

# Regulatory Update

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## 1. FCA UPDATES & DEVELOPMENTS

### 1.1 FCA published findings on oversight of Appointed Representatives

On 6 September the FCA published its [findings](#) following a review of how principal firms are meeting Appointed Representative rules. The FCA sets out good practice and areas for improvement to help principal firms monitor their appointed representatives (ARs).

Examples of good practice from principals included keeping clear documentation to show compliance with the FCA's enhanced rules and using a broad range of checks and information to oversee and monitor ARs' activities.

The FCA did, however, find some firms were taking a tick-box approach to complying with its rules, relying on basic information like website checks, or using self-declarations from their ARs, to demonstrate effective oversight.

The review also found:

- 1 in 5 principals had not carried out the required self-assessment or annual review of their ARs
- approximately half of principals were not regularly reviewing their AR agreements
- a third of principals were not using data or management information to monitor whether ARs were acting within the scope of AR agreements.

### 1.2 FCA Quarterly Consultation Paper No. 45

On 6 September 2024, the FCA published [Quarterly Consultation Paper No.45](#). Once per quarter, the FCA consults on proposed miscellaneous amendments to the FCA Handbook.

In CP24/18 the FCA is proposing to:

- change the definition of 'firm' to clarify that designated coordination bodies fall within the remit of the Enforcement Guide and Decision Procedure and Penalties Manual
- allow a Non-UCITS Retail Scheme (NURS) to be exposed to long-term asset funds without the constraints of the second scheme rules.

### 1.3 FCA speech on the new listing rules and what's to come

On 6 September 2024, the FCA published a speech – [The FCA's new listing rules and what's to come](#), by Sarah Pritchard, Executive Director of Markets and International at The Capital Markets Industry Taskforce conference. The key messages included:

- the FCA is continuing with its ambitious package of reforms to strengthen the UK's position in global wholesale markets
- after undertaking the biggest change to the listing rules in over three decades, the FCA followed up weeks later with a package of measures to further boost the UK's position as a global and vibrant financial centre
- success isn't measured in days, weeks or months – it is measured in the long-term economic growth of UK capital markets.

## 1.4 FCA provides information on approach to recognising funds under the OFR

On 12 September 2024, the FCA published information on its [approach to recognising funds under the OFR](#).

The aim of the document is to assist firms in making an application for an overseas investment fund to be recognised under the Overseas Funds Regime. The FCA sets out details of the process and explains some of the factors it will look at when deciding whether an overseas fund meets the conditions for being recognised under the Financial Services and Markets Act 2000.

The Overseas Funds Regime (OFR) is a new legislative gateway to allow certain investment funds established outside the UK to be promoted in the UK, including to retail clients. If a fund applies for and is given “recognised scheme” status under the OFR, it can be promoted in the same way as an authorised collective investment scheme established in the UK.

## 1.5 FCA update on good and poor practice in implementing the Consumer Duty’s price and value outcome

On 18 September 2024, the FCA published [insights](#) from the first year of the implementation of the price and value outcome that is intended to help firms improve the way they think about fair value assessments.

The [Consumer Duty](#) sets high and clear standards of protection for retail customers across financial services. Firms made significant compliance efforts in the lead up to the Duty coming into force on 31 July 2023, and after that in relation to closed products and services, which have become subject of the Duty from 31 July 2024. Firms are continuing to adjust and improve the way they are implementing the Consumer Duty to deliver good consumer outcomes.

The FCA’s key messages to firms are:

- outcomes of the Consumer Duty should be considered holistically
- effectively identifying target markets helps in assessing impacts on different customer
- an analysis of cross-subsidies, where relevant in a firm’s business model, can be helpful in identifying where different consumer groups may be at risk of not receiving fair value
- evidence is vital in fair value assessments, but firms should be proportionate in their approach
- prompt action should be identified and taken if fair value assessments show consumers are at risk of not receiving fair value.

## 1.6 BoE and FCA open Digital Securities Sandbox for applications

On 30 September 2024, the BoE and the FCA [announced](#) that the Digital Securities Sandbox (DSS) has opened for applications. The DSS allows firms to test regulatory changes in real world scenarios before changes are fully implemented.

The DSS gives firms the opportunity to explore new technologies in traditional financial markets, for example, distributed ledger technology (DLT), a system for storing and managing information distributed

across participants in a network. This technology has the potential to improve efficiency and reduce costs in wholesale markets, benefitting industry and investors.

The FCA and BoE encourage firms that are innovating in financial market infrastructure to apply to the DSS and have published guidance to help them.

## 1.7 FCA updates its statement on forbearance in relation to investment trust disclosure requirements

On 30 September 2024, the FCA published an update to its [statement](#) on forbearance in relation to investment trust disclosure requirements. This updated statement sets out the FCA's forbearance given the Government's intention to exclude some investment trusts from the PRIIPs Regulation and other assimilated law.

In the updated statement the FCA flags that the implication of the forbearance is that it applies along the distribution chain, to any firm carrying on business relating to these products, including manufacturing, distribution or marketing. All firms must continue to comply with other relevant rules and regulations including the Consumer Duty and the requirements to ensure communications are fair, clear and not misleading. Firms also need to comply with the requirements in COBS 2.1.1R to act honestly, fairly and professionally in accordance with the best interests of clients.

This means firms across the distribution chain will need to consider what approach will deliver good outcomes for their retail clients. For example, where a firm chooses not to provide a key information document (KID), they may wish to consider whether any additional product information is needed to support retail investors, in line with PRIN 2.A.5.3R(1) requirements to equip consumers with the information to make effective, timely and properly informed decisions.

## 2. FINANCIAL CRIME

### 2.1 FCA speech on financial crime

On 5 September 2024, the FCA published a speech – [a targeted and outcomes-based approach to tackling financial crime](#), by Sarah Pritchard Executive Director, Markets and Executive Director, International at the Financial Crime Summit, London. Highlights included the following:

- fighting financial crime is a priority for the FCA and a key commitment in its 3-year strategy
- consistent with the national economic crime plan and fraud strategy, its work is based on a partnership approach
- financial crime is not just an issue for the financial sector, but for other sectors too, sharing data and intelligence is a vital tool in staying one step ahead.

## 2.2 JMLSG publishes revisions to Sector 18 (Wholesale markets) in Part II of its Guidance

On 30 September 2024, the Joint Money Laundering Steering Group (JMLSG) [published](#) revisions to Sector 18 (Wholesale markets) in Part II of its Guidance.

The revisions, which the JMLSG consulted on earlier in 2024, have been submitted to HM Treasury for Ministerial approval.

## 3. ESG

### 3.1 FCA sets out temporary measures for firms on ‘naming and marketing’ sustainability rules

On 9 September 2024, the FCA set out temporary measures for firms on ‘naming and marketing’ sustainability rules. The temporary flexibility is available until 2 April 2025.

Through engagement with industry and their representative trade bodies, it has become clear it has taken longer than expected for some firms to make the required changes. In particular, some firms wishing to use an investment label, or which need to change the names of their products, require more time to meet the higher standards and prepare the disclosures needed for the FCA’s approval.

Given the importance of getting SDR right for investors, the FCA is seeking to take a pragmatic and outcomes-based approach to provide further support to those firms that may need additional time to operationalise any changes required.

The FCA is offering limited temporary flexibility until 2 April 2025, for firms to comply with the ‘naming and marketing’ rules (i.e. ESG 4.3.2R to ESG 4.3.8R of the [ESG sourcebook](#)) in relation to a [sustainability product](#) which is a UK authorised investment fund in exceptional circumstances where the firm:

- had submitted a completed application for approval of amended disclosures in line with ESG 5.3.2R for that fund by 5pm on 1 October 2024; and
- is currently using one or more of the terms ‘sustainable’, ‘sustainability’ or ‘impact’ (or a variation of those terms) in the name of that fund and is intending either to use a label, or to change the name of that fund.

Where firms can comply with the rules without requiring this flexibility, they should do so. The FCA also expects firms to comply with the rules as soon as they can, without waiting until 2 April 2025.

Firms must continue to comply with all other relevant rules, including the anti-greenwashing rule.

These temporary measures do not apply to funds using other sustainability-related terms in their names that are not specified above.

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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.