EFFECTA
REGULATORY CONSULTING

REGULATORY OVERVIEW OF COMPLIANCE CHANGES DURING 2020

18th December, 2020

- **SENIOR MANAGERS AND CERTIFICATION REGIME LATEST**
- **KEY REPORTING REQUIREMENTS AFTER BREXIT**
- **NEW PRUDENTIAL REGIME FOR INVESTMENT FIRMS**

The year 2020 has been challenging for many reasons. Amidst a global pandemic and the years Brexit transition before the UK officially leaves the EU (very possibly without a deal), firms have had to to be able to oversee their compliance programs and maintain operational resilience during "the new normal" being a work from home environment, which has brought with it increased outsourcing and technology changes that required implementing in a compliant way.

During these turbulent times compliance areas have also had to incorporate planned regulatory change (albeit with some concessions made by the FCA), and in this article we take a look at those changes during 2020 in reverse chronological order and make a regulatory scan of the forthcoming changes in 2021.

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Q4 2020

FCA GABRIEL system is being replaced by the new Regulatory Data Collection Platform ("RegData").

Firm Type: All

The first regulated firms started to be moved from the FCA GABRIEL system to the new "RegData" system for regulatory reporting from mid-October 2020, with all firms to be moved across over the coming months and into 2021.

Firms will be notified of their moving date via email at 3 weeks, 5 days and 1 day notice before they are moved across. Firms will not be able to access RegData until they and their users' data has been moved across from GABRIEL and until then Firms should continue to use GABRIEL for ongoing regulatory reporting.

Further information: **RegData | FCA**

Extended deadline to certify staff under the Senior Managers Certification Regime ("SM&CR") Update.

Firm Type: All

The SM&CR went live on 9 December 2019 and originally had a one year transitional period cumulating on 9 December 2020 to assess all Certified Staff as fit and proper, issue certificates and once certified upload details of Certified Staff to the new "FCA Directory". However, due to the impact of the coronavirus pandemic, the regulator now intends to extend the deadline to 31 March 2021. The introduction of the Conduct Rules for those members of staff who are not Senior Managers or Certified Staff has also been delayed until 31 March 2021.

This extension will give firms affected by the coronavirus pandemic time to complete assessments of staff, however, the FCA stated where firms are able to certify staff earlier than March 2021 they should do so and firms should not wait to remove staff who are not fit and proper from certified roles.

Further information: **Extension of the Senior Managers & Certification Regime (SM&CR) implementation periods for solo-regulated firms | FCA**

Q3

Senior Managers and Appointed Representative's Approval extension to cover absence due to Coronavirus

Firm Type: All

The FCA has temporarily extended the period for which Senior Managers and Appointed Representatives' ("ARs") Approved Persons can be covered by another member of staff, without regulatory approval, from 12 weeks to 36 weeks in a consecutive 12 month period, provided the absence is due to COVID-19. Oddly, it does not confirm if this extension incorporates long term absence due to any other type of illness.

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The change in the rules covers situations where staff are absent due to COVID-19 as well as where there is a delay in the recruitment of a replacement for a Senior Manager or an ARs Approved Person due to the pandemic. Firms can allocate the absent member of staff's responsibilities, including Senior Manager prescribed responsibilities, to the person covering the role.

Firms are required to submit a notification to their FCA supervisor if they think they may need to make use of the extension, for most firms this will be the FCA Contact Centre. All firms must clearly document any changes to responsibilities internally, including Senior Manager prescribed responsibilities, so that everyone understands who is responsible for what areas. Firms should be aware that the FCA may request this documentation now or in the future.

Further information: **Period to cover absent Senior Managers extended due to coronavirus (Covid-19) | FCA**

Q2

European Securities and Markets Authority ("ESMA") Focus on European Fund Fees

Firm Type: All

ESMA held a Supervisory briefing on costs in UCITS and Alternative Investment Funds ("AIFs"), which was published on 4 June 2020. The briefing aims to align the approach of European regulators to the supervision of fund costs. The Briefing outlines criteria for the assessment and supervision of UCITS management companies and AIFMs (collectively "management companies") obligation to prevent "undue costs" being charged to investors.

ESMA suggest that European regulators require management companies to develop a "pricing process" to document how they work out and review fund costs charged to investors. In practice, this will require an in-depth cost analysis of each fund. Management companies will be required to prepare this at the initial launch for new funds and on an ongoing basis for all funds.

It remains to be seen what action the FCA will take on this matter (if any) following the UK's decision to leave the EU in January 2021 and we await further details from the FCA.

Further information: **ESMA promotes convergence in the supervision of costs in UCITS and AIFs (europa.eu)**

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FCA business plan for 2020/21

Firm Type: All

The FCA released its business plan for 2020/21 on 7 April 2020 and used it as an opportunity to highlight its finite resources which results in it having to focus its efforts on the areas of greatest potential harm. The impact of COVID-19 and the UK leaving the European Union were unsurprisingly high on the FCA's agenda.

The FCA stated their objectives are to focus efforts on ensuring that:

- Markets function well
- The most vulnerable consumers are protected
- The impact of firm failure is minimised
- Scams are investigated thoroughly
- Ensure consumers and small firms are treated fairly

Although the business plan for 2020/21 does not introduce any significant changes, it emphasises the Regulators existing areas of concern (e.g. conflicts of interest, treating customers fairly and business continuity). Therefore, firms should take this opportunity to consider their ongoing compliance requirements and ensure that they are in line with the FCA's expectations.

Further information: **Our Business Plan 2020/21 | FCA**

Q1

Annual RTS 28 statement on quality of execution and top five execution venues

Firm Type: MiFID Investment firms with retail permissions

The FCA wrote to CEOs of firms providing services to retail investors to set out its approach to Covid-19 on 31 March 2020. The communication confirmed that the Regulator has extended the deadline for the statement from 30 April 2020 to 30 June 2020 and "has no intention of taking enforcement action where a firm does not publish an RTS 28 disclosure by 30 April 2020, subject to them being published by 30 June 2020".

Further information: **Dear CEO Letter: Firms providing services to retail investors (fca.org.uk)**

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FCA extends 10% depreciation notifications deadline

Firm Type: MiFID Investment firms

Firms who fall under the MiFID directive are required to inform investors where the value of their portfolio or leveraged position falls by 10% or more compared with its value in their last periodic statement, and for each subsequent 10% fall in value (COBS16A.4.3).

However, in its 31 March 2020 letter to CEO's of firms providing services to retail investors (see above link), the FCA also confirmed that, until 1 October 2020, it has no intention of taking enforcement action where a firm chooses to cease providing 10% depreciation reports for any professional clients. In regards to retail clients, firms must have issued at least one notification to a client within a current reporting period, indicating their portfolio has decreased in value by at least 10%, and subsequently provide general updates through its website, other public channels (such as social media) and/or generic, non-personalised client communications.

General Data Protection Regulation ("GDPR")

Firm Type: All

The UK formally left the EU on 31 January 2020 and entered a transitionary period, which lasts until 31 December 2020. During this period, EU data protection law will continue to apply (in particular, the GDPR).

After the transition period ends, the UK is expected to apply to the European Commission for an "adequacy" decision to enable the continued free flow of personal data between the EU, but it is currently uncertain how this will operate in practice.

Firms should continue to monitor the situation as the absence of an adequacy decision will likely result in firms needing to revise contracts to legitimise continued EU UK data transfers post 31 December 2020.

UK Stewardship Code

Firm Type: All

The Financial Reporting Council ("FRC") completed a revision of the UK Stewardship Code which came into effect on 1 January 2020. The new code substantially raises expectations for how money is invested on behalf of UK savers and pensioners. It establishes a clear benchmark for stewardship as the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.

Firms wanting to become "signatories" to the new UK Stewardship Code 2020 are required to produce an annual Stewardship Report explaining how they have applied the Code and submit this to the FRC. Firms wanting to be amongst the first signatories, must submit their annual report by 31 March 2021.

Further information: **Investors I UK Stewardship Code I Financial Reporting Council (frc.org.uk)**

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Outsourced service providers

Firm Type: All

The UK Regulators are aware that firms are increasingly relying on third party service providers and outsourcing to facilitate the provision of their services and focused on this area in 2020. Outsourced service arrangements give rise to risk of operational disruption and harm to consumers where they are not effectively managed. The Regulator expects firms to be operationally resilient by having a comprehensive understanding and mapping of the people, processes, technology, facilities and information necessary to deliver each of your important business services, which includes any dependencies on third party providers.

The Bank of England ("BoE"), Prudential Regulation Authority ("PRA") and the FCA have launched a co-ordinated consultation on the extent to which their existing policies should be supplemented to improve the resilience of the system as a whole, and to increase the focus on this area within individual firms. The consultation is primarily aimed at UK banks, building societies and PRA designated investment firms and insurers but may result in FCA providing additional guidance or feedback to the wider industry.

Further information: **Building operational resilience: impact tolerances for important business services | FCA**

End of LIBOR Preparations

Firm Type: Asset Managers

The FCA wrote to the CEOs of all regulated asset management firms on 27 February 2020 to set out its expectations for firms as they prepare for the end of LIBOR. The Regulator set out next steps for firms as follows:

- Determine if the firm has LIBOR exposure or dependencies.
- The FCA expects transition activities to be underway and reminds firms that must develop and execute an appropriate plan.
- If the firm's board decides that no LIBOR transition plan is needed, the FCA may seek to understand and, where appropriate, challenge the reasons for this decision.
- If the board decide that a barrier to transition is insurmountable, or transition preparations will not be completed in time, the FCA will expect to be notified immediately via the firm's supervisory team so that the FCA can review further.

Further information: **Dear CEO Letter Asset management firms: prepare now for the end of LIBOR (fca.org.uk)**

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Senior Managers and Certification Regime comes into force

Firm Type: All

The SM&CR went live on the 9 December 2019 and applies to all FCA and PRA authorised firms such as banks, building societies, asset managers, insurers, mortgage providers and Consumer Credit firms. All solo regulated firms are now required to implement and adhere to the FCA rules on individual accountability.

The SM&CR establishes a new regulatory framework to:

• Hold all employees of authorised firms accountable for their actions
• Incorporate within the framework accountability of a firm's most senior individuals
• Encourage individuals to take greater responsibility for their conduct

Further information: **FCA extends the Senior Managers and Certification Regime to 47,000 firms | FCA**

Annual Standing Data Affirmation

Firm Type: All

Firms that have not registered with the FCA "Connect" platform will need to do so in preparation for a new mandatory update. Since January 2020 firms are now required to review and confirm the accuracy of their firm details annually, in line with their Accounting Reference Date and this will need to be completed via Connect.

The FCA will be contacting firms that are not Connect users to encourage them to register as soon as possible.

Firms can register via the FCA website or by calling the FCA during business hours on 0300 500 0597.

The Connect platform is also used for the submission of applications such as approved persons, variation of permissions and MiFID II notifications.

Further information: **Firms need to register for Connect to update their firm details | FCA**

New FCA Form - Management Body changes for Non SMF Directors

Firm Type: All

Since 9 December 2019 MiFID investment firms have been required to use a new form to submit information to the FCA when appointing Non SMF Directors to, or withdrawing them from, the firm's management body.

If a firm's management body changes, they will need to download the form, complete it and email it to the FCA at NonSMFNotification@fca.org.uk (The submission must be made via Connect).

Further information: **MIFID investment firms will need to use a new form to notify FCA of management body changes for Non-SMF Directors | FCA**

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Cryptoasset Firms FCA Registration

Firm Type: Cryptoasset

Since 10 January 2020 all UK cryptoasset businesses carrying on activities that fall within the scope of the Anti-Money Laundering ("Terrorist Financing and Transfer of Funds Regulations 2017") need to register with the FCA.

Firms undertaking the following activities should assume they are within scope and therefore required to register until HM Treasury publishes a response on the 5th Money Laundering Directive at which time they may reduce or extend the activities.

• Peer to peer providers
• Crypto asset exchange providers
• Custodian wallet providers
• Crypto asset ATM machine providers
• Issuers of new crypto assets
The FCA's remit under the regime will be limited to AML registration, supervision and enforcement only.

New Cryptoasset businesses incorporated after 10 January 2020 that intend to carry out the above activities must be registered prior to the activity commencing. Existing Cryptoasset business need to register by 10 January 2021 or cease all related activity.

Further information: **Cryptoassets: AML/CTF regime: Register with the FCA | FCA**

Regulatory Horizon 2021

In a year dominated by the pandemic and Brexit, firms must not lose sight of other regulatory developments that are to be implemented in 2021. Below we review the forthcoming regulatory changes that will impact the industry.

Q1

FCA's Temporary Permission Regime ("TPR")

Firm Type: EU firms passporting into the UK

The TPR enables firms and funds which passport into the UK to continue operating in the UK when the passporting regime falls away at the end of the transition period. Firms that want to use the TPR must notify the FCA when the temporary notification window opens on 30 September 2020. If necessary, firms must also update their previously submitted notifications.

Further information: **Temporary permissions regime | FCA**

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Complaint handling during the COVID-19 pandemic

Firm Type: All

The FCA has published a statement on its website, which is subject to periodic updates, clarifying its expectations of firms when they are handling complaints. The statement considers the operational challenges faced by many firms during the COVID-19 pandemic. Firms will need to review their arrangements for handling complaints to ensure they are as effective as possible, taking into account any operational challenges they face.

Further information: Firm handling of complaints during coronavirus | FCA

FCA key Reporting Requirements after Brexit

Firm Type: MiFID investment firms

The FCA expect firms to meet their obligations under UK rules to meet their various reporting requirements at the end of the transitional period from January 2021. Therefore, firms should discuss their reporting arrangements with their third-party service providers.

The FCA is conscious of the scale, complexity and magnitude of some of the changes firms will be required to make, and so they intend to act proportionately. This means that the FCA do not intend to take enforcement action against firms and other regulated persons for not meeting all requirements straight away, where there is evidence firms have taken reasonable steps to prepare to meet the new obligations by 31 December 2020.

However, where firms and other regulated persons are not fully prepared by that date, the FCA would expect them to comply with the new obligations as soon as reasonably practicable.

Further information: Key requirements of firms | FCA

Senior Managers and Certification Regime Staff Certifications

Firm Type: All

Under SM&CR firms must assess the fitness and propriety of their certified staff before the expiry of the extended deadline of 31 March 2021. Firm's must notify the FCA of certified persons for upload to the FCA Directory ahead of the deadline.

Further information: Directory of certified and assessed persons | FCA

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Regulatory changes in 2021 with date still to be finalised… further details will be provided by Effecta in due course.

Remuneration Code for dual-regulated firms

Firm type: Dual FCA / PRA regulated firms

The FCA has released a Consultation Paper (CP20/14) dual regulated firms remuneration code. The Remuneration Code aims to ensure firms establish remuneration policies that promote effective risk management. The Code is being reviewed to bring it in line with the EU's Capital Requirements Directive V ("CRD V"). Dual-regulated firms will need to review their remuneration policies and governance arrangements to ensure they meet the new requirements.

Further Information: **CP20/14: Updating the Dual-regulated firms Remuneration Code to reflect CRD V | FCA**

Sustainable Finance Disclosure Regulation ("SFDR") Level 1 and Level 2 (delayed)

Firm Type: All

The European Commission has confirmed that the Level 2 draft regulatory technical standards ("RTS") due to accompany the Level 1 requirements of the SFDR have been delayed due to the impact of COVID-19.

This means that, from 10 March 2021, in-scope firms should seek to comply with the general Level 1 principles of sustainability-related disclosures on a best efforts basis in pre-contractual documents, periodic reports and on their website at both firm and product level. Firms will then need to carry out a second update to reflect the requirements of the RTS, once implemented.

Further information: **Sustainable Finance Disclosures Regulation and the impact of the delayed regulatory technical standards on UK firms. – Effecta Compliance**

New Prudential Regime for investment firms

Firm Type: MiFID investment firms

The FCA has set out its initial views on a new prudential regime for UK MiFID investment firms in a discussion paper ("DP20/2") published on 23rd June 2020. This follows the publication of the Investment Firm Directive ("IFD") and the Investment Firm Regulation ("IFR") in the European Union's Official Journal on 5th December 2019. EU member states will have to comply with IFD and IFR from 1 January 2022 (which has been delayed from the original date of 26 June 2021). As the UK has exited the EU it will not be implementing the IFD/IFR, but it will introduce UK specific rules intended to achieve the same overall outcome as the IFD/IFR.

Further information: **DP20/2: Prudential requirements for MiFID investment firms | FCA**

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Packaged Retail Investment and Insurance based Products ("PRIIPS") Regulation

The PRIIPs Regulation requires firms to provide a short Key Information Document ("KID") to investors covering the key features of PRIIPs they offer. The regulation is being reviewed to improve it. Once the changes are published, firms will need to check which of their products are affected and amend the contents of any KIDs.

European Commission review of the Alternative Investment Fund Managers Directive ("AIFMD")

Firm type: Alternative Investment Fund Managers

The AIFMD is the major piece of legislation setting out the regulatory framework for EU fund managers and the funds they manage. The Directive is being reviewed to identify and address potential shortcomings. Firms will need to monitor the regulatory developments so they can prepare for any potential changes to the legislation in advance.

Further information: **Financial services – review of EU rules on alternative investment fund managers (europa.eu)**

The FCA also produce a bi-annual regulatory initiatives grid that aims to give a clear idea of upcoming regulatory work, the last one was published in September 2020 and can be found on the link below.

Financial regulators publish updated Regulatory Initiatives Grid | FCA

Effecta will be producing regular updates and relevant articles during 2021, to receive these please subscribe **here** or visit **www.effectacompliance.com/mailing-list**

How Effecta Can Help

Effecta can provide further information on any of the areas discussed within this article and specifically how the regulatory changes will impact your firm. We can work with your firm to review your current compliance structure, provide a gap analysis and assist with the implementation of the regulatory changes at the relevant time.

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