

“We have far less time than we thought – and far less urgency than we need.”

Jim Yong Kim, President of the World Bank

Companies are increasingly aware of how climate change will affect them, and how to respond. And it is becoming ever more apparent that swift, decisive action is an economic imperative. The FCA have opened a discussion on the impact of climate change and green finance on financial services. The effects of climate change and the associated transition to a low carbon economy may have a major impact on financial markets.

Brexit and financial services: where have we got to?

Andrew Bailey, Chief Executive of the FCA, delivered a speech at the the City Banquet, Mansion House, London.

Key highlights included:

- The FCA is on course to be ready for a hard exit from the EU and has the resources to handle it.
- It is important for both sides that we coordinate to avoid disruption in the event of a no deal situation.
- We want the permanent arrangement post Brexit to allow for close alignment with the EU, without the UK being a rule taker.

Temporary permissions regime for inbound firms and funds

The UK will leave the EU on **29th March 2019**. The UK and EU agreed on the terms of an implementation period, which was included in the draft withdrawal agreement (the implementation period is subject to further negotiations between the UK and EU). The FCA consultation paper published on October 10, 2018 sets out how they expect the Temporary Permission Regulation (TPR) to operate, how firms can enter the regime and how long TPR will operate for.

Please see the attached summary for more information.

FCA consults on new rules to improve the approach to open-ended funds investing in illiquid assets

The FCA is consulting on new rules and guidance to reduce the potential for harm to investors in funds that hold illiquid assets, particularly under stressed market conditions. These measures will also support the FCA's market integrity objective and help address financial stability concerns. Open-ended funds that invest in illiquid assets can encounter difficulties if significant numbers of investors simultaneously try to withdraw their money at short notice. The FCA is consulting on a package of measures that will require:

- Funds to suspend trading when the independent valuer expresses uncertainty about the value of 'immovables', such as commercial property, that account for a significant part of the fund's assets.
- Managers of funds investing mostly in inherently illiquid assets to produce contingency plans in case of a liquidity risk crystallising.
- Depositaries to oversee the liquidity management process in these funds.

- More information to be disclosed about the liquidity risks in these funds, the liquidity management tools available to the fund manager, the circumstances in which they may be used and what impact they may have on investors.

The importance of international co-operation

Megan Butler, Executive Director of Supervision - Investment, Wholesale and Specialists at the FCA, delivered a speech on the importance of international co-operation at The Pan Asian Regulatory Summit 2018, Hong Kong.

Key highlights included:

- It is imperative that we don't slip into a model of fragmented regulation, with competing philosophies and regulatory agendas.
- The best option for promoting economic security is to build on the work that's been done since the financial crisis to improve international engagement.
- The FCA and Securities and Futures Commission in Hong Kong reach an agreement on the mutual recognition of funds.
- Funds in Hong Kong will find it easier to market to UK customers if they can demonstrate broad equivalence, or equivalent outcomes to our own retail fund rules, with UK businesses having the same access to Hong Kong.

Registering as a trade repository

When the UK leaves the EU, the FCA will become the UK regulator of trade repositories. On 5 October 2018 the Treasury published a draft of the Trade Repositories Statutory Instrument (SI).

This SI makes provision for the FCA to register trade repositories operating in the UK once the UK leaves the EU. It is not intended to make policy changes, other than where appropriate to reflect the UK's new position outside the EU.

Getting registered

To support a smooth transition to the new regime for trade repositories (TRs) in the UK and minimise disruption to users of TRs, the draft SI includes 2 registration regimes for firms:

- A conversion regime. This will allow TRs established in the UK to convert their ESMA registration into registration with the FCA.
- A temporary registration regime. This will offer temporary registration to TRs that apply for registration with the FCA before exit day, if they are a UK legal entity and are part of the same group as a TR with an existing ESMA registration. This will allow time for us to assess these applications. This regime is distinct from the Temporary Permission Regime for inbound passporting EEA firms and funds.

Temporary authorisation regime for data reporting services providers (DRSPs)

MiFID II allows DRSPs established and authorised under MIFID in an EEA member state to provide data reporting services in the UK based on its home member state authorisation.

What will change post Brexit:

- EEA DRSPs authorised under MIFID will no longer be able to provide a service in the UK without authorisation from us.
- The temporary authorisation regime will allow EEA DRSPs authorised under MIFID to provide a data reporting service in the UK for a limited period after exit day while enabling it to seek authorisation in the UK, on a permanent basis.

How the regime will work:

- EEA DRSPs authorised under MIFID currently operating in the UK, or EEA DRSPs authorised under MIFID seeking to operate in the UK for the first time, will need to let us know if they intend to provide a service to operate in the UK after exit day (29 March 2019).
- This temporary authorisation will last for up to 1 year from exit day. We expect firms in the temporary regime to follow the requirements in the Data Reporting Services Regulations 2017 and relevant provisions of the FCA Handbook.

Improving the Quality of Pension Transfer Advice

The FCA has published new rules and guidance on improving the quality of pension transfer advice, primarily for when customers are considering transferring from a defined benefit scheme to a defined contribution scheme.

This includes:

- new rules on qualifications
- guidance on an appropriate triage service
- clarification on our expectations that advisers should be exploring clients' attitudes to the general risks associated with a transfer, in addition to their attitude to investment risk

CMA considers pricing algorithm effects on competition

The UK Competition & Markets Authority (CMA) has published the results of a study into how firms use pricing algorithms and whether this gives rise to potential competition concerns.

Pricing algorithms automatically set prices based upon the analysis of large volumes of relevant market data. When used properly, they can benefit consumers and promote competition, for example by reducing labour costs, creating supply-side efficiencies, allowing for faster and more informed decision-making and enabling consumers to carry out their own price forecasting.

The CMA's study, however, identifies various ways in which pricing algorithms could be used to support anti-competitive practices, in particular:

- the enforcement of collusion within cartels: cartelists could use algorithms to automatically detect competitor pricing changes, identify instances in which their fellow cartel members deviate from an agreed pricing model, and "punish" them accordingly. This would stabilise cartels by reducing motivation for cartelists to deviate from their agreement.
- personalised pricing: whilst this can be used to ease market entry for new firms and increase competition (eg by offering targeted discounts), it can also cause obvious consumer harm.

FCA confirms greater access for SMEs to the Financial Ombudsman Service

The FCA has confirmed plans to extend access to the Financial Ombudsman Service ('the ombudsman service') to more small and medium-sized enterprises (SMEs).

The changes will mean that SMEs with an annual turnover below £6.5m and fewer than 50 employees, or an annual balance sheet below £5m will now be able to refer unresolved complaints to the ombudsman service. Under the 'near-final' rules published around 210,000 additional UK SMEs will be eligible to complain to the ombudsman service. The changes will allow a wider number of SMEs to access the service, so they can seek redress. The criteria for access to the service have been amended so that SMEs must only meet the turnover test and one of either the headcount or balance sheet total tests, not all 3 tests as previously proposed. The FCA made this change in response to feedback that applying all 3 tests would unfairly exclude certain types of SME, for example those with relatively low turnover but 50 or more employees.

Going green: the FCA's developing approach

The FCA have opened a discussion on the impact of climate change and green finance on financial services. The effects of climate change and the associated transition to a low carbon economy may have a major impact on financial markets and on products that serve those markets.

Christopher Woolard, Executive Director of Strategy and Competition, delivered a speech on "Going green" at the FCA's Innovating for a Greener Great Britain event.

Key highlights included:

- The FCA's job is to make markets for financial services work well. Part of that is ensuring that financial services are adequately prepared to cope with the changes on the horizon.
- The FCA want to ensure that firms not only respond to the challenges climate change poses, but also make the most of the opportunities it presents.
- The FCA have set out in our discussion paper how these changes might affect the FCA's work and we would welcome your views on this.

New resolution data reporting requirements not applicable to FCA firms cases

Certain €730k firms will have new resolution data reporting templates. However, The Bank of England, as the UK Resolution Authority, anticipates that all UK-headquartered firms that have been notified that their preferred resolution strategy does not involve the use of stabilisation powers, won't be affected by these new requirements. Currently, this is the case for all FCA solo-regulated firms, which are expected to submit their resolution data as usual.

ESMA updates its Q&As on Application of AIFMD

Article 33 of AIFMD requires that an authorised EU AIFM which wishes to manage an EU AIF in a different Member State must first send a notification, containing specified information, to the competent authorities of its home Member State.

The new Q&A confirms that, where such a notification is made in respect of an EU umbrella AIF, the AIFM must identify all the compartments of the umbrella AIF, as well as each compartment's name and investment strategy. This is "to facilitate administrative procedure in home and host Member States".

ESMA also notes that Article 33(6) of AIFMD requires that any change in the composition of an umbrella AIF managed on a cross-border basis must be notified to the relevant competent authorities.

European Commission 2019 work programme: financial services aspects

The European Commission published a communication outlining its work programme for 2019. Of interest to financial services practitioners are the number of priority pending financial services legislative proposals. These are the proposals on which the Commission wants the European Parliament and the Council of the EU to take swift action.

They include proposals on:

- Sustainable finance.
- Cross-border investment funds.
- Crowdfunding services.
- The pan-European personal pension product (PEPP).
- Banking.
- Recovery and resolution of central counterparties (CCPs).
- The European deposit insurance scheme (EDIS).
- Anti-money laundering.

Enforcement cases

FCA has fined large UK Insurer £5.2 million for failures in its oversight of mobile phone insurance claims and complaints handling

The UK insurer entered into a relationship in the UK with a third party to enable them to provide mobile phone insurance to retail customers. The third party undertook all administrative functions associated with the mobile phone insurance on the company's behalf including all claims and complaints handling functions. They retained regulatory responsibility for ensuring that claims and complaints made by customers were handled fairly, and ought to have ensured that it had in place adequate systems and controls to oversee the activities of the third party throughout. It did not.

The Insurer's customers were exposed to the possibility that their claims and complaints would not be handled fairly. During the relevant period some claims were unfairly declined or not investigated adequately. Some customers who complained about this had the original decision overturned which created a de facto two-stage claims process and others had complaints dismissed without a proper investigation having been undertaken.

The firm settled at an early stage of the investigation and therefore qualified for a 30% discount. Without the discount, the financial penalty would have been £7,544,000.

Former Compliance Officer charged with insider trading

A former investment bank compliance officer repeatedly searched internal databases at the bank to see sensitive

information about five potential takeovers that she shared with a friend via a burner phone, prosecutors said on the first day of an insider-trading trial.

The defendant effectively abused the trust that her company placed in her when she disclosed the inside information to a friend. The friend was accused of making 1.4 million pounds (\$1.8 million) from the tips he received. He placed bets on shares in companies days and sometimes hours before the takeovers were disclosed.

The former compliance officer was a heavy user of the investment bank's internal database, which contained information on deals that the bank was either pitching for or already working on as a mergers and acquisitions adviser. In some cases, she accessed the database many times in a single day, he said. To speak and text with her friend, the former compliance officer used at least five different SIM cards in her pay-as-you go BlackBerry device, which was the same model as her company-issued phone.

The pair have both pleaded not guilty. They were each charged last year by the U.K. regulator with five counts of insider dealing between June 2013 and June 2014.

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- Related Training

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