Commission adopted a [Commission Delegated Regulation](#) to add Cameroon and Vietnam to the list of high-risk third countries.

The Commission published a revised methodology for identifying high-risk third countries on 7 May 2020. The main new elements are an increased interaction with the Financial Action Task Force (FATF) listing process, strengthened engagement with third countries, and reinforced consultation of the Member States and the European Parliament. The FATF has updated its list of 'Jurisdictions under Increased Monitoring' since the last amendments to Delegated Regulation (EU) 2016/1675. At its plenary meeting between 21 - 23 June 2023, the FATF added two third-country jurisdictions to its list: Cameroon and Vietnam.

4.3 JMLSG publishes new guidance on cryptoasset transfers

On 31 August 2023, the Joint Money Laundering Steering Group (JMLSG) published [sectoral guidance for cryptoasset exchange providers and custodian wallet providers](#), to be read in conjunction with the main guidance set out in Part I of the Guidance. The new guidance relates to the provisions of The Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) that implement the Travel Rule for cryptoasset transfers in the UK. The new obligations per Regulations 64A-64H come into effect on 1 September 2023.

The new guidance has been submitted to HM Treasury for Ministerial approval.

5. ESG

5.1. ESMA and NCAs to assess disclosures and sustainability risks in the investment fund sector

On 6 July 2023, ESMA [launched](#) a Common Supervisory Action (CSA) with National Competent Authorities (NCAs) on sustainability-related disclosures and the integration of sustainability risks.

The goal is to assess the compliance of supervised asset managers with the relevant provisions in the Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation and relevant implementing measures, including the relevant provision in the UCITS and AIFMD implementing acts on the integration of sustainability risks.

Using a common methodology developed by ESMA, NCAs will share knowledge and experiences on how to foster convergence in how they supervise sustainability related disclosure. Among the main objectives:

- to assess whether market participants adhere to applicable rules and standards in practice
- to gather further information on greenwashing risks in the investment management sector
- to identify further relevant supervisory and regulatory intervention to address the issue.

Ensuring greater convergence in the supervision of risks stemming from incorrect and misleading disclosures is central to the effort to foster transparency and is identified as one of the Union Strategic Supervisory Priorities for NCAs. The CSA will promote this goal by improving the comprehensibility of ESG disclosures by asset managers across key segments of the sustainable finance value chain. In addition, the preliminary findings on the identification of greenwashing risks at entity and product level will provide input to ESMA's Final Report on greenwashing.

In 2023 and until Q3 2024, NCAs will undertake their supervisory activities and share knowledge and experiences through ESMA to foster convergence in how they supervise sustainability-related disclosures and sustainability risk integration in asset managers.

5.2. Lending Standards Board publishes report on business customers and green finance

On 10 July 2023, the Lending Standards Board (LSB) [published](#) its April report: [Business customers and green finance](#), which examines the provision of green finance products for SMEs, finding that while demand for, and interest in, these products is growing, many smaller businesses still face barriers accessing sustainable financial products.

The LSB says firms should be considering, across all finance products, how they can help customers to achieve their green objectives whilst balancing the effects of the wider landscape. For customers looking to borrow or use finance to make changes that are positive for the environment, firms should be understanding how their products – whether they are labelled as green or sustainable, or not – can support the SME's objectives.

5.3. EBA collects institutions' data on ESG risks to set up a monitoring system

On 18 July 2023, the EBA [announced](#) it will collect on an ad-hoc basis ESG data from large, listed institutions based on their pillar 3 quantitative disclosures on ESG risks. This collection will provide competent authorities with data to monitor ESG risks and support the EBA in fulfilling its ESG mandates, including to set up a risk monitoring framework and to contribute to the European Commission's Strategy for financing the transition to a sustainable economy. The collection is temporary and will be discontinued once a supervisory reporting framework on ESG risks will be in place.

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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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