

EFFECTA REGULATORY ROUNDUP FOR 2021

February 2021

Welcome to the Effecta Compliance regulatory newsletter. In the ever changing regulatory landscape, it is key that firms keep up to date with the latest compliance developments and ensure relevant compliance changes are considered internally and implemented 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:

- Coronavirus – Remote Working
- New Prudential Rules and ICARA process
- Brexit and the Temporary Permission Regime
- New Consumer Duty - Retail Clients
- Rise of Environmental, Social and Governance ("ESG") Issues
- FCA Business Plan
- Research and Best Execution Changes
- HMT Wholesale Markets Review
- Diversity and Inclusion

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Coronavirus – Remote Working

Covid-19 has posed some issues for firms, with many having to significantly adapt their systems and controls to deal with a more hybrid workforce. The increase in the number of staff working from home has placed a greater reliance on IT systems, with many Firms having to invest heavily in their IT infrastructure to ensure the continued operation and oversight of their business.

Although the FCA acknowledges these challenges, they have been clear in stating firms should not change their risk appetite but should instead adapt their systems and controls to the changing working environment to ensure they continue to be robust and effective.

The FCA expects Firms to have already completed these reviews of their systems and controls and to have made all the required necessary changes to ensure they remain effective and sufficient.

Effecta can provide an independent review of your control framework and can provide guidance on how you can continue to meet your regulatory responsibilities with changes to your workplace environment.

New Prudential Rules and ICARA process

The Investment Firms Prudential Regime ("IFPRU")

The FCA published its final rules on remuneration-related disclosures under the IFPRU at the end of 2021, with an effective implementation date of 1st January 2022. As expected, the final rules are largely the same as the draft rules proposed in the FCA's August 2021 Consultation Paper.

For Investment Firms which are part of a group, a key consideration is whether a consolidated situation exists and whether prudential consolidation rules can be applied. If a consolidated situation does apply, firms may be able to use the Group Capital Test rather than applying full prudential consolidation. The main advantage of being able to apply this test is that only the parent entity is required to hold sufficient regulatory capital, which simply needs to be capable of being allocated to each of its subsidiaries if required.

The ICARA

The ICARA stands for 'Internal Capital Adequacy and Risk Assessment'. All firms will be required to have in place a process to:

- Identify and monitor harms
- Undertake harm mitigation, taking into account your business model, systems and controls
- Plan and forecast along with severe but plausible stress testing scenarios
- Plan recovery actions and an orderly wind-down





While a lot of the above were previously used to create an ICAAP, the ICARA process does impose some significant changes to the way investment firms monitor their own funds and liquidity going forwards.

If you would like help modifying documentation or creating an ICARA for your firm, Effecta are happy to help.

Brexit and the Temporary Permission Regime

The Temporary Permissions Regime ("TPR") was set up to allow EEA based firms that were already passporting into the UK at the end of the Brexit Transition Period (31 December 2020) to continue to operate in the UK under their previous passport permissions, provided: i) they made an application to the FCA of their intention to do so; and ii) sought full authorisation in the UK.

The FCA has started its review of applications under the TPR, with a significant number of firms receiving their 'landing slots' (dates whereby the FCA reviews the entities authorisation application). At the end of these reviews, firms will either be granted FCA authorisation and be permitted to continue doing business in the UK or will have their applications rejected and thus no longer be authorised to conduct business in the UK.

To date four firms have had their permissions cancelled by the regulator following failure to respond to information requests.

The Executive Director of Authorisations at the FCA, Emily Shepperd, stated "the UK is open for business, but not to firms who do not meet our regulatory expectations...we expect firms operating under the regime to be responsive to our requests for information, and that are coherent in their business planning. We will continue to act against firms that fail to meet our standards."

Outside of these firms, appetite for EU firms to apply for full authorisation appears to be low according to a Freedom of Information request. An estimated 46% of EU firms did not apply to the FCA, higher than the regulators initial estimation of about 20%. This could be due to some European EU firms previously having passport permissions that they were not using, or more significantly it could indicate a large number of EU firm firms are looking to rely on the Overseas Persons Exemption.

If you would like any advice on what activity you can continue to do both out of and into the UK following Brexit, please do contact one of the Consultants at Effecta, all of which have a strong understanding of the implications of the UK being considered a third country by the EU.





New Consumer Duty - Retail Clients

In May 2021, the FCA published a consultation paper ([CP21/13](#)) proposing the introduction of a New Consumer Duty which places greater responsibilities on Firms to ensure retail clients are provided with appropriate products and services.

After receiving industry input, the FCA issued a second consultation paper ([CP21/36](#)) in December 2021 detailing the proposed draft rules which are intended to be implemented by 30th April 2023 to all financial institutes who deal with retail clients.

There are three main focuses in the new Consumer Duty:

- i. Consumer Principle that a firm must act upon delivering good outcomes for retail customers.
- ii. How firms should act with regards to retail clients (in good faith, avoiding foreseeable harm and enabling them to pursue financial objectives).
- iii. Four outcomes looking at products & services, consumer understanding, customer services and price/value.

The FCA takes the servicing of Retail Clients incredibly seriously and it is therefore imperative firms start to consider and plan for the implementation of these new rules; identifying what work needs to be completed by April 2023. Should you require any advice on the most recent Consultation Paper or wish for Effecta to help you plan your required changes, please do get in touch.

Rise of Environmental, Social and Governance ("ESG") Issues

There continues to be an increased focus on ESG issues, with companies seeing greater demands for transparency on their ESG initiatives. Perhaps the most-high profile of ESG initiatives in 2021 were:

- The COP26 climate change meeting in Glasgow in November 2021, which although many said did not go far enough in tackling the climate crisis, did increase focus on the issues at hand.
- The Sustainable Finance and Sustainability Framework of the EU which has been developed to change the landscape when it comes to corporate disclosures. For example, in the UK, the Government consulted on its proposals for mandatory climate related disclosures to be required from all 'relevant firms' by 2025 ('relevant firms' being proposed to be those with greater than 500 employees or more than £500m turnover). The full consultation on requiring mandatory climate-related financial disclosures can be found [here](#).

A number of Firms are beginning to voluntarily publish their ESG initiatives and Disclosures to the public; with many recognising the need to identify methods to be able to accurately obtain the necessary data to be able to make these disclosures. Should you require any assistance in producing Disclosure Templates, please do get in touch with Effecta to help.





FCA Business Plan

The FCA published its annual Business Plan back in June 2021 (pushed back from April due to the Coronavirus pandemic). The plan outlines the FCA's aims and approach to being an effective regulator, under the new stewardship of Chief Executive Nikhil Rath.

The Business Plan is separated into four sections:

1. **The FCA's role**

The FCA is looking to become more innovative; with £120 million being put forwards to improve its data and technological capabilities as well as £11m being allocated to a digital marketing campaign warning investors of risks in cryptocurrency. The regulator is also looking to be more assertive and has stated it will encourage its partners to take action more readily where issues arise.

2. **Consumer priorities**

To drive the agenda for Firms to provide better outcomes for consumers, the FCA are intending to target specific areas including:

- strengthening the rules on Financial Promotions;
- monitoring how firms support clients in difficulty;
- conducting proactive reviews of CASS/the safeguarding of client assets

3. **Wholesale markets priorities**

With the UK having now left the EU, the FCA has declared it will have a focus on UK market integrity, reviewing primary and secondary market rules to ensure they are tailored to and appropriate for the UK Markets; albeit the FCA states it does recognise the need to maintain a consistent standard of equivalence to regulations in the EU.

Other areas of focus for the Wholesale Markets will be Market Abuse and Financial Crime; in addition to the FCA's intention to make significant changes to the Appointed Representative (AR) Regime.

4. **Priorities across all markets**

The FCA has outlined the following additional priorities across the markets:

- Diversity and inclusion
- Environmental, Social and Governance (ESG)
- Promoting cooperation with other regulators
- Fraud strategy
- IFPR coming into force
- Assessing operational resilience

Please find a link to the full FCA Business Plan for 2021/22 [here](#).





There are a number of focus areas in the most recent FCA Business Plan, which is layered with the acknowledgement there will be changes in regulation following the UK's departure from the EU. Firms should ensure they are resourced to react to these changes; to ensure their business is both up to date and compliant.

Effecta has significant experience in supporting businesses during times of regulatory change, either through ad hoc regulatory advice, or conducting individual projects or deep dives into areas of concern for a business. If you require additional support to implement the upcoming changes in Regulation or would like an independent review into an area of regulatory concern, please do contact Effecta to help.

Research and Best Execution Changes

In 2021, the FCA permanently removed the best execution reporting obligations which came from the implementation of MiFID II in January 2018, and which were contained in RTS 27&28. This decision came as a result of industry feedback that these reports were expensive to produce and of little benefit to investors. Consequently, as of 1st December 2021, UK firms and execution venues are no longer required to prepare RTS 27/28 best execution reports.

HMT Wholesale Markets Review

Her Majesty's Treasury submitted a consultation which closed on 24th September 2021 looking to review the UK's wholesale capital markets regime, especially as part of the UK's post-Brexit strategy. The paper will be relevant to banks, brokers and asset managers and presents them with an opportunity to influence upcoming changes to the framework.

The Consultation made a number of proposals, including:

- the complete removal of the UK Share Trading Obligation (which would significantly facilitate cross-border activity) and the double volume cap regime.
- Removing the obligation for algorithmic trading firms who are pursuing purely market making activity from entering into market making agreements with trading venues.

These are only a few of the proposals being considered. For further information, you can review the full consultation document [here](#).

Effecta has a number of consultants with direct in-house wholesale experience, who have advised first hand on the regulatory changes being made by HMT and the FCA following Brexit. If you would like some advice on your business or to discuss some of the upcoming proposed changes to the Wholesale Markets, please contact Effecta.





Diversity and Inclusion

In July 2021, the FCA published a consultation paper ([CP21/24](#)) on changing Listing Rules to require companies to:

- annually disclose whether they have met board diversity targets;
- and to publish data on the make-up of their Boards and Executive Management.

These additional disclosures won't need to be published until Spring 2023, however the FCA encourages firms to consider making disclosures on a voluntary basis before then.

These changes indicate an increased focus from the FCA on transparency and diversity issues. In the joint discussion paper ([DP 21/2](#)) from the Prudential Regulation Authority (PRA), the Bank of England and the FCA, the main outcomes include wanting firms to think about how they can advance diversity and inclusion through "improving their policies, governance arrangements, accountability, remuneration arrangements and disclosure".

If you would like to discuss any of the regulatory topics mentioned in this paper, or are looking for some advice or support on upcoming issues, please do reach out to Effecta on info@effectacompliance.com or reach out to one of our Consultants directly [Our People – Effecta Compliance](#)

