

EFFECTA'S ESSENTIAL INSIGHTS: A REGULATORY UPDATE

April 2022

Welcome to the latest edition of EFFECTA's Essential Insights, a quarterly newsletter aimed at providing its readers with succinct overviews of some of the key regulatory issues currently faced by UK Firms.

Our newsletter reflects our consultants, diverse in background and knowledge base. We all have a love for Regulation, but hold very different areas of expertise, enabling us to cover a wide client base and bring more than one perspective to the table.

More information about our individual consultants can be found on our [website](#), but whatever your question, we will have someone who will be able to help. If you would like to discuss any of the topics covered in this newsletter and what implications they may have to your business, please do reach out to us on info@effectacompliance.com.

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In this newsletter we cover the following topics:

1. Operational Resilience

By 31 March 2022, 'relevant firms' were required to have completed stage one of the new operational resilience requirements.

Have you identified whether you are a 'relevant firm' and completed stage one? Do you feel confident you understand and have the resources required to be compliant with all operational resilience rules by 31 March 2025?

[Click here if you would like more information on what these requirements are.](#)

2. Own Funds Requirement Reporting

In its March 2022 Quarterly Consultation Paper, the FCA declared it had received fewer notifications regarding existing capital instruments as own funds under MiFIDPRU 3 than expected.

Were you a non IFPRU firm pre-January 2022 and did you make the required MiFIDPRU own funds notification by 1 January 2022? [Click here for more information on the FCA's recent proposals for those firms which failed to meet the deadline.](#)

3. Appointed Representative Regime

Are you a Principal Firm with Appointed Representatives? If so, are you aware of the proposed reform of the Appointed Representative Regime and the significant increase in responsibilities expected for Principal Firms?

[For information on the proposed changes to the Appointed Representative Regime, and the practical implications, please click here.](#)

4. Financial Crime/Sanctions

Sanctions have been thrown into the limelight in recent months, with Russia's invasion of Ukraine prompting the UK to issue unprecedented sanctions against Russia and Belarus.

But what do these Sanctions mean for your business and what risks should you be anticipating?

[Click here for more information.](#)

5. HMT's Wholesale Markets Review

HM Treasury's Wholesale Markets Review has been considered by many in the market as the UK's "MiFID II". On 1 March 2022, HM Treasury published its response to its consultation on the Wholesale Markets Review (WMR).

Are you up to date with the changes being proposed and the possible impacts to your business?

[Click here for more information.](#)





1. Operational Resilience

Are you in scope?

The new rules apply to the following UK authorised financial services firms:

- banks
- building societies
- PRA-designated investment firms
- insurers
- Recognised Investment Exchanges
- enhanced scope SM&CR firms
- entities authorised and registered under the Payment Services Regulations 2017 or Electronic Money Regulations 2011

What were the Stage One Requirements?

By 31 March 2022, in scope firms were required to have completed stage one of the new operational resilience requirements which at its most basic level involves Firms identifying, mapping and implementing disruption tolerance levels for those business services considered 'important' and capable of causing intolerable harm to consumers, market integrity and/or the financial system.

If you need any advice on which of your business services should be considered 'important' with regards to operational resilience or, would like to discuss the mapping and tolerance level analyses you have completed, please reach out to Effecta.

What are the ongoing requirements I need to be aware of?

As soon as possible after 31 March 2022, and no later than 31 March 2025, firms must have developed infrastructure which is sophisticated enough to ensure each important business service operates within its set impact tolerance levels.

If I am currently awaiting my FCA Authorisation, do I get an extension on the Stage 2 deadline of 31 March 2025?

31 March 2025 is a market deadline: not a firm specific one. Consequently, all in scope firms, regardless of their stage of infancy or date of authorisation must be in adherence with the requirements on 31 March 2025.

Firms currently applying for authorisation or looking to obtain authorisation over the coming months/ years should take this into consideration during the authorisation process and be prepared to provide details to the Regulator as required.

Effecta specialises in authorisations. Please do reach out if you would like to discuss your authorisation application and the required supporting documentation.





2. Own Funds Reporting Requirement

Which firms were required to make the MiFIDPRU own funds notification?

FCA investment firms who:

- were previously not subject to the UK CRR definition of capital (including BIPRU, exempt CAD and local firms) as well as collective portfolio management investment firms (CPMIs) and
- who wished to count their existing instruments as own funds for the purpose of MIFIDPRU 3, must notify us of that fact no later than 1 January 2022.

Why should Firms make the notification?

As long as the instruments meet the relevant conditions and the FCA has been notified of that fact, firms will not require separate permission from us to classify their pre-MIFIDPRU capital instruments as own funds under MIFIDPRU 3.

What should Firms which failed to meet the 1 January 2022 notification now do?

In the FCA's March 2022 quarterly consultation paper, it proposed to extend the notification deadline from 1 January 2022 to 29 June 2022. The Consultation Period closes on 11 April 2022 and if the proposals are accepted, Firms will have until 29 March 2022 to make the required notification.

It is anticipated this deadline will be extended. Therefore, if you are a Firm which mistakenly failed to meet the previous deadline, we would advise you to start preparing the notification.

3. Appointed Representative Regime

What is the reason for the reform?

The FCA identified it was receiving more complaints about Principal firms than non-Principal firms and that Regulatory Host supervision cases are higher than for other regulated firms. These figures prompted the FCA to undertake a review, initiated with the issuance of a survey questionnaire to a number of Principal firms about their Appointed Representatives towards the end of 2021.

When will changes come into effect?

The FCA's Final Rules on the changes to the Appointed Representative Regime are expected at the end of H1 2022; albeit it is anticipated there will be very limited changes to those already proposed.

Comparatively, the FCA's approach to Regulatory Hosting is still largely unknown, with a discussion paper on their approach expected in the latter part of 2022.

What are the proposed changes?

Essentially the FCA expects Principal Firms to have much stronger oversight of its Appointed Representatives activities and is proposing to implement a number of FCA reporting requirements on Principal Firms.





For example, Principal Firms will have to:

- annually attest that the information about the Appointed Representative in the Financial Services Register is correct;
- provide revenue information on each of its Appointed Representatives; which breaks down the activity and revenue generated for its regulated and unregulated activity

There are a number of additional reporting and due diligence requirements, including Principal Firms being required to demonstrate they have sufficient resources to oversee the activity of its Appointed Representative.

For further information on the proposed changes, **please contact Effecta.**

Will the changes to the Regime only be applicable to those Appointed Representatives taken on after the new rules come into effect?

In summary, no! Principal Firms will have to provide the required notifications and information to the FCA for each of the Appointed Representatives they oversee; regardless of when the relationship started.

For existing Appointed Representatives, Principals will have to provide the information to the FCA within 60 days of the new rules coming into effect.

For new Appointed Representative relationships, Principal Firms will have to make the required notifications to the FCA at least 60 days prior to the appointment being effective.

What should firms be doing now?

The changes proposed are likely to be the final rules and therefore Principal Firms should be reviewing the requirements now to identify what additional resources, infrastructure or controls they need in place to ensure they are compliant when the rules are enforced. The FCA has consulted widely with the industry on these changes and consequently the FCA's expectation will be that Firms are compliant from day one.

Effecta has extensive experience in the monitoring of Appointed Representatives and will be presenting on this topic at industry events. If you would like to discuss the impact of these changes to your business, please do reach out directly.

4. Financial Crime: Russian Sanctions

How wide are the sanctions imposed in the UK Financial Services Sector?

The sanctions imposed in the Financial Services sector have been unprecedented, with numerous changes in legislation made to widen the scope of their implementation. No longer are UK Firms prohibited from conducting business with those persons or entities directly associated to Russia but with any persons 'connected' or 'linked' to them.

UK firms must not broker into, provide services to, or enter into loan or credit agreements with any persons connected to Russia, in addition to asset freezes and prohibitions against certain Russian entities and individuals.





The Economic Crime Act of 2022 implements a new register of overseas entities, which will require foreign companies owning UK property to identify their beneficial owners.

Please also see a list to the UK Government's Sanctions list [here](#).

What are the implications for a Firm if they breach sanctions or fail to have the necessary controls in place to identify activity being conducted with sanctioned entities/individuals?

The Economic Crime Act, which received Royal Assent on 15th March, has strengthened the sanctions enforcement opportunities in the UK.

The Act makes it far easier for the Office for Financial Sanctions Implementation (OFSI) to impose fines against companies which fail to comply with the government sanctions. In addition to fines, the Economic Crime Act assigns new powers to OFSI, permitting it to publicly name organisations found to have breached financial sanctions.

The implementation of this Act demonstrates how seriously the UK is taking the issuance of its sanctions and how important it is that businesses are implementing them effectively.

Please see a link to the [Economic Crime Act](#) [here](#).

What key information should a Firm consider when reviewing its clients?

As seen with high profile cases including Chelsea Football Club, ownership visibility and due diligence is now more vital than ever. You should consider whether you have full visibility of your customer's beneficial owners and whether they have any direct or indirect links to countries which are subject to sanctions or trade embargoes.

- Do you have full visibility of the beneficial owners (including voting rights) for your clients, up to the Ultimate Beneficial Owner(s)?
- Is the information you hold on clients up to date, verifiable and easy to access and run against updated daily sanctions list?
- Have you done adequate checks on your client to identify whether it or its affiliates do business in countries that are subject to sanctions or trade embargoes?
- Are your or your client's products supplied to sanctioned countries or for use in sanctioned countries?

Are you confident your Financial Control Framework is adequate and you have the correct oversight and monitoring in place to meet your regulatory requirements with regards to Sanctions?

Effecta specialises in AML checks and sampling client files to ensure the correct level of due diligence is being conducted. If you would like to discuss using this service, or would like to discuss the current sanctions in place, please do reach out to Effecta directly.





5. Wholesale Markets Treasury Review

What is the intention of the Review?

Now the UK has left the EU, HMT sees the opportunity to tailor financial regulation rules more closely to the UK market. The intention behind the review has been described as an attempt to make the UK markets more efficient and to remove unnecessary and burdensome pieces of Regulation.

What changes are being proposed in the Review?

The proposed changes are wide ranging and for some markets (such as the commodity derivatives markets) fundamental in nature.

Perhaps the most prominent areas identified as requiring changing are listed below:

- Trading Venues: Reviewing the regulatory perimeters for MTFs and the ability for OTFs to execute transactions in equities
- Equity markets: Removal of the double volume cap, share trading obligation and requirement for algorithmic firms to enter into market making agreements with trading venues
- Fixed income and derivatives markets: Realignment of the Derivatives Trading Obligation with the clearing obligation under EMIR
- Commodity Derivatives: Transferring the power to set position limits from the FCA to trading venues and removing the requirement for position limits to be applied to all exchange traded contracts.

Clementine Bowyer has recently joined Effecta. Clementine has 15 years experience working in-house in brokerage houses and has a wealth of knowledge of the wholesale markets. Should you wish to discuss the upcoming changes to UK rules and regulations, please reach out directly to Clementine on cbowyer@effectacompliance.com.

When will the changes take place?

It is fair to say the Treasury's response to the Wholesale Markets Review hasn't been as dramatic or as ambitious in its implementation timescales for changes as the market had anticipated. The reality is that the changes will be made gradually, with many reforms not taking effect for some time are requiring legislative changes.

The FCA is expected to consult on its proposals for rule changes in the first half of this year. Effecta will be keeping abreast of these proposed changes and can advise Firms on the identified amendments and consequent implications to businesses.

Articles published by Effecta in Q1 2022

Effecta prides itself on the breadth and depth of its regulatory knowledge, with its Consultants regularly publishing articles on compliance issues or relevant pieces of Regulation we see our clients grappling with first hand. An example of the recent articles published by Effecta are listed below. If you would like to receive regulatory articles from Effecta going forward, **please register here**.

Benchmark Regulation: Are you meeting your responsibilities?

Sanctions: Were you Prepared?

