

**“The way I see it, if you want the rainbow, you’ve got to put up with the rain”**

**- Dolly Parton**

As some of the pandemic restrictions were relaxed at the weekend and a sense of normality begins to appear, the FCA have started to plan for life after Covid-19, and look at the effect the pandemic has had on the financial sector.

### Building a financial regulatory system suitable for the UK in the new era

On 1st July 2020, Nausicaa Delfas (Executive Director of International, and a member of the Executive Committee at the FCA) delivered a speech on Building a financial regulatory system suitable for the UK in the new era. In this she highlighted three factors affecting the new era: Brexit; COVID 19; and technological and societal changes.

#### On Brexit:

- firms will need to continue to prepare for a range of scenarios, to be ready for the end of the year;
- there will be a robust legal regime on day 1 by onshoring EU law to the UK statute book and FCA rule book – with some transitional rules;
- arrangements are in place for temporary permission that will allow EEA firms to continue providing services and EEA funds to continue to be marketed in the UK once passporting ends;
- FCA have already signed MoUs with EU and non-EU authorities to enhance
- Equivalence decisions have not yet been made, and negotiations are ongoing;
- The data adequacy assessments conducted this year will impact transfers of personal data between the EEA and the UK.

#### Covid-19:

- the regulatory agenda is moving from crisis response to supporting economic recovery
- Non-banks will be critical in enabling recapitalisation to promote growth and recovery from the pandemic
- FCA are now looking at conduct and resilience of the markets in the medium and longer term

#### Other Areas:

- FCA approach going forward will be guided by our continued commitment to the highest international standards, and by what is right for the UK’s markets, building on the strengths of the existing UK regulatory and legal system
- FCA support open markets, with mechanisms to defer regulatory and supervisory oversight to other jurisdictions;
- Digital innovation may help address issues from the longer-term decline in the use of cash, increase the availability of mass market financial advice, and reduce the need for manual processes in businesses;
- FCA are co-leading the work on climate-related financial disclosures at an IOSCO Task Force.

### Inside FCA Podcast: Chris Woolard interview on emergency regulation and future planning

In his first Inside FCA Podcast interview as Interim Chief Executive, Chris Woolard talked to Ozge Ibrahim about the regulatory response to the coronavirus (Covid-19) pandemic, and outlines areas of focus from the 2020/21 Business Plan, including retail investments, payments and protections for the consumer credit market.

He discussed plans for the transformation of the FCA, and talks through the challenges and opportunities that technological advancements could bring for regulation and the financial services sector.

- The FCA have kept their focus on routine supervision and routine enforcement activity, and despite the crisis they have still been active in terms of seeking enforcement outcomes.
- The FCA postponed a large amount of their new planned activity, to focus on their regulated firms and looking after those who are vulnerable. The FCA plan to phase back in their new activities that they had planned through late summer and autumn.

### New prudential regime for investment firms.

The prudential regime for investment firms in the UK and EU is expected to change significantly, for nearly all regulated entities caught under Financial Resources regime, including BIRU firms and CAD Exempt firms. The FCA issued a Discussion Paper which sets out their alignment with the Investment Firms Regulation (the “IFR”) and the Investment Firms Directive (the “IFD”) and due to be implemented on **26 June 2021**. This moves investment firms away from the Banking Regime but there is a sting in the tail:

1. Firms may need to make significant and complex changes, including in relation to their governance and remuneration arrangements, as well as facing increases to their capital requirements, which may be phased in over time for existing investment firms.
2. The regime introduces a new classification system as well as increasing the capital requirements for all firms.
3. Firms with Client Money permissions will have their minimum capital rise to €150,000 (from €125,000)
4. BIRPU firms will have their minimum capital increase to €50,000 (from €75,000)
5. All firms will be subject to the higher of FOR or minimum capital – **including CAD exempt firms**
6. Investment firms that are currently subject to a minimum/initial capital requirement of €50,000 (including exempt CAD and BIRPU firms) **will no longer be permitted to meet their capital requirements with professional indemnity insurance.**
7. The matched principle trader exemption is removed so such firms’ minimum capital increases from €125,000 to the higher €750,000 initial/minimum capital.
8. **All investment firms now have a basic liquidity requirement based on holding “liquid assets” equivalent to at least one third of their FOR.**
9. Firms will replace the current ICAAP process to assess adequacy of capital with the new ICARA process, which will alter the way firms assess the capital impact of its internal and external risks. The intention is to apply this to all categories of firms, including CAD exempt firms.
10. The fixed component element of Remuneration must represent a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component. This appears to apply to all firms, including currently CAD exempt firms.

Firms wanting a more detailed analysis of the implications including what Class of firm they will fall under should contact FMConsult for further details.

### FCA announces proposals to further support consumer credit customers

The FCA has announced proposals which would provide continued support for users of certain consumer credit products, who are facing a financial impact because of the exceptional circumstances arising from coronavirus.

The proposals include:

- At the end of a payment freeze, firms should contact their customers to find out if they can resume payments and if so, agree a repayment plan.
- Anyone who continues to need help gets help – firms should provide them with support by reducing payments on their credit card and personal loans to a level they can afford for 3 months.
- Allowing who already have an arranged overdraft on their main personal current account, to request up to £500 interest-free for a further 3 months, and providing further support in the form of lower interest rates on borrowing above the interest-free buffer and repayment plans for those who would benefit from them.
- Extending the time the scheme is available to people who may be impacted at a later date – customers that have not yet had a payment freeze or an arranged interest-free overdraft of up to £500 and experience temporary financial difficulty, due to coronavirus, would be able to request one up until 31 October 2020.
- Where a customer needs further temporary support to bridge the crisis, any payment freezes or partial payment freezes offered under this guidance should not have a negative impact on credit files.

Firms should be particularly aware of the needs of their vulnerable customers and should consider how they engage with them.

### FCA to make mini-bond marketing ban permanent

The FCA introduced the ban without consultation in January following concerns that speculative mini-bonds were being promoted to retail investors who neither understood the risks involved, nor could afford the potential financial losses. This is now a permanent ban with a small number of changes and clarifications to the ban introduced in January. This includes bringing listed bonds with similar features to speculative illiquid securities and which are not regularly traded within the scope of the ban.

The ban will apply to most complex and opaque arrangements where the funds raised are used to lend to a third party, or to buy or acquire investments, or to buy or fund the construction of property. The FCA ban will mean that products caught by the rules can only be promoted to investors known to be sophisticated or high net worth.

### PS20/5: Extending the Senior Managers Regime to benchmark administrators: final rules

The FCA have published the final guidance on extending the senior managers regime to benchmark administrators in order to reduce harm to consumers and strengthen market integrity by making employees at benchmark administrators more accountable for their conduct and competence.

This should encourage all employees to take personal responsibility for their actions and improve conduct at all levels. It should also ensure that firms understand and can demonstrate where responsibility lies while supporting and promoting a healthy culture. The rules will come into force on 7th December 2020.

### The FCA's response to COVID-19 and expectations for 2020

In a recent speech Megan Butler, Executive Director of Supervision – Investment, Wholesale and Specialists at the FCA, the FCA set out its latest expectations and thoughts:

- In operational terms, advisors and wealth managers responded well to the onset of the coronavirus (Covid-19) crisis.
- As firms adapt to the long term effect of coronavirus – there is a need to transition from the immediate “incident response” towards focusing on long term impacts.
- Key areas of focus for the FCA include operational resilience in light of coronavirus, financial resilience and acting with integrity
- It is unacceptable conduct for firms to try to avoid their liabilities to customers by closing down companies and setting up new ones.

The FCA expects all firms to have contingency plans to deal with major events and that these plans have been properly tested.

*“We will capture the lessons from this emergency about delivering quickly. But we also need to look at our entire system, from the data and intelligence we collect, how we decide which firms and individuals to allow to operate and how we supervise them, to how we ensure that unacceptable firms and individuals are stopped and removed from the regulated sector as quickly as possible.”*

### The impact that covid-19 has had on culture

In the FCA's latest edition of Insight they examine the impact COVID-19 has on culture. In conclusion they note that the Covid-19 pandemic has changed our world and the way that we work in an extraordinarily short time. It is becoming increasingly evident that we will have to live with and adapt to these changes for a long time and it is far from certain that we will ever return to life exactly as it was before the pandemic.

These changes bring with them great challenges and risks. However, in the FCA's view there are also great opportunities, and these challenges can be met where leaders are able to move from a crisis management mindset to thinking about how to run their businesses differently, with a strong focus on culture.

They warn firms that getting this wrong runs the risk of poor conduct, low staff morale and ultimately, weak future performance. These are all things that the FCA take great interest in and following the implementation of SMCR, all Senior Managers should too. However, those that find ways to nudge behaviours in the right direction have the chance to build business models and resilient cultures that adapt to the new circumstances with positive outcomes for customers, employees and investors.

### Firms to prepare for phased move to FCA's new data collection platform RegData

The FCA is now preparing to gradually move firms across to a new data collection platform, which replaces Gabriel.

The FCA will be moving firms and their users to RegData in groups to minimise the impact this has on them.

Firms' moving dates will be determined by the nature of their reporting obligations and reporting schedules. The FCA will email firms' principal user and associated users 3 weeks before their moving date, with reminders 5 days and 1 day to go. Compliance consultants will receive reminders for every firm their user account is currently associated with in Gabriel.

In advance of their moving date, firms should check they have:

- up-to-date contact details in Gabriel
- nominated the correct principal user and assigned administrator rights correctly in Gabriel
- accurate information in Gabriel about all other active users – with any non-active users disabled

The feedback the FCA got from Gabriel users last year indicated 3 main areas for improvement which they have taken into account in RegData:

- accessing Gabriel, particularly the speed of the system and getting support
- viewing your Gabriel reporting schedule, especially the need to improve the schedule layout and submission history
- submitting data and the importance of guidance and data validation

### Approved Persons Regime (APR) and coronavirus: The FCA's expectations

The FCA have published their expectations to help benchmark administrators and firms using Appointed Representative (AR) arrangements apply the Approved Persons Regime (APR) during coronavirus (Covid-19).

Unless a furloughed individual is permanently leaving their post, they can retain their approval during their absence and will not need to be re-approved by the FCA when they return.

Firms do not need to notify the FCA under Form D of these temporary arrangements; however these arrangements should be clearly documented internally.

Regulated firms that use ARs to carry on regulated activity remain responsible for their ARs and networks meeting the FCA's rules. Principals should continue to ensure that:

- the controllers, directors, partners, proprietors and managers of an AR are fit and proper
- the AR is solvent and suitable to act for the firm
- the principal has adequate controls over the AR's activities
- the appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions
- the principal is able to monitor and enforce compliance with relevant requirements

### Nikhil Rathi appointed as new Chief Executive of the FCA

HM Treasury have announced the appointment of Nikhil Rathi as the new permanent Chief Executive of the FCA. Nikhil is expected to take up the role in the autumn.

### The FCA has fined two banks £64,046,800 for failures in mortgage arrears handling

The FCA fined the two banks for failures in relation to their handling of mortgage customers in payment difficulties or arrears. The banks have estimated that they will have paid approximately £300 million in redress.

Between April 2011 and December 2015 the banks' systems and procedures for gathering information from mortgage customers in payment difficulties or arrears resulted in the banks' call handlers not consistently obtaining adequate information to assess customers' circumstances and affordability, creating a risk that customers were treated unfairly. The banks also employed a system that created a risk of inflexibility in approach, with the result that call handlers may have failed to negotiate appropriate payment arrangements for customers. The FCA therefore found that the banks breached Principle 3 and Principle 6.

The banks' agreement to accept the FCA's findings meant they qualified for a 30% discount. Otherwise, the FCA would have imposed a financial penalty of £91,495,400.

The fair and appropriate treatment of customers experiencing financial difficulty remains a focus for the FCA and they are working to ensure that firms raise their standards in this area. The FCA recognises the challenges firms face in this area posed by coronavirus (Covid-19), which only heightens the importance of firms treating customers in financial difficulty fairly and appropriately.

### FCA fines a UK Branch of a foreign bank £37,805,400 over Anti-Money Laundering (AML) failures

The FCA fined a London Branch of a foreign bank £37.8m for failing to put adequate AML systems and controls in place between October 2012 and September 2017. The Bank was aware of these weaknesses and failed to take reasonable and effective steps to fix. The FCA's investigation identified several failings including failure to:

1. Conduct timely periodic due diligence on its clients
2. Address long-standing weaknesses in its automated tool for monitoring money laundering risk on transactions for clients.
3. Have adequate policies and procedures in place when undertaking customer due diligence on clients.

The Bank therefore breached Principle 3 of the FCA's Principles for Businesses, which requires firms to have adequate risk management systems in place. The branch has undertaken a significant remediation exercise to bring its AML controls into compliance.

A Skilled Person has been testing the effectiveness of these enhancements, and their work is now complete. The branch voluntarily implemented a wide-ranging business restriction, which included temporarily stopping taking on new high-risk customers and suspending all new trade finance business activities.

As it agreed to resolve the matter at an early stage of the investigation, the bank qualified for a 30% discount. Without the discount, the financial penalty would have been £54,007,800.



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- Fund authorisation services
- Outsourced MLRO services
- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
- Compliance 'Health' checks
- Policy and procedures
- Systems and Controls
- GDPR assistance
- SMCR assistance
- Related training
- Financial Crime

### UK and Ireland

- Consumer Credit Authorisation, whether you have an interim authorisation or not
- Investment & Operational Risk management services
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- ACD / Management Company structuring and governance review
- Fund and firm re-domiciliation advice
- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.
- Related Training

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