

Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 FCA and OFSI sign Memorandum of Understanding

On 1 December 2023, the FCA published a [Memorandum of Understanding](#) (MoU) that it has entered into with the Office of Financial Sanctions Implementation (OFSI), dated 21 November 2023. The MoU states that the FCA's functions and OFSI's sanctions functions may interact.

The MoU explains the following practices between the FCA and OFSI:

- information sharing and co-operation
- information requests and disclosures
- permissible uses of information
- confidentiality and data protection
- onward disclosure to third parties
- data subjects' rights
- the operation of the MoU.

1.2 FCA publishes Quarterly Consultation Paper No. 42

On 1 December 2023, the FCA published its [Quarterly Consultation Paper No. 42](#) (CP23/25). The FCA is proposing to:

- make amendments to the TC qualifications table
- make minor consequential amendments to CREDS as a result of legislative changes to the Credit Unions Act 1979
- make minor amendments, including clarifications and corrections to COLL
- make changes to clarify the scope and application of COBS 19.7 and to improve the clarity of requirements under COBS 19.9
- make corrections and clarifications to MIFIDPRU 1, 4, 7 and 8, and IPRU-INV 1
- to make references to enactments in the Handbook ambulatory

The consultation closed on 8 January 2024.

1.3 The FCA consults on regulatory approach for new Overseas Funds Regime

On 4 December 2023, the FCA published [Consultation Paper CP23/26 on implementing the Overseas Funds Regime \(OFR\)](#).

The UK asset management industry is a global industry. Many of the funds offered here are from outside the UK.

The OFR provides a new method for offering an overseas fund to UK retail investors, following an equivalence determination by the Treasury. The FCA is consulting now to:

- make changes to its Handbook so that if an equivalence determination is made for EEA UCITS, this new gateway can be operationalised
- ensure UK and overseas firms are aware of this new route to the UK market.

The consultation Paper will be of interest to:

- operators (management companies) of European economic area (EEA) undertakings for collective investment in transferable securities (UCITS) that currently market the funds to UK investors or plan to do so
- distributors of EEA UCITS marketed to UK investors.
- investment advisers
- firms providing facilities to UK investors in EEA UCITS
- firms approving financial promotions on behalf of EEA UCITS
- fund managers and distributors of EEA UCITS schemes that are currently in the temporary marketing permissions regime (TMPR)
- UK and EEA trade associations
- EEA and EU national competent authorities (NCAs).

The consultation closes on 12 February 2024.

1.4 New FCA webpage on expectations of firms offering fractional shares to retail investors

On 1 December 2023, the FCA published a new [webpage](#) on its expectations under the Consumer Duty for firms offering fractional shares to retail investors.

The Treasury recently [announced](#) its plan to allow certain fractional share contracts as ISA investments and engagement with stakeholders on implementing this.

HM Revenue & Customs (HMRC) currently does not consider that fractional shares are eligible for ISAs. This is a longstanding position which it has [recently confirmed in guidance](#). The FCA has reminded firms currently offering fractional shares in ISAs of their obligations to consumers, and consumers who currently hold fractional shares in ISAs should contact their provider if they have any questions.

The Treasury's announcement provides an opportunity to clarify the FCA's expectations of firms offering fractional shares to a retail market under the Consumer Duty, and to set out the next steps in this area.

Firms offering fractional shares must act in good faith, avoid causing foreseeable harm, and enable and support consumers to pursue their financial objectives.

Firms should carefully consider whether their fractional share offerings are delivering good outcomes for consumers, in line with the Consumer Duty.

Some characteristics of fractional share models that firms should consider that may impact consumer outcomes include:

- any limits on **transferability** (i.e. where the consumer cannot transfer their investment to another firm) or the consumer's ability to trade fractional shares
- when fractional share trades will be **executed** including whether the firm aggregates share orders to whole shares in order to fulfil trades and how this may affect the price for consumers
- what **fees and charges** consumers will incur, including foreign exchange conversion charges or other fees impacted by trading in shares issued by companies outside the UK
- whether consumers understand if they will have **voting rights or other shareholder rights** based on their holdings and how these rights can be exercised
- whether consumers understand if they will receive **dividend income** based on their holdings and how this is calculated
- whether consumers understand their **ownership rights** to their fractional share holdings, including how investments may be recovered in the event of a firm failure.

The FCA will work closely with the Treasury and HMRC as it develops its proposal to allow certain fractional shares contracts as eligible ISA investments.

1.5 Joint PRA and FCA Policy Statement on remuneration: enhancing proportionality for small firms

On 5 December 2023, the PRA and FCA jointly published a [Policy Statement on Remuneration: Enhancing proportionality for small firms](#). The FCA set out, jointly with the PRA, their final policy on changes to the remuneration rules for dual-regulated firms to enhance the proportionality of the remuneration requirements that apply to small firms.

The FCA wants to ensure its remuneration rules for smaller, less complex dual-regulated firms are proportionate to the risks they pose to consumers and markets in the UK. Therefore, it is making changes to proportionality thresholds, and exempting firms meeting the updated proportionality thresholds from the requirements relating to malus and clawback.

The FCA is also making minor changes to the current rules to address some differences between the FCA Handbook and the PRA Rulebook.

Alongside this, the FCA has made consequential amendments to its existing non-Handbook guidance to reflect these rules changes. Specifically, the:

- Dual-regulated firms Remuneration Code (SYSC 19D) – Frequently asked questions on remuneration ([FG23/4](#))
- General Guidance on Proportionality ([FG23/5](#))
- General Guidance on the application of ex-post risk adjustment to variable remuneration ([FG23/6](#)).

The changes came into force on 8 December 2023 and apply to a firm's performance year starting on or after that date. The PRA supervisory statement and FCA non-Handbook guidance changes also apply from 8 December 2023.

1.6 HM Treasury and FCA Joint Discussion Paper 23/5: Advice Guidance Boundary Review – proposals for closing the advice gap

On 8 December 2023, HM Treasury and the FCA jointly published [Discussion Paper 23/5: Advice Guidance Boundary Review – proposals for closing the advice gap \(DP23/5\)](#).

The proposals aim to create a regulatory system where a range of commercially viable, high-quality models of support will be in place enabling consumers to access better support.

In December 2022, the Government announced a set of reforms taking forward its ambition for the UK to be the world's most innovative and competitive global financial centre (Edinburgh Reforms). As part of these reforms, it was announced that the FCA and the Government will commence a joint review to examine the regulatory boundary between financial advice and other forms of support. This is now known as the Advice Guidance Boundary Review. This policy paper is seeking views from a range of stakeholders on the proposals set out in the paper to help close the advice gap.

The feedback period ends 28 February 2024.

2. REGULATORY REFORM

2.1 HMT publishes near-final draft Money Market Funds Regulations 2024

On 6 December 2023, HM Treasury (HMT) [published](#) a near-final version of the draft statutory instrument – the Money Market Funds Regulations 2024 to replace the Money Markets Funds Regulation. It also published a [policy note](#) on the Money Market Funds (MMFs) Framework.

The statutory instrument will predominantly impact the managers of MMFs and their investors. However, changes to the existing legislative framework are limited. There are limited impacts for some individual firms as listed below:

- Managers of unauthorised AIFs currently authorised as MMFs: unauthorised AIFs will no longer be able to be authorised as MMFs. However, any funds currently using this route will, in perpetuity - subject to complying with regulatory obligations - be treated as though they are authorised MMFs, and subject to the same legislative framework, limiting the impact of this change.
- Managers of EEA MMFs currently, or previously, marketing under the TMPR: in future, these funds will be required to market to the UK using the overseas MMFs regime. However, the statutory instrument introduces a transitional regime with the aim of avoiding cliff-edge risks.
- The remaining parts of the retained EU law in this area will be repealed, to be replaced with regulator rules where the FCA considers it appropriate. Alongside this draft statutory instrument and policy note, the FCA is publishing a consultation on their draft rules for MMFs.

2.2 FCA consults on updating the regime for Money Market Funds

On 6 December 2023, the FCA published [Consultation Paper: Updating the regime for Money Market Funds \(CP23/28\)](#).

The proposals in the consultation, prepared in close cooperation with the Bank of England and HM Treasury, prioritise strengthening the existing regulatory regime for Money Market Funds (MMFs) while maintaining the broad current MMF operating model. The proposals increase MMFs' resilience principally by ensuring MMFs have usable liquidity sufficient to endure severe but plausible redemption stresses. The proposals include:

- A significant increase in the minimum liquid asset requirement for all MMFs, raising daily liquid assets (DLA) and weekly liquid assets (WLA) levels to 15% and 50% of their assets respectively. The FCA also modifies the assets eligible for WLA for Variable NAV (VNAV) MMFs
- The removal of the regulatory link between liquidity levels in MMFs that have the ability to offer subscriptions and redemptions at a constant Net Asset Value (NAV) (so-called 'stable NAV MMFs') and the need for the manager to consider or impose tools such as liquidity fees or redemption gates. This is known as 'delinking' and is intended to make those MMFs' liquidity buffers more usable.

Other enhancements include:

- enhanced 'know your customer' (KYC) requirements: strengthened and broadened KYC requirements on MMF investor concentration
- enhanced stress testing for stable NAV MMFs
- enhanced operational resilience for stable NAV MMFs.

The FCA is asking for comments on the Consultation Paper by 8 March 2024.

3. EU REGULATORY UPDATES

3.1. European Banking Authority issues Consultation Paper on Draft RTS specifying the requirements for policies and procedures on conflicts of interest for issuers of asset-referenced tokens under MiCAR

On 7 December 2023, the European Banking Authority (EBA) issued a [Consultation Paper](#) on the draft Regulatory Technical Standards specifying the requirements for policies and procedures on conflicts of interest for issuers of asset-referenced tokens (ARTs) under the Markets in Crypto-Assets Regulation (MiCAR).

The conflicts of interest policies and procedures of the issuers of ARTs should ensure that issuers consider all the circumstances which may influence or affect, or which may be perceived to influence or affect, their ability, or the ability of the parties connected to an issuer of ARTs, to take impartial and objective decisions.

Ensuring the sound management of the reserve of assets and contributing to the protection of holders and prospective holders of ARTs is key. For that purpose, the draft RTS require the issuer to give particular attention to the conflicts of interest that could arise when it manages and invests the reserve of assets, including when third parties are involved.

The draft RTS encompass specific provisions, including documentation requirements, related to personal transactions that must be conducted objectively, in the interest of each party. The draft RTS also specify that the remuneration procedures, policies and arrangements of the issuer should not create conflicts of interest.

The draft RTS underline the key role of the issuer's management body, which is responsible to define and adopt the conflicts of interest policies and procedures. The draft RTS require a person responsible for the management of conflicts of interest with adequate resources at hand. Finally, the draft RTS set out the content of the disclosure, which should be accessible to the public, both in term of sources (internet) and language.

Comments are to be sent to the EBA by 7 March 2024.

4. FINANCIAL CRIME

4.1 HMT publishes the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No.2) Regulations 2023

On 5 December 2023, HM Treasury published [The Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) \(No.2\) Regulations 2023](#) (SI 2023/1306), which came into force on the same day.

The SI updated the list of high-risk third countries as follows:

- Albania, Cayman Islands, Jordan and Panama are no longer classed as high-risk third countries for the purposes of enhanced customer due diligence requirements in regulation 33(1) of the MLRs
- Bulgaria, Cameroon, Croatia, Nigeria, South Africa and Vietnam are now classed as high-risk third countries for the purposes of enhanced customer due diligence requirements in regulation 33(1) of the MLRs.

4.2 Government announces new unit to clamp down on companies evading sanctions

On 11 December 2023, Nusrat Ghani, the UK's Industry and Economic Security Minister, [announced](#) a new Office of Trade Sanctions Implementation (OTSI) to strengthen enforcement and clamp down on companies attempting to avoid Russian sanctions.

The OTSI will be responsible for the civil enforcement of trade sanctions, including those against Russia. The unit will help businesses comply with sanctions and investigate potential breaches, issuing civil penalties and referring cases to HMRC for criminal enforcement where needed. Its remit will involve activity by companies who may be avoiding sanctions by sending products through other countries.

4.3 Council and European Parliament agree to create new authority for anti-money laundering

On 13 December 2023, the Council of the EU [announced](#) that it had reached a provisional agreement with the European Parliament for a new European authority for countering money laundering and financing of terrorism (AMLA).

The provisional agreement contains the following supervisory powers:

- AMLA to directly supervise certain types of credit and financial institutions, including crypto asset service providers, if they are considered high-risk or operate across borders
- AMLA will carry out a selection of credit and financial institutions that represent a high risk in several member states. The selected obliged entities will be supervised by joint supervisory teams led by AMLA that will among other things carry out assessments and inspections. The agreement entrusts the authority to supervise up to 40 groups and entities in the first selection process.
- For non-selected obliged entities, AML/CFT supervision would remain primarily at national level.
- For the non-financial sector, AMLA will have a supporting role, carrying out reviews and investigating possible breaches in the application of the AML/CFT framework. AMLA will have the power to issue non-binding recommendations. National supervisors will be able to voluntarily set up a college for a non-financial entity operating across borders if deemed needed.
- The provisional agreement expands the scope and content of AMLA's supervisory database by asking the Authority to establish and keep up-to-date a central database of information relevant for the AML/CFT supervisory system.

The Authority will monitor that selected obliged entities have internal policies and procedures in place to ensure the implementation of targeted financial sanctions, asset freezes and confiscations.

The provisional agreement introduces a reinforced whistle-blowing mechanism. Regarding obliged entities, AMLA will only deal with reports coming from the financial sector. It will also be able to attend reports from employees of national authorities.

The text of the provisional agreement will now be finalised and presented to member states' representatives and the European Parliament for approval. If approved, the Council and the Parliament will have to formally adopt the texts.

Negotiations between the Council and Parliament on the regulation on anti-money-laundering requirements for the private sector and the directive on anti-money laundering mechanisms are still ongoing.

4.4 The Money Laundering and Terrorist Financing (Amendment) Regulations 2023 are published

On 14 December 2023, Statutory Instrument 2023 No. 1371 – [The Money Laundering and Terrorist Financing \(Amendment\) Regulations 2023](#) was published, along with an [explanatory note](#).

These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the "MLRs") to secure the result referred to in section

77(3) of the Financial Services and Markets Act 2023 (c. 29); that for the purposes of assessments under regulation 35(3) of the MLRs, where the customer is a domestic PEP (a politically exposed person), or a family member or known close associate of a domestic PEP, the starting point for the assessment is that the customer presents a lower level of risk than a non-domestic PEP. The extent of enhanced customer due diligence measures to be applied in relation to that customer should be less than for non-domestic PEPs, unless enhanced risk factors apply.

The SI came into force on 10 January 2024.

5. ESG

5.1. IOSCO final report – Supervisory practices to address greenwashing

On 4 December 2023, the International Organization of Securities Commissions (IOSCO) [published](#) a final report presenting supervisory practices across its members to address greenwashing.

The [Supervisory Practices to Address Greenwashing Final Report](#) provides an overview of initiatives undertaken in various jurisdictions to address greenwashing, in line with IOSCO recommendations published in November 2021 and the subsequent Call for Action in November 2022.

The Report presents the challenges hindering the implementation of these recommendations, including data gaps, transparency, quality, and reliability of ESG ratings, consistency in labelling and classification of sustainability-related products, evolving regulatory approaches, and capacity building needs. While some of these challenges are currently being addressed, greenwashing remains a fundamental market conduct concern that poses risks to both investor protection and market integrity.

5.2. Publication of a Code of Conduct for ESG Ratings and Data Products Providers

On 14 December 2023, the ESG Data and Ratings Working Group (DRWG), an industry working group mandated by the FCA, [published](#) a Code of Conduct for ESG Ratings and Data Products Providers. The DRWG brings together stakeholders such as ratings and data providers, asset managers, asset owners, banks, corporate rated entities, NGOs, academics and other organisations. The Secretariat role is jointly provided by the International Regulatory Strategy Group and the International Capital Market Association (ICMA). The FCA, HMT and other national and international financial regulators acted as observers.

On 14 December, following a 3-month consultation period, the DRWG published a voluntary, globally consistent voluntary Code of Conduct for ESG ratings and data products providers. The Code is grounded in IOSCO's recommendations for ESG data and ratings, with a focus on promoting transparency, good governance, management of conflicts of interest, and robust systems and controls. The DRWG also published a [feedback statement](#) presenting summaries of the comments received during the public consultation together with the DRWG's feedback in relation to those comments.

The Code will be owned and maintained and a signatories list will be available here on ICMA's [website](#).

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.