

EFFECTA REGULATORY NEWSLETTER NO 1. 2021

May 2021

Welcome to the Effecta Compliance regulatory newsletter. In the ever changing regulatory landscape, it is key that firms keep up to date to with latest compliance developments and ensure relevant compliance changes are considered internally and implemented by firms and ahead of any deadlines set by the Regulator. Our newsletter is designed to provide information on the latest regulatory topics in an easy to read and succinct format. In this newsletter we cover the following topics:

- New Prudential Regime for Investment Firms (Update April 2021)
- Financial Conduct Authority Temporary Permission Regime
- Senior Managers and Certification Regime Staff Certifications
- FCA Fee and Levy Consultation
- Annual Financial Crime Report
- RTS 27 Best Execution Reports and 10% Depreciation Notifications
- Transaction Reporting and Brexit
- Environmental Social Governance amendments to AIFMD and UCITS Directive
- Operational Resilience policy statement
- FCA new online invoicing portal
- FCA Statement on Diversity
- HMT consultation on Stablecoins

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New Prudential Regime for Investment Firms (Update April 2021)

The FCA published its second consultation paper (CP21/7) on the Investment Firm Prudential Regime (IFPR) on 19th April 2021.

The consultation paper provided some more of the detail needed to prepare for the IFPR, which will apply from 1st January 2022. The consultation also finalises the capital and liquidity requirements and the new Internal Capital and Risk Assessment ("ICARA") process, which will alter the way firms need to review and manage their risk.

The consultation paper covers the following areas:

Own Funds

The FCA confirms details of the changes to the Own Funds Requirements for firms. This is made up of the greater of the Fixed Overhead Requirement ("FOR") (confirmed as three months expenses less specific deductions), the new permanent minimum requirement and, for firms that are not categorised as "small non-interconnected" firms, the sum of the activity based "K-factor" requirements.

Liquidity

The consultation paper confirmed that the basic liquid asset requirement is set at one third of the FOR (which could mean firms need to considerably increase their liquid assets!), with some additional requirements for guarantees where relevant. Firms that are part of a group can apply for an exemption to rely on liquidity elsewhere in a group, but this will not be available for solo regulated firms.

Supervisory Approach

Going forward, the FCA will be more reliant on data to supervise and ensure the ongoing capital requirement is being met, and will conduct fewer visits to firms. The FCA confirmed they will use data from regulatory reporting, including a new "ICARA Questionnaire" and will conduct thematic reviews of sub-sectors of firms which could lead to additional capital requirements for those sub-sectors if the FCA is not satisfied with the outcome of their thematic reviews.

ICARA Process

The consultation paper sets out its expectations of the new ICARA process, which applies to all FCA regulated firms. This will involve an in-depth review of a firm's risks and could potentially be an intensive piece of work to implement, even for those firms who are used to the current ICAAP process. The ICARA process must be updated at least annually, and will need to be signed off by the board (or



senior management), although it should also be a continuous process and reviewed and updated on an ongoing basis.

This process will make firms think about the ongoing risks within their businesses and whether they have sufficient capital and liquidity to mitigate the risks. As part of the process firms will also need to consider their wind-down planning at a firm level.

You can find Effecta's knowledge piece on the FCA first IFPR consultation process here: [First Consultation Paper on a New FCA Prudential Regime for Investment firms – It's now time to join the debate! – Effecta Compliance](#)

You can find the FCA CP21/7 here: [CP21/7 A new UK prudential regime for MiFID investment firms | FCA](#)

Financial Conduct Authority Temporary Permission Regime

As part of the United Kingdom's ("UK") preparations for Brexit, the UK Government, along with the Financial Conduct Authority ("FCA") established the Temporary Permission Regime ("TPR") for firms based in the European Economic Area ("EEA") that passported services into the UK.

The TPR allows EEA-based firms that were passporting into the UK at the end of the transition period to continue operating in the UK for a limited time after 31st December 2020. This is subject to having notified the FCA that they wanted to join the TPR before the transition period had expired.

During the period firms are within the TPR, they will be issued with a time slot in which they must apply to the FCA for full authorisation to continue to access the UK market or confirm their withdrawal from the TPR. Failure to get authorised within the correct time slot could see the EEA-based firm unable to carry on undertaking regulated business within the UK.

Please see Effecta's full Regulatory Insight article on the TPR here: [EU Firms using the Temporary Permission Regime should look out for their Landing Slot – Effecta Compliance](#)

Senior Managers and Certification Regime Staff Certifications

Under the Senior Managers and Certification regime ("SM&CR"), which replaced the Approved Person Regime for solo regulated firms on 9 December 2019 (with a one year transition period), firms were required to assess the fitness and propriety of their certified staff before the expiry of the transition period, that period was then extended to 31 March 2021 due to COVID-19. Firms must have notified the FCA of their certified persons for upload to the FCA Directory ahead of the March deadline, but it has been reported that 2,800 firms are yet to do so. Therefore, the FCA will be writing to these firms to give a small extension of time to complete this, if no certified persons are uploaded prior to the new deadline then a £250 admin fine will be issued ahead of further punishments for continued non-compliance.



Please see Effecta's full Regulatory Insight article on the SM&CR here: [Senior Managers and Certification Regime – Hands up if you are ready – Effecta Compliance](#)

FCA Fee and Levy Consultation

The FCA has published a Consultation Paper (CP 20/22) on changes in the way it will increase regulated fees and levies rates from 2021/2022, however the consultation feedback period closed in January 2021 and the industry awaits the outcomes from the consultation.

The consultation seeks feedback on simplifying all FCA authorisation application fees and introducing new transaction fees; propose a structure of periodic fees for crypto-asset businesses and introduce income based calculations to periodic fees for firms that operate in OTFs and MTFs.

More specifically, a few of the proposed changes include:

- Introducing a fee for Change in Control applications of £500 and for individual Senior Managers applications of £250.
- Increasing FCA application fees, i.e. for a "straightforward" application, there will be an increase from the current amount of £1,500 to £2,500 and for a "moderately complex" application the fee would increase from £5,000 to potentially up to £10,000.

The FCA state that in 2019 the total cost of running the Authorisations Department was £19 million, the application fees meanwhile raised revenue of £6.2m and the FCA wish to cover more of their costs. This will be the first time the fees have increased since the regulator changed from the "Financial Services Authority" to the "Financial Conduct Authority" in 2014.

Annual Financial Crime Report

In March 2021, the FCA released a policy statement summarising proposals to increase the number of firms who need to submit the annual financial crime report ("REP-CRIM") going forward. The policy statement proposes that additional firms and cryptoasset business should be brought into scope of the return based on their business activities and the potential money laundering risks.

This will increase the number of firms who need to submit a REP-CRIM from 2,500 to 7,000 (approx) as the FCA are requiring more firms to report if they are considered to pose a higher money laundering risk and firms that are being brought into scope will need to prepare to submit the return when it becomes due. The date it is due can be found with the Firm's GABRIEL schedule (or RegData schedule for those firms who have been moved across to the new system).



RTS 27 Best Execution Reports and 10% Depreciation Notifications

In March 2021, the FCA announced that the next set of RTS 27 Best Execution reports on execution quality will be based on pre-Brexit data. As a result, the information in them is likely to be of limited use for market participants and may even be misleading. There is also a particular challenge arising from the European Union's two-year suspension of RTS 27 reports for firms within the Temporary Permissions Regime (see above).

The FCA are currently preparing a consultation looking at the RTS 27 reporting obligation, with a view to ending it altogether, given concerns around the value these reports bring to the market and to consumers, and the difficulties involved in producing them.

Considering this forthcoming consultation, the FCA has confirmed that they will not take action against firms who do not produce RTS 27 reports for the rest of 2021. The FCA expect that by the end of 2021 they will be in position to confirm whether the RTS 27 will continue or will officially end.

For the last twelve months the FCA have adopted temporary Covid-19 measures on the requirement for firms to issue 10% depreciation notifications to investors (as per COBS 16A.4.3 of the FCA Handbook).

These measures were put in place to help firms support consumers during periods of actual/potential market volatility linked to the spread of Covid-19 and also the Brexit transitional period.

This period of flexibility has given the FCA the opportunity to consider the effectiveness of the 10% depreciation notification requirement and they intend to consult on changes to the requirement later in 2021. The FCA are therefore extending the temporary measures for firms until the end of 2021 while they undertake policy work on the future of the requirement.

Therefore, the FCA will not take action for a breach of COBS 16A.4.3 provided that firms have allowed professional clients to opt-in to receiving depreciation notifications upon request. Firms that have retail clients will need to continue to provide the depreciation notifications as applicable.

The link to the article on the FCA website can be found here: [Supervisory flexibility on RTS 27 reports and 10% depreciation notifications | FCA](#)

Transaction Reporting and Brexit

Post-Brexit reporting obligations in the UK are the same as those under MiFIR/MiFID II in the pre-Brexit era, as the transaction reporting requirements have been adopted locally by the UK parliament. However, now that the UK is able to set its own transaction reporting requirements, over time it is likely that the UK will make changes and diverge away from the current EU regime.

For now, it is important to note that in the event an EU investment firm has executed its transactions via a UK branch or vice versa, the entity will have a dual reporting obligation to the FCA and the local EU regulator. The FCA has confirmed that a UK branch will no longer be able to discharge the reporting obligations by transmitting orders to other entities within the EU.



All investment firms should review their current arrangements and ensure that they are compliant with their reporting requirements post Brexit. This may mean reviewing transaction reporting agreements, setting up new agreements and if a delegated reporting provider is used, firms should ensure that the appropriate arrangements are in place, particularly if dual reporting is required.

Environmental Social Governance amendments to AIFMD and UCITS Directive

The European Services and Markets Act's ("ESMA") proposed reforms to the UCITS and AIFMD regimes would embed a requirement to consider sustainability into the organisational rules that apply to UCITS, ManCos and AIFMs. For example, both AIFMs and UCITS ManCos would be required to take sustainability risks into account when establishing decision making procedures, allocating responsibilities and ensuring compliance with internal procedures.

UCITS ManCos and AIFMs would also need to consider whether they have the necessary resources and expertise for the "effective integration of sustainability risks" into their governance structure as well as the current requirement to employ personnel with the skill, knowledge and expertise necessary for the discharge of their responsibilities.

Finally, both AIFMs and UCITS ManCos would need to ensure that their senior management is made responsible for integrating a consideration of sustainability risks into the investment manager's business.

Firms will have to amend organisational procedures, conflicts of interest policies, risk management policies and arrangements for investment due diligence to consider the sustainability risks.

Operational Resilience policy statement

On the 29th of March 2021, the FCA published a Policy Statement on Building Operational Resilience (PS21/3).

In PS21/3, the FCA sets out its final rules and notes that it has:

- Extended the period to implementation to provide firms with more time and flexibility to meet mapping and scenario testing requirements;
- clarified how the rules fit with the broader domestic and international regulatory landscape and other FCA policy initiatives;
- sets out how it will further support firms in implementing the rules on operational resilience; and
- includes more varied examples of how different types of firm might apply the proposals.

The FCA plans to apply these changes proportionately to firms, reflecting the impact on consumers and market integrity if their services are disrupted. The FCA states the proposed approach is proportionate and flexible enough to accommodate the different business models of firms.



The FCA rules and guidance will come into force on 31 March 2022. By this date, firms must have identified their important business services, set impact tolerances for the maximum tolerant disruption and carried out mapping and testing to a level of sophistication necessary to do so. Firms must also have identified any vulnerabilities in their operational resilience.

The FCA also states that as soon as possible after 31 March 2022, and no later than 31 March 2025, firms must have performed mapping and testing so that they are able to remain within impact tolerances for each important business service. Firms must also have made the necessary investments to enable them to operate consistently within their impact tolerances.

The policy statement can be found here: [Policy Statement 21/3: Building operational resilience: Feedback to CP19/32](#)

FCA new online invoicing portal

On the April 2021, the FCA launched a new Online Invoicing Portal:

The portal can be used to access invoices and arrange payment of fees. The change is part of the FCA's wider data strategy to help ensure the FCA keep up to date with new technology and ensure their systems are efficient and effective. Users can access the new portal using the same login details as they use for the FCA Connect system.

The portal can be found on the link below: [Login \(fca.org.uk\)](#)

FCA Statement on Diversity

On 17 March 2021, the FCA published a speech by Nikhi Rathi (CEO, FCA) entitled "Why Diversity and Inclusion are Regulatory Issues". Key points from Mr Rathi's speech were:

- The charter, which challenges the financial services industry to do better, is making a difference.
- Diversity will be crucial in the FCA's consideration of vulnerability, particularly as we come out of the COVID-19 pandemic that has disproportionately affected women and people of colour.
- The FCA are working with the Prudential Regulation Authority on a joint approach to D&I for all financial services firms.
- The FCA will increasingly be asking tough questions firms about representation across grades and whether their culture is open and inclusive and provides a safe space for colleagues at all levels of the organisation.
- As part of our regulatory work on diversity and inclusion and the listings framework, we will be exploring whether we should make diversity requirements part of our premium listing rules.

The full speech can be found here: [Why diversity and inclusion are regulatory issues | FCA](#)



HMT consultation on Stablecoins

HM Treasury has published a consultation on the future regulatory landscape as it will apply to cryptoasset issuers and firms providing cryptoasset services. The consultation does not have any legal effect, but it does set out in broad strokes the direction of future cryptoasset regulation in the UK.

The consultation paper looks at the expansion of the scope of the current regulatory perimeter to include first stablecoins and, in the future, other unregulated cryptoassets.

The primary concern of HMT is to "ensure that tokens which could be reliably used for retail or wholesale transactions are subject to minimum requirements and protections as part of a UK authorisation regime". As a result, the proposals are primarily focused on stablecoins which reference an underlying asset or assets, such as a single fiat currency or a group of investment assets, as HMT considers them to be the most stable types of cryptoassets. Where tokens are also considered to be e-money tokens, then they may fall within scope of both the new regulatory regime and the EMRs.

The proposals also consider the systematic use of stablecoin payment systems in a way that would allow stablecoins to essentially work as a form of crypto currency. However, it should be noted that no such systematic adoption seems likely in the near future and unregulated exchanges and stablecoins (and other utility tokens) remain out of scope of the authorisation regime.

However, what could be brought within scope are Anti-Money Laundering and financial promotions regimes and HMT is requesting feedback on the following issues:

- whether there is value in treating unregulated tokens, such as popular utility and exchange tokens, as speculative investments under the regulatory perimeter; and
- whether any clarifications or amendments could be made to pre-existing regulations to support the issuance and use of regulated security tokens.

The consultation identifies the following cryptoasset services as requiring authorisation (if the proposals were implemented):

- transmission of funds;
- executing transactions;
- validating payment transactions;
- custody and administration of stablecoins for third parties; and
- facilitating access to stablecoin networks or underlying infrastructures by participants.

There will be some exemptions available, such as for small payment service providers that do not meet a minimum volume of transactions.

HMT is also consulting on potential location requirements to protect the UK from active marketing of unregulated in-scope tokens from overseas issuers or service providers. The proposals are wide ranging and high level at this point.





The standards that an authorised firm must meet in relation to in-scope cryptoasset services would be broadly similar to those of an authorised firm under the Financial Services and Markets Act 2000, but will be discussed further by HMT in future consultations.

The Consultation can be found here: [UK regulatory approach to cryptoassets and stablecoins: consultation and call for evidence - GOV.UK \(www.gov.uk\)](#)

