

Regulatory Update

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1. FCA UPDATES & DEVELOPMENTS

1.1 FCA portfolio letter outlines expectations for loan-based peer-to-peer lending platforms

On 15 January 2024, the FCA released a [portfolio letter](#) outlining its expectations for loan-based peer-to-peer lending platforms.

The FCA's key areas of focus for P2P firms are:

- Policy Statement PS22/10: Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions
- wind-down plans, their triggers, and liquidity monitoring
- consumer duty.

Firms should consider whether the risks of harm are present and adopt strategies for mitigating them. In any future supervisory engagement with firms, the FCA will consider whether the Board and Senior Managers have taken appropriate action to ensure that consumers and markets are adequately protected from these harms.

1.2 FCA portfolio letter outlines expectations for Investment Based Crowdfunding Platforms

On 15 January 2024, the FCA released a portfolio letter outlining its expectations for Investment Based Crowdfunding Platforms (IBCF).

The FCA's key focus for IBCF firms are:

- Policy Statement PS22/10: strengthening our financial promotion rules for high-risk investments and firms approving financial promotions
- trading venue perimeter guidance
- S.21 Approvals
- public offer platform
- consumer duty
- financial resilience.

Firms should consider whether the risks of harm are present and adopt strategies for mitigating them. In any future supervisory engagement, the FCA will consider whether the Board, and Senior Managers, have taken appropriate action to ensure that consumers and markets are adequately protected from these harms.

1.3 FCA publishes Regulation Round Up

On 25 January 2024, the FCA published its latest [Regulation Round Up](#), which covers the following updates:

Deadline to apply to approve financial promotions

In September the FCA confirmed the introduction of a new authorisations gateway for firms who approve financial promotions for unauthorised persons.

Under the new regime, those who approve financial promotions for unauthorised persons will require a specific permission from the FCA, unless an exemption applies. This change will be reflected on the FCA Register for all Part 4A authorised persons.

Firms applying for this permission will have to demonstrate, among other things, that they have the necessary skills and expertise to approve promotions. Firms will also be required to report regularly to the FCA on their approval activity.

The initial application window for firms to apply for this new permission closed on 6 February 2024. The new legislative restriction came into force on 7 February 2024.

Firms that did not apply during this initial window will be subject to a restriction which will mean they cannot approve financial promotions for unauthorised persons with effect from 7 February 2024 (other than within the scope of an exemption).

Firms can still apply for this permission after 6 February 2024, but they will not be able to approve financial promotions unless and until their application has been granted.

Changes to financial promotion exemptions for investments

The Treasury's [consultation response](#) on reforming the financial promotion exemptions for high-net-worth individuals and self-certified sophisticated investors in the Financial Promotion Order and the [PCIS Order](#) resulted in changes that came into force on 31 January 2024.

The changes include amendments to the thresholds and eligibility criteria for consumers to self-certify as high net worth individuals and sophisticated investors, and to the statements that investors are required to sign.

Other topics covered by the round up include:

- expectations of firms selling client banks
- firms cancelling their authorisations
- principals should check when their REP025 return is due
- Appointed Representatives should attest to their details within 60 days of their account referencing date.
- Financial Services Compensation Scheme - Management Expenses Levy Limit 2024/25.
- report on quantum security for the financial sector
- industry-led sustainable working group for financial advisers
- motor finance market.

1.4 FCA Handbook Notice No. 115

On 26 January 2024, the FCA published [Handbook Notice No. 115](#), which describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers.

On 14 December 2023, the FCA Board made changes to the FCA Handbook, as set out in the instruments listed below:

- Data Reporting Services (Amendment) Instrument 2023
- Technical Standards (Authorisation, Organisational Requirements and the Publication of Transactions for Data Reporting Services Providers) Instrument 2023
- FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2023.

On 10 January 2024, the FCA Board made changes to the FCA Handbook, as set out in the instrument listed below:

- Dispute Resolution: Complaints Sourcebook (Motor Finance Discretionary Commission Arrangement Complaints) Instrument 2024.

On 25 January 2024, the FCA Board made changes to the FCA Handbook, as set out in the instruments listed below:

- Supervision Manual (Professional Indemnity Insurance and Appointed Representatives) Instrument 2024
- Perimeter Guidance Instrument 2024.

1.5 Primary Market Bulletin 47

On 26 January 2024, the FCA published its [Primary Market Bulletin 47](#), which covers the following topics:

Short-selling regulations

- The Government has recently published various documents outlining its proposals to change the regulatory regime for short selling in the UK. It has also introduced legislation which will change the minimum reporting threshold for net short positions in shares on 5 February 2024.

Credit Rating Agency UK market share report for 2022

- high concentration in UK credit rating agency (CRA) market according to second Market Share Report
- regulatory requirements for issuers when selecting multiple credit rating agencies

1.6 FCA Market Watch 76

On 30 January 2024, the FCA published [Market Watch 76](#), covering market conduct and transaction reporting issues.

[Market Watch 57](#) described flying and printing as:

- flying involves a firm communicating to its clients, or other market participants, via screen, instant message, voice or other method, that it has bids or offers when they are not supported by, or sometimes not even derived from, an order or a trader's actual instruction.
- printing involves communicating, by one of the above methods, that a trade has been executed at a specified price and/or size, when no such trade has taken place.

These activities create a false impression of a financial instrument's liquidity and/or price. As a result, investment decisions of clients and other market participants may be based on misleading information. This might cause financial harm to those participants, as well as undermine the integrity of, and confidence in, the market. Such behaviour may breach various provisions of the law, including Article 12.1.a(i) of the UK Market Abuse Regulation and/or Sections 89 and 90 of the Financial Services Act 2012 (Misleading impressions), and well as sections of the FCA's Handbook.

The FCA continues to see instances of possible flying and printing in several markets, including fixed income, commodities, and currencies in instruments such as bonds, swaps and options. This has included entering prices in lit markets to generate orders in dark markets.

The FCA has also seen cases of management failing to deal with this behaviour in a robust and timely way, including:

- failing to recognise the risks of flying and printing
- failing to implement appropriate surveillance
- failing to submit suspicious transaction and order reports, or market observations, relating to flying or printing
- taking a long time to investigate potential misconduct.

To mitigate the risks of the harms caused by flying and printing firms may want to:

- ensure compliance manuals prohibit flying and printing, and that annual attestations of compliance are obtained and senior management should ensure that they effectively communicate their expectations on culture and compliance to policy.
- ensure that training includes the nature of and the prohibition of flying and printing and the consequences of such behaviours. Firms may also want to consider enhanced training for desks considered to be higher risk.
- take all steps to assure themselves that surveillance procedures to identify and report flying and printing are robust, and that the behaviours are considered in risk assessments. Factors to be considered could include properly targeted surveillance to identify spread compression, order cancellation rates, order to trade ratios, and the lexicons embedded in e-comms surveillance systems.

- ensure that disciplinary procedures offer clear and consistent processes for dealing with misconduct, and that commercial interests are not drivers of outcomes.

Firms should take all steps to ensure compliance with relevant legislation, and make changes where gaps are identified. The FCA will not hesitate to intervene when it suspects behaviour detrimental to confidence in, and the fairness of, UK markets.

2. REGULATORY REFORM

2.1 FCA publishes finalised rule review framework

On 10 January 2024, the FCA updated its [webpage](#) on its Rule Review Framework. The FCA published its [response](#) to the feedback to the consultation separately. As well as monitoring and reviewing the rules, the FCA will also consider whether the Framework is meeting its intended outcomes and update this as needed.

This Framework applies to all rules in the FCA Handbook, with some of the requirements on monitoring applying especially to new rules. However, as part of the Framework's initial implementation, there may be some rules, such as those that were added to the Handbook shortly after this Framework's publication, that do not fully meet all the requirements on monitoring. The FCA will explain adherence to the Framework in relevant publications on rules, including Consultation Papers and Policy Statements.

The Framework sets out the three main types of rule review that the FCA may undertake, their purpose and when they may be used.

These are:

- an evidence assessment
- a post implementation review
- an impact evaluation.

The Framework also sets out what actions the FCA may take as a result of a review, where it has concluded a rule is not working as intended.

These include considering whether:

- the FCA can improve understanding of the existing rule, for example, through additional guidance.
- a change to the rule is needed (including varying or revoking the rule) - the FCA would follow its existing policy development process to achieve this.
- a further, more detailed, review would be helpful. This could be undertaken immediately, scheduled for a future date or depend on the outcome of further monitoring. This may be the case where the first review was an evidence assessment.

As well as providing valuable insight into how well a rule is working, the findings of a review can inform the FCA's wider work and approach.

2.2 HMT equivalence decision on EEA states under Overseas Funds Regime

On 30 January 2024, the Economic Secretary to the Treasury, Bim Afolami, announced in a [statement](#) to the House of Commons that HM Treasury (HMT) has reached a decision regarding the equivalence assessment for EEA states under the UK's Overseas Funds Regime (OFR).

The announcement confirms that, following a detailed assessment, the Government has found the EEA states, including the EU member states, equivalent under the OFR. To enact this decision, secondary legislation was required (see below). The Government does not intend to require the funds assessed to comply with any additional UK requirements as part of this equivalence determination at this time.

This decision will apply to Undertakings for the Collective Investment in Transferable Securities except those which are also Money Market Funds (MMFs), as there is ongoing regulatory development in this area.

In accordance with the principles set out in the Guidance Document for the UK's Equivalence Framework for Financial Services, the UK will monitor this equivalence decision on an ongoing basis, in light of UK and EEA regulatory developments.

On 31 January 2024, a draft statutory instrument (SI), [the Financial Services Act 2021 \(Overseas Funds Regime and Recognition of Parts of Schemes\) \(Amendment and Modification\) Regulations 2024](#) – was published on legislation.gov.uk, with [a draft explanatory memorandum](#).

The draft SI supports the operationalisation of the OFR, a new equivalence regime to recognise overseas funds under section 271A of the Financial Services and Markets Act (FSMA) 2000 (c. 8), which was legislated for in the Financial Services Act (FSA) 2021 (c. 22). This SI makes consequential amendments across the statute book to insert references to section 271A FSMA 2000. It also makes modifications to some of these new amendments and existing references to recognised funds where relevant, to ensure that such references account for recognised sub-funds - a commonly used structure whereby funds have an umbrella fund, under which different sub-funds sit, each with their own investment strategies.

The draft SI states that it will come into force on 26 February 2024.

2.3 The Public Offers and Admissions to Trading Regulations 2024 are published

On 31 January 2024, a statutory instrument (SI) – [The Public Offers and Admissions to Trading Regulations 2024](#) – was published on legislation.gov.uk, with an [explanatory memorandum](#).

The SI forms part of HM Treasury's programme to deliver the Smarter Regulatory Framework for financial services tailored to the UK. It replaces the Prospectus Regulation and creates a new framework for the offering of securities to the public in the UK.

The SI:

- creates a general prohibition on public offers of securities, followed by a series of exceptions from this prohibition
- establishes a new regime for securities 'admitted to trading' on a regulated market or multilateral trading facility (MTF)

- creates a new regulated activity of operating an electronic system for public offers of certain securities.

The SI will come fully into force alongside the commencement of the repeal of retained EU law relating to prospectuses.

3. EU REGULATORY UPDATES

3.1. European Supervisory Authorities publish updated Q&As on the SFDR

On 12 January 2024, the European Supervisory Authorities issues consolidated [Q&As on the Sustainable Finance Disclosure Regulation](#). The Q&As combine responses given by the European Commission to questions requiring interpretation of Union Law, and responses generated by the ESAs relating to the practical application or implementation of SFDR.

The topics include:

- scope issues
- Definition of sustainable investment
- current value of all investments in PAI and Taxonomy-aligned disclosures
- PAI disclosures
- financial product disclosures
- multi-option products
- taxonomy-aligned investment disclosures
- financial advisers and execution-only FMPs.

4. FINANCIAL CRIME

4.1 Council of the EU and European Parliament strike deal on stricter AML rules

On 18 January 2024, the Council and Parliament came to a [provisional agreement](#) on parts of the anti-money laundering package that aims to protect EU citizens and the EU's financial system against money laundering and terrorist financing.

With the new package, all rules applying to the private sector will be transferred to a new regulation, while the directive will deal with the organisation of institutional AML/CFT systems at national level in the member states.

The provisional agreements covers the following points:

- Obligated entities: the provisional agreement expands the list of obliged entities to new bodies. The new rules will cover most of the crypto sector, forcing all crypto-asset service providers (CASPs) to conduct due diligence on their customers. This means that they will have to verify facts and information about their customers, as well as report suspicious activity.

- Enhanced due diligence: credit and financial institutions will undertake enhanced due diligence measures when business relationships with very wealthy (high net-worth) individuals involve the handling of a large amount of assets. The failure to do so will be considered an aggravating factor in the sanctioning regime.
- Cash payments: an EU-wide maximum limit of €10,000 is set for cash payments, which will make it harder for criminals to launder dirty money. Member states will have the flexibility to impose a lower maximum limit if they wish. In addition, according to the provisional agreement, obliged entities will need to identify and verify the identity of a person who carries out an occasional transaction in cash between €3,000 and €10,000
- Beneficial ownership: the agreement clarifies that beneficial ownership is based on two components – ownership and control – which both need to be analysed to identify all the beneficial owners of that legal entity or across types of entities, including non-EU entities when they do business in the EU or purchase real estate in the EU. The agreement sets the beneficial ownership threshold at 25%. Related rules applicable to multi-layered ownership and control structures are also clarified to make sure hiding behind multiple layers of ownership of companies won't work anymore. In parallel, data protection and record retention provisions are clarified to make the work of the competent authorities easier and faster. The agreement provides for the registration of the beneficial ownership of all foreign entities that own real estate with retroactivity until 1 January 2014.
- High-risk third countries: obliged entities will be required to apply enhanced due diligence measures to occasional transactions and business relationships involving high-risk third countries whose shortcomings in their national anti-money laundering and counter-terrorism regimes make them represent a threat to the integrity of the EU's internal market.
- The Anti-money laundering directive will cover updates to the Beneficial ownership registers; the responsibilities of Financial Intelligence Units; supervisors; an EU-level risk assessment.

The texts will now be finalised and presented to member states' representatives in the Committee of permanent representatives and the European Parliament for approval. If approved, the Council and the Parliament will have to formally adopt the texts before they are published in the EU's Official Journal and enter into force.

4.2 The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2024 are published

On 23 January 2024, the [Money Laundering and Terrorist Financing \(High-Risk Countries\) \(Amendment\) Regulations 2024](#) was published, along with an [explanatory memorandum](#).

The objective behind this legislation is to streamline updates to the High Risk Third Countries (HRTCs) in respect of which regulated businesses must carry out enhanced due diligence (“EDD”). Referring businesses directly to the jurisdictions published in the FATF lists, rather than a separate schedule in the Money Laundering Regulations, removes the need for up to three SIs per year in order to keep the UK's list of HRTCs in alignment with the FATF lists. It allows the Government to respond more quickly to international findings and to provide greater clarity to businesses on which jurisdictions are deemed to be high-risk at the speed necessary, allowing businesses to protect themselves and their customers.

The Regulations entered into force on 23 January 2024.

5. ESG

5.1. EBA consults on guidelines on the management of ESG risks

On 18 January 2024, The European Banking Authority (EBA) launched a [public consultation](#) on draft Guidelines on the management of Environmental, Social and Governance (ESG) risks. The draft Guidelines set out requirements for institutions for the identification, measurement, management and monitoring of ESG risks, including through plans aimed at addressing the risks arising from the transition towards an EU climate-neutral economy. The consultation runs until 18 April 2024.

Climate change, environmental degradation, social issues and other environmental, social and governance factors are posing considerable challenges for the economy that impact the financial sector. The risk profile and business model of institutions may be affected by ESG risks, in particular environmental risks through transition and physical risk drivers.

To ensure the safety and soundness of institutions in the short, medium and long term, the Guidelines set requirements for the internal processes and ESG risks management arrangements that institutions should have in place. As part of it, these Guidelines set out principles for the development and content of institutions' plans in accordance with the Capital Requirement Directive (CRD6), with a view to monitoring and adequately addressing the financial risks stemming from ESG factors, including those arising from the adjustment process towards the objective of achieving climate neutrality in the EU by 2050.

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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