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Diploma in Investment Compliance

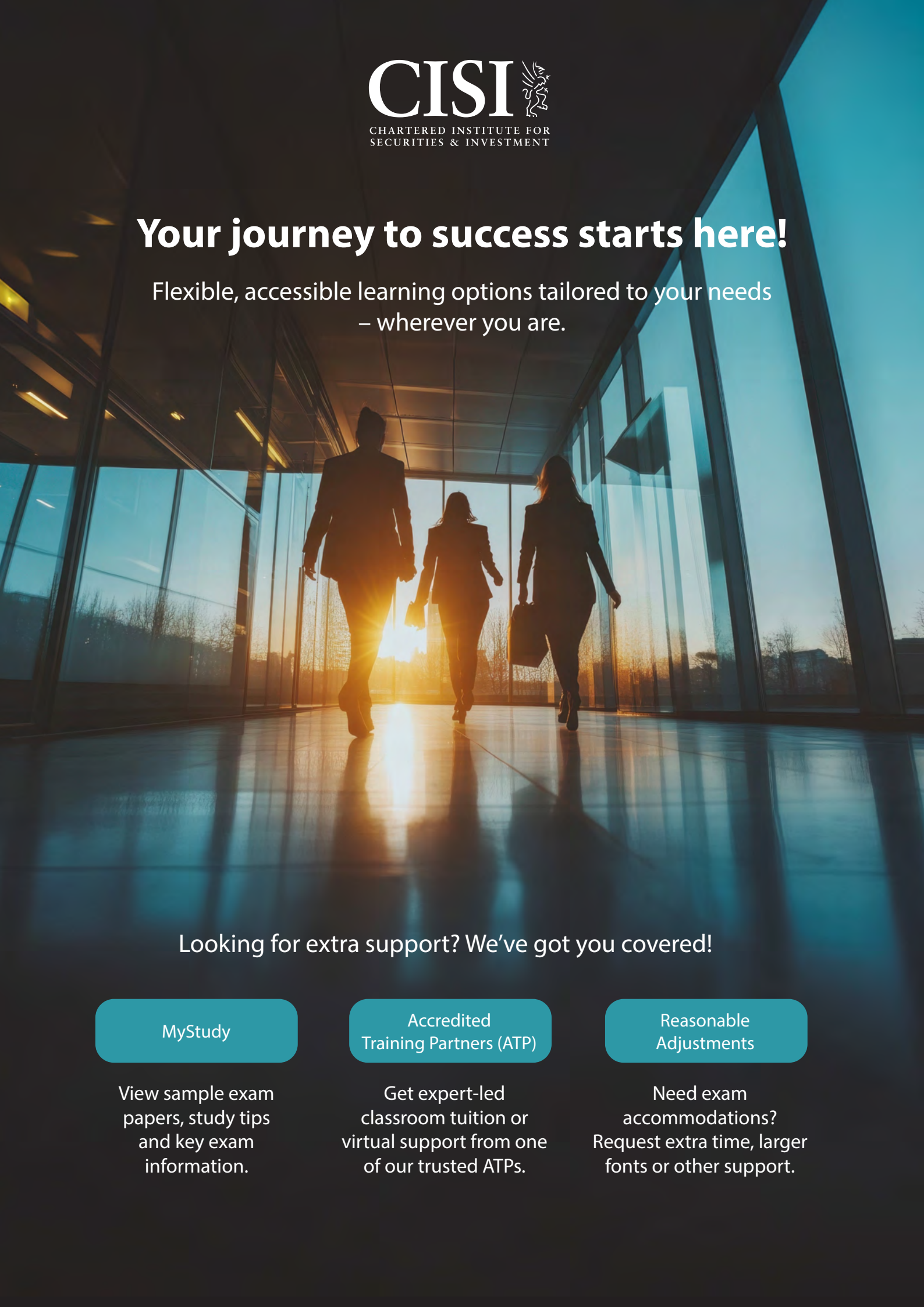
Regulation and Compliance

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Welcome to the Chartered Institute for Securities & Investment's Regulation and Compliance study material.

This manual has been written to prepare you for the Chartered Institute for Securities & Investment's Regulation and Compliance examination.

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Candidates should be aware that the laws mentioned in this study material may not always apply to Scotland.

A learning map, which contains the full syllabus, appears at the end of this study material. The syllabus can also be viewed on cisi.org and is also available by contacting the Customer Support Centre on +44 20 7645 0777.

Please note that the examination is based upon the syllabus. Candidates are reminded to check the Candidate Update area details (cisi.org/candidateupdate) on a regular basis for updates as a result of industry change(s) that could affect their examination.

The questions contained within the study material are designed to aid revision of different areas of the syllabus and to help you consolidate your learning chapter by chapter.

Please note that, as part of exam security, hand-held calculators are not allowed in CISI exam venues. Candidates must use the onscreen calculator for all CISI CBT exams in all languages in the UK and internationally.

Version: 13.1 (June 2026)

Candidate Further Reading

Examinations at level 6 and level 7 are intellectually demanding tests which differ from the CISI's offer at levels 3 to 5 in a number of ways.

The examination will be based on the content of the syllabus. The workbooks are designed to support your learning. At levels 3 to 5 no further reading is expected in respect of the technical content of the syllabus, although regular scrutiny of

the financial press will be an advantage. You are expected to be able to apply principles outlined in the workbooks to situations which are not explicitly stated in the workbook and may be expected to use information from more than one area of the workbook in answering a single question.

At levels 6 and 7, while the official workbook is essential reading, you are expected to read around the subject, and this reading is not prescribed, although for some subjects, there are suggestions at the end of the syllabus. Questions will be set on the whole syllabus, and topical issues may be tested, so candidates are expected to be aware of developments in the relevant area of financial services.

As part of your preparation for all level 6 and 7 examinations you should thoroughly scrutinise past papers for your exam, all of which are available free of charge via MyStudy, and refer to the Examiners' Reports, which are also available. Together, these give a detailed insight into the type of questions asked, although they should not be relied upon to predict questions or syllabus areas likely to be tested in future papers.

Important – Keep Informed of Amendments or Changes to Examination Dates

Changes in industry practice, economic conditions, legislation/regulations, technology and various other factors mean that practitioners must ensure that their knowledge is up to date. At the time of publication, the content is approved as suitable for examinations taken during the period specified. However, changes affecting the industry may either prompt or postpone the publication of an updated version.

It should be noted that the current version will always supersede the content of those issued previously. Keep informed on the publication of new versions and any changes to examination dates by regularly checking the CISI's website: cisi.org/candidateupdate

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The Chartered Institute for Securities & Investment is the leading professional body for those who work in, or aspire to work in, the investment sector, and we are passionately committed to enhancing knowledge, skills and integrity – the three pillars of professionalism at the heart of our Chartered body.

CISI examinations are used extensively by firms to meet the requirements of government regulators. Besides the regulators in the UK, where the CISI head office is based, CISI examinations are recognised by a wide range of governments and their regulators, from Singapore to Dubai and the US. Around 50,000 examinations are taken each year, and it is compulsory for candidates to use CISI study materials to prepare for CISI examinations so that they have the best chance of success. Titles are normally revised every year by experts who themselves work in the industry and also by our Accredited Training Partners, who offer training and elearning to help prepare candidates for the examinations. Information for candidates is also posted on a special area of our website: cisi.org/candidateupdate.

This edition not only provides a thorough preparation for the examination it refers to, but it is also a valuable reference for practitioners, and studying from it counts towards your Continuing Professional Development (CPD). Mock examination papers, for most of our titles, will be made available on our website, as an additional revision tool.

CISI examination candidates are automatically registered, without additional charge, as student members for one year (should they not be members of the CISI already), and this enables you to use a vast range of online resources, including CISI TV, free of any additional charge. The CISI has more than 40,000 members, and nearly half of them have already completed relevant qualifications and transferred to a core membership grade. Please click here to find out more information on becoming a member.

Completing a higher-level examination enables you to progress even more quickly towards personal Chartered status, the pinnacle of professionalism in the CISI. You will find more information about the next steps for this at the end of this workbook.

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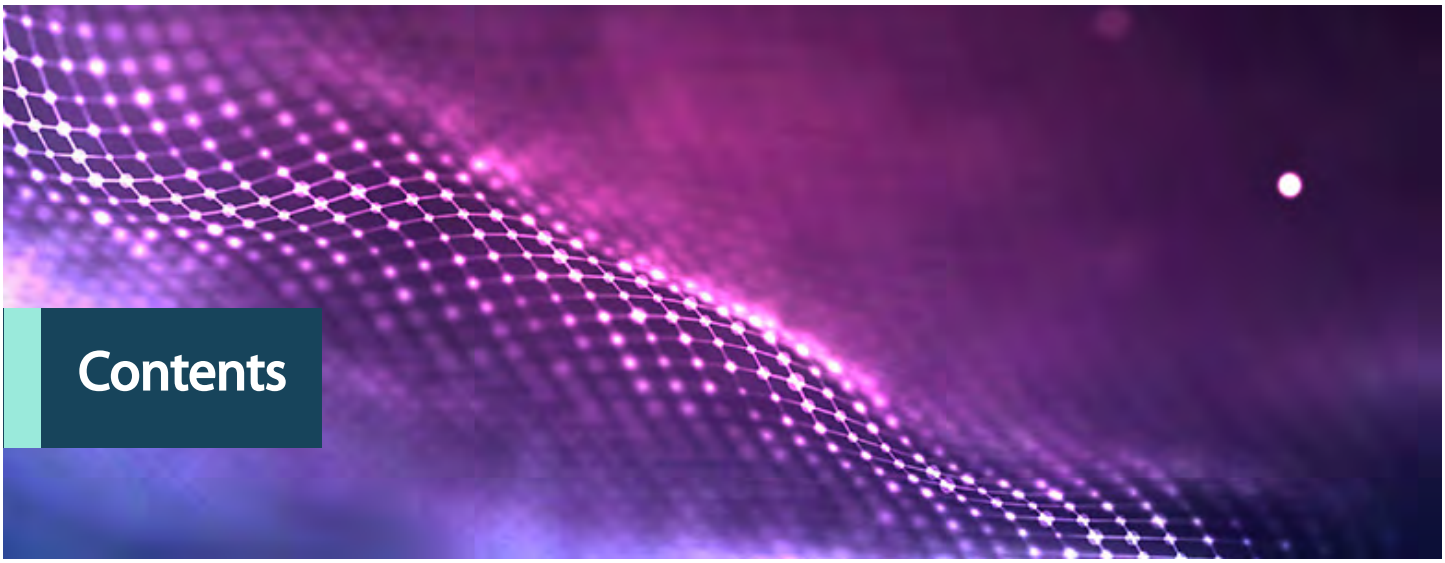
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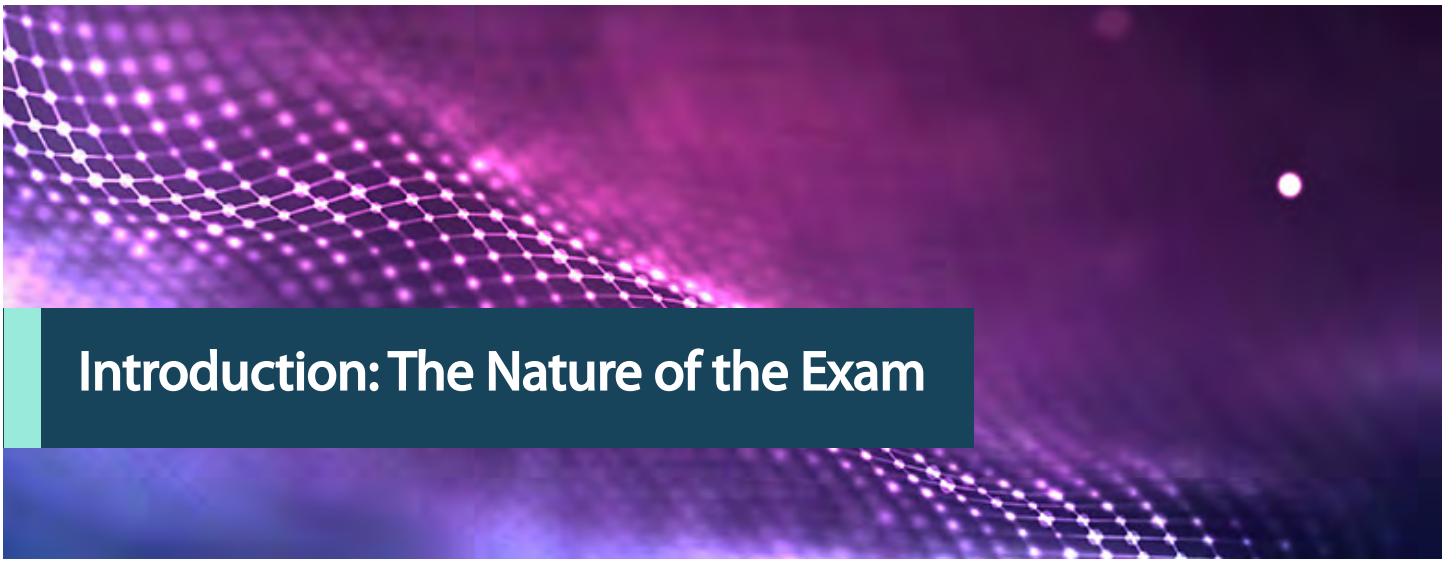
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Introduction: The Nature of the Exam

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1. The General Approach to the Exam

The Diploma is the highest award available from the CISI to candidates that is based upon regulatory qualifications rather than upon investment, dealing or front-office activities of any kind. It is a professional level award and, therefore, in order to address it successfully you must think like a compliance officer. When reading the questions in the paper which present a scenario, always imagine what the person in the question is faced with, despite you not having the direct experience yourself, and analyse it from that point of view.

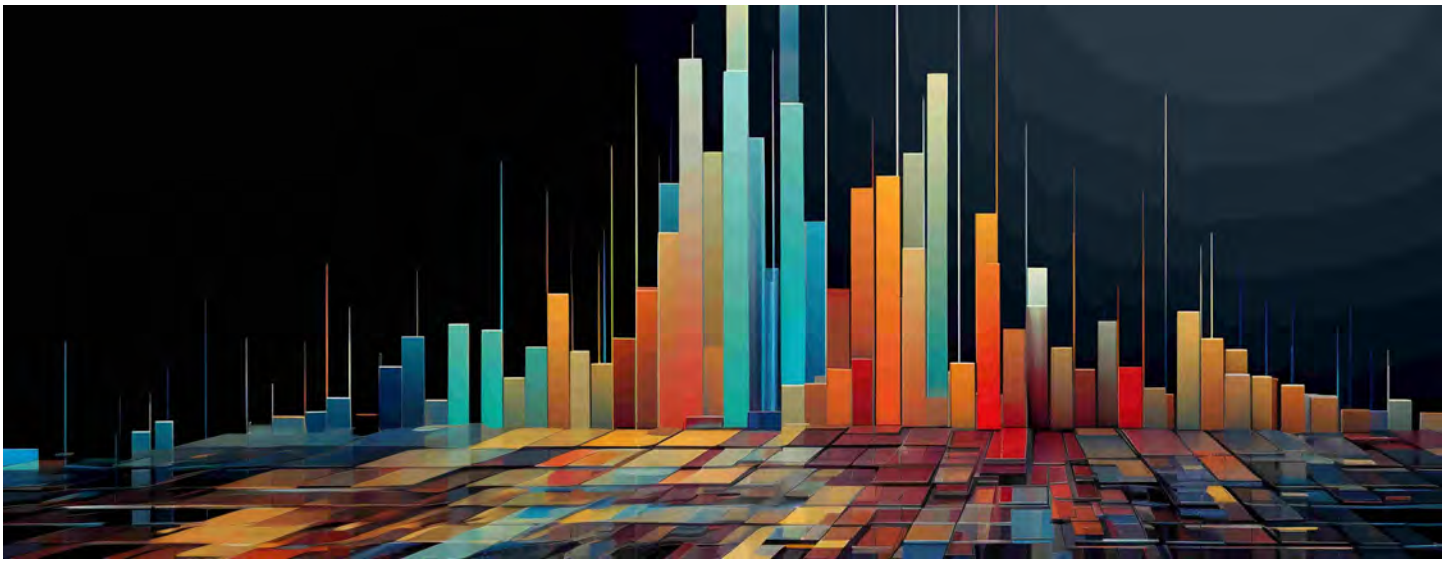
Remember that, on passing the Regulation and Compliance exam, you will enhance your attractiveness as a potential employee for all firms in the financial services sector. Holders will be respected as having attained an outstanding level of competence and achievement.

Unsurprisingly, this exam concentrates on the management aspects of regulations and their impact on firms. There is less attention paid by the examiner to the very detailed knowledge, which may be more relevant at other examination levels. Mastery of detail is relevant and is expected in certain areas of the syllabus, but the important thing for candidates taking the CISI Regulation and Compliance exam is to be able to understand and communicate from an overall management viewpoint. Performance in the examination is likely to be

enhanced by having practical experience and knowledge of the financial services sector.

There is only one objective for you and that is to pass the exam. This workbook has been written from that practical standpoint.

The purpose of the workbook is to enable candidates to know and understand regulations and be able to pass the exam. However, unlike the multiple choice question based exams, just reading the workbook will not in itself enable a candidate to pass the exam. You should aim to acquire a good knowledge and understanding of regulations and how to apply them in situations or scenarios as laid out in the exam questions.



2. The Syllabus

Aim

The aim of the examination is to test candidates' knowledge and understanding of the legal, regulatory and ethical framework of the UK financial services sector and their ability to apply such knowledge and understanding in a practical manner. Candidates will also be required to display an awareness of current topics of interest in the field and be able to debate the major principles of such topics.

The exam is predominantly focused on the laws, rules and requirements that apply in the UK, but candidates should be aware of certain international rules and regulations that can impact the UK due to their extraterritorial application and scope.

The regulatory environment is subject to significant change and candidates should ensure that their knowledge is up to date. Therefore, you should read the financial press and material published by the UK regulators (HM Treasury, the FCA, the PRA and the Bank of England) and other agencies whose actions affect the UK, and global financial services to the extent that they may impact the UK financial services.

Knowledge Level Explanations

In this syllabus, knowledge levels give an indication of the depth to which each topic should receive emphasis, as follows:

- **Overview knowledge (O)** – an awareness of principles or rules, sufficient for the student to know when they should refer to an outside source and why. Candidates with such knowledge should be able to articulate issues which would require further study and to discuss briefly the likely result of that enquiry.
- **General knowledge (G)** – knowledge and understanding sufficient for intelligent comment and the solution of straightforward problems.
- **Detailed knowledge (D)** – a thorough knowledge and substantial understanding, permitting detailed comment and the solution of complex problems.

Examination Structure

A three-hour-and-fifteen-minute examination, with the paper divided into three sections:

- **Section A** – up to ten compulsory short answer questions. This section will carry 30% of the marks.
- **Section B** – a choice of four practical, problem-solving questions from which students are required to answer two. **ONE QUESTION WILL BE COMPULSORY**. This section will carry 40% of the marks, and these will be awarded to reflect not only technical knowledge, but the ability to apply that knowledge to the problem and to deal practically and effectively with the situation presented, **INCLUDING AN ETHICAL AND PROFESSIONAL RESPONSE TO THE SITUATION, BASED UPON THE CISI CODE OF CONDUCT, WHERE APPROPRIATE.**
- **Section C** – a choice of four essay questions from which students are required to answer two. This section will carry 30% of the marks and these will be awarded to reflect both knowledge and understanding, together with clarity of arguments presented.

Candidates are required to keep their knowledge up to date with regard to changes in the regulatory environment.

Part 1 – Regulatory Framework

Objectives

To demonstrate a knowledge and understanding of the regulatory framework of the financial services sector, including the roles of the regulators concerning the major London markets, both as currently organised and incorporating planned future changes.

Content	Knowledge Level
A. UK Statutory Structure	
Financial Services and Markets Act 2000	
Part I (the regulators)	D
Part II (regulated and prohibited activities)	D
Part III (authorisation and exemption)	D
Part IV (permission to carry on regulated activities)	D
Part VIII (penalties for market abuse)	D
Part X, Chapter 1 (rule-making powers)	D
Part XIV (disciplinary measures)	D
Part XXV (injunctions and restitution)	D
Part XXVII (offences)	D
Carrying on Regulated Activities by way of business order	G

Regulated Activities Order	D
Regulated Activities Order (PRA)	D
Financial Promotions Order	D
Collective Investment Schemes: Section 235/8 & 240/241	G
Prescribed Markets and Qualifying Investments Order (2001)	G
Bank of England Act 1988	O
Banking Act 2009	O
Financial Services Act 2010	O
Financial Services Act 2012	O
Financial Services (Banking Reform) Act 2013	O
Bank of England and Financial Services Act 2016	O
European Union (Withdrawal) Act 2018 & European Union (Withdrawal Agreement) Act 2000	O
Financial Services Act 2021	O
Financial Services and Markets Act 2023	O
B. European Financial Services (as relevant to the UK Financial Services Industry)	
Home and Host state regulation including passporting	O

European Financial Services structure, operation and legislation	O
C. International Financial Services Structure, Operation and Legislation (as relevant to the UK Financial Services Industry)	
Supranational Financial Services	O
US Financial Services	O
Key Asian Financial Services	O

Part 2 – FCA Handbook and PRA Rulebook of Rules and Guidance

Objectives

To demonstrate a knowledge and understanding of the FCA's and PRA's rules and guidance as applicable to investment business conducted in the UK.

Content	Knowledge Level
A. High-Level Standards	
PRIN Principles for Businesses	D
SYSC Senior Management Arrangements, Systems and Controls	
SYSC 1 Application and purpose	O
SYSC 2 Senior management arrangements	D
SYSC 3 Systems and controls	D
SYSC 4 General organisational requirements	G

SYSC 5 Employees, agents and other relevant persons	G
SYSC 6 Compliance, internal audit and financial crime	G
SYSC 7 Risk control	G
SYSC 8 Outsourcing	G
SYSC 9 Record keeping	G
SYSC 10 Conflicts of interest	G
SYSC 12 Group risk systems and controls requirements	O
SYSC 15a Operational resilience	G
SYSC 18 Whistleblowing	G
SYSC 19 Remuneration Codes and Performance Management	O
SYSC 21 Risk control: additional guidance	O
SYSC 22 Regulatory References (SM&CR)	O
SYSC 23 Senior Managers and Certification Regime: Introduction and Classification	D
SYSC 24 Senior Managers and Certification Regime: Allocation of Prescribed Responsibilities	D
SYSC 25 Senior Managers and Certification Regime: Management Responsibilities	D

SYSC 26 Senior Managers and Certification Regime: Overall and Local Responsibility	D
SYSC 27 Senior Managers and Certification Regime: Certification Regime	D
COND Threshold Conditions	D
FIT The Fit and Proper Test for Employees and Senior Personnel	D
FINMAR Short Selling Financial Stability and Market Confidence Sourcebook	
FINMAR 2 (Short Selling)	G
TC Training and Competence	G
GEN General Provisions	O
COCON Code of Conduct	D
B. Business Standards	
COBS Conduct of Business Sourcebook	
In particular:	
COBS 1 Application	O
COBS 2 Conduct of Business obligations	O
COBS 3 Client categorisation	D
COBS 4 Communicating with clients, including financial promotions	D

COBS 5 Distance communications	O
COBS 6 Information about the firm, its services and remuneration	D
COBS 8 Client agreements (Non-MiFID provisions)	D
COBS 8A Client agreements (MiFID provisions)	D
COBS 9 Suitability (including basic advice) (Non-MiFID provisions)	D
COBS 9A Suitability (including basic advice) (MiFID provisions)	D
COBS 10 Appropriateness (for non-advised services) (Non-MiFID provisions)	D
COBS 10A Appropriateness (for non-advised services) (MiFID provisions)	D
COBS 11 Dealing and managing	D
COBS 11A Underwriting and placing	O
COBS 12 Investment research	D
COBS 16 Reporting information to clients (non-MiFID provisions)	D
COBS 16A Reporting information to clients (MiFID provisions)	D
COBS 18 Specialist regimes	O
COBS 22 Restrictions on the distribution of certain complex investment products	D

CASS Client Assets Sourcebook	G
MAR Market Conduct	
PROD Product Intervention and Product Governance Sourcebook	D
C. Regulatory Processes	
SUP Supervision	
In particular:	
SUP 6 Applications to vary and cancel Part 4A permissions and to impose, vary or cancel requirements	O
SUP 8 Waiver and modification of rules	O
SUP 10A FCA Approved Persons in Appointed Representatives	D
SUP 10B PRA Approved Persons	D
SUP 10C FCA Senior Managers Regime for Approved Persons in SM&CR firms	D
SUP 15 Notifications to the FCA	G
SUP 17A Transaction reporting and supply of reference data	G
DEPP Decision Procedure and Penalties Manual	O
D. Redress	
DISP Dispute Resolution and Complaints, in particular:	

DISP 1 (Treating Complaints Fairly) & DISP 2 (Jurisdiction of the Financial Ombudsman Service)	D
COMP Compensation	G
E. Regulatory Guides	
PERG The Perimeter Guidance Manual	
PERG 2 Authorisation and regulated activities	D
PERG 8 Financial promotions and related activities	G

Part 3 – Other Regulatory Provisions

Objectives

To demonstrate knowledge and understanding of a selection of regulatory provisions relevant to UK firms and individuals.

Content	Knowledge Level
A. Takeover Code	
General Principles	D
Role and function of the Takeover Panel	O
B. FCA Listing rules	O
C. Market Abuse	
Insider Lists	D
Stabilisation	D
Insider dealing	D

Legitimate behaviour	D
Market soundings	D
Market manipulation	D
Investment recommendations	D
Accepted market practices	D
D. Insider Dealing	
Part V and Schedule 1 of the Criminal Justice Act 1993 and regulations made thereunder	D
The offences	D
The defences	D
• 'dealing'	D
• 'inside information'	D
• 'insiders'	D
• 'made public'	D
• 'professional intermediary'	D
Penalties, prosecution and territorial scope	D
Misleading statements and impressions (Part 7, ss89–95 of Financial Services Act 2012)	D

E. Money Laundering	
The regulatory framework in respect of money laundering	
The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)	O
Offences under the Terrorism Act (2000) Sec 21A	D
Proceeds of Crime Act (2002) Sections 327–334	D
Serious Organised Crime & Police Act 2005	O
Joint Money Laundering Steering Group Guidance for the UK Financial Sector (Chapters 1–4)	O
Firms' systems and controls (including relevant provisions of SYSC)	D
Implementation of international money laundering standards	O
F. UK Bribery Act 2010	D
G. Whistleblowing	D
H. Benchmarks	O
I. Data Protection Act 2018 and the Information Commissioner's Office (General Data Protection Regulation)	G
J. ESG	
The Climate Financial Risk Forum (CFRF)	G

K. Cryptoassets	O

Part 4 – The Regulation of Markets and Exchanges

Objectives

To demonstrate a knowledge and understanding of the main dealing and reporting rules of the major securities and financial derivative exchanges and some of the major characteristics of and differences between a variety of regulated markets, including other developments in the areas of payment and market infrastructure.

Content	Knowledge Level
Regulation of:	
Recognised Investment Exchanges (RIE)	O
Designated Investment Exchanges (DIE)	O
Recognised Overseas Investment Exchanges (ROIE)	O
Multilateral Trading Facilities (MTFs)	O
Organised Trading Facilities (OTFs)	O
Systematic Internalisers (SIs)	O

Part 5 – Current Regulatory Developments

Objectives

Candidates are required to keep up to date with regulatory developments that could have an impact on the UK Financial Services Sector.

Candidates are advised to familiarise themselves with the HM Treasury, FCA, PRA and websites, including:

- FCA Business Plan
- Regulatory Initiatives Grid
- Dear CEO letters
- Market watch/market abuse
- Enforcement actions
- Executive speeches and press releases
- Consultation papers, discussion papers, call for evidence, feedback statements, policy statements and supervisory statements

Candidates are also encouraged to read:

- CISI Review magazine
- Upper Tribunal decision.



3. Booking the Exam

The CISI makes full details available on its website, describing the exam booking process and timetable. Exams are held twice per year in June and December. There is a fee payable, and results are published in February and August.



4. The Exam

4.1 How the Exam is Structured

The examination is divided into three sections – A, B and C.

Section A

Section A normally comprises around ten **short-answer compulsory questions** and contributes a total of 30 marks, representing 30% of the total marks. It is really a test of one's knowledge. Most candidates tend to execute this section first; however, sections, and indeed questions, may be attempted in whatever sequence one wishes.

In Section A the examiner is looking for brief, factual answers, and it is advised that candidates express a concise yet clear answer in a few short sentences or statements. Questions in this section may require you to define or explain something, but there is no discussion element.

As facts are key in this section of the overall paper, when preparing for the examination you must therefore commit such knowledge to memory. Always write enough to ensure that the meaning is properly conveyed, but do not over-elaborate.

Section B

In Section B, which is worth 40 marks (40%), candidates are required to address one compulsory case study, and then choose another question from a choice of three. This will test your ability to deal with a number of related problems arising from a scenario and data provided. This section provides the examiner with an opportunity to create a practical example and ask questions as to how you would analyse and approach a problem. The examiners do explicitly show how many marks are available for answering specific questions within the overall section. The indicated number of marks tells you where to devote your effort. Time spent on thinking and planning is vitally important. The examiners always like to see evidence of a plan being drafted by candidates here.

The case studies tend to present evidence (perhaps in the form of a table of information) which has to be analysed and conclusions then drawn in line with the questions asked.

Section B is noted for its ability to separate those candidates with a sound depth of knowledge and relevant experience, from those without a solid framework on which to structure their answers.

Section C

Only in Section C are you given a free choice of questions. It requires you to select two questions from the four presented. Each one offers 15 marks, thus overall this is for 30 marks (30% of the total marks available). You may be asked to write short reports, memoranda or letters, with the examiners effectively reserving the right to request answers in whatever format they wish; so be prepared to be flexible and understand the differences in formats. If the question says 'write a report' then please do just that. Why do anything else?

These questions will be either discursive or draw upon specific technical areas of expertise which will include topical issues. Candidates' ability to communicate clearly and concisely will form an element of the assessment.

Section C will tend to include a question on current or future developments, such as the impact of new regulations on markets, industry or the impact of EU

legislation; or on topical issues such as ethics in financial services or the changing focus and shape of regulations. It is therefore necessary to be able to put yourself (at least mentally) in the position of those who make decisions on compliance within firms (ie, the firm's compliance officer).

The questions in this section are often described as 'discursive'. The examiners are looking to assess whether or not you are able to discuss the points raised by the question, and they may also address future industry developments. In order to be able to do so, you will need both background and factual knowledge. Regularly reading the news as reported in the financial press is important. You should keep up to date on topics of importance and on developing issues. Questions are regularly set on topical issues.

The CISI website contains the last four exam papers and the chief examiners' report. Candidates should use these papers to get an understanding of the type of questions that will be asked in the exam.

4.2 Subject Areas

The following subjects have appeared in the exam for the last few years in Sections B and C. The summary list is as follows:

- Regulated activities
- Environmental, Social and Governance (ESG)
- Market abuse
- Financial crime
- Conduct of business (advice/suitability, financial promotions)
- Conduct risk
- Senior Managers & Certification Regime (SM&CR)
- UK regulatory structure
- EU legislation/global regulations
- Ethics (business conduct)
- Enforcement.

There are many other subjects about which questions have been asked on a less frequent basis, and careful examination of previous exam papers (available on the CISI website) will stand you in good stead if you read through them. It is imperative that candidates read and understand the exam structure, as this will help them in their studies and approach to the exam.

Very occasionally, a one-off question will crop up which has never been seen before on some fairly esoteric topic. However, by and large, candidates can expect to find a fair set of questions in the exam paper, offering everyone a fair chance to achieve success in the exam. Not everyone will possess the necessary specific industry background to answer absolutely every Section C question. Therefore, it is important that candidates keep up to date with industry topical issues and discussions, which may appear in the exam.

4.3 Model Answers

Previous exam papers, and the chief examiner's reports (and answers), are available to view on the CISI website (under Qualifications > Past Papers and Reports).

To get an idea of what the examiner is expecting from candidates, what previous candidates did right and wrong in previous exams, and how to judge the length and structure of your answers, it is valuable to read the reports written after marking each set of papers by the chief examiner, also available on the CISI website (as above).

There is no correct model answer to any question. Indeed, when you look at some of the examiner's feedback documents, you will realise that it would not be possible to write all the suggested content for an answer in the time available. The examiner is looking for a well-structured answer that meets the standard required. Every candidate has their own unique experience, and the ability to bring to bear your practical experience will be to your benefit.

Sometimes questions are posed by examiners that ask candidates to present broad overviews. You have to be careful here if you have really deep knowledge of a subject; the selectivity that is required can only be addressed by planning

against the specific question as set. Try to relate every element of the paragraph to the question concerned. For example, a candidate might see that a certain question is addressing regulatory issues surrounding hedge funds. Perhaps that candidate works in hedge funds and knows an enormous amount about them. However, the question will focus on a specific aspect concerning the regulation of hedge funds. It is evident, therefore, that there is a need to be specific and selective in the response.

4.4 What is the Examiner Looking For?

The successful candidate will demonstrate to the examiner and to the Regulation and Compliance panel that they have the ability to communicate and present a well-structured answer demonstrating knowledge of relevant issues, highlighting how processes fit together and drawing a coherent conclusion. The ability to demonstrate a practical application towards management of these issues will be expected.

The following summary list of thoughts may prove useful:

- Evidence of planning
- A well-constructed answer which is a pleasure to read
- Legible handwriting
- Use of examples, diagrams and headings where appropriate.

As has been said hundreds of times before, it is important for all candidates to read and understand the question and to answer the question as set. Do not stray into any other area and keep your answers relevant to the question posed by the examiners. Furthermore, there is no point in representing the question in the written answer. Successful candidates will be able to demonstrate how the industry works and describe its 'moving parts' and how they operate, showing knowledge of the linkages. Therefore, the examiner is seeking a relatively high-level answer, but one that is able to draw together all the strands of knowledge that are required. It is not a test of your ability to show understanding of enormous degrees of in-depth detail. Detail can always be looked up in a work situation. It is the overall view that is important, together with a logical

understanding of the pressures and responsibilities that fall upon compliance and operations managers.

Examiners report that they very often see **poor presentation skills** from candidates. Don't let yourself fall into that trap. Similarly, be able to be topical and quote examples. You are bound to have good experience upon which you can draw from your own job and roles that you have held within firms you have worked for, so prepare widely and undertake additional reading, which will enable you to present yourself in the finest possible shape for the written examination.

4.5 Keys to Success

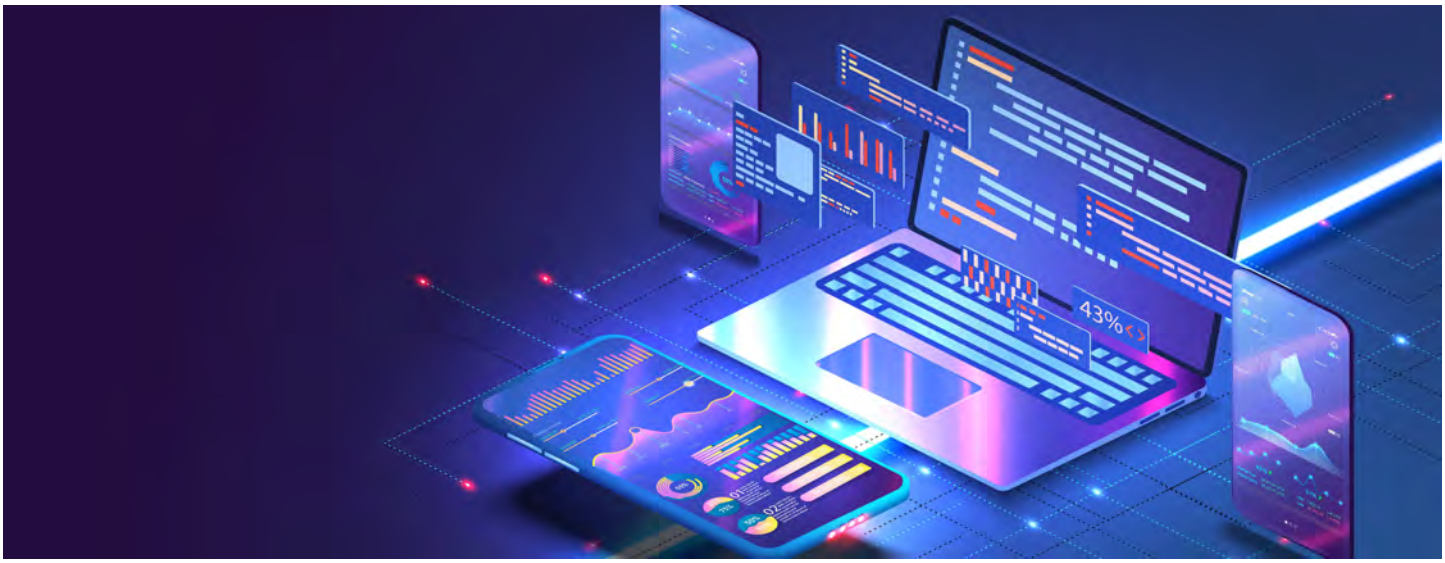
Section A is factual. This requires knowledge which can be gained through experience or by sheer hard work and revision. Experience will always play a significant part in assisting candidates to achieve a good score. You should aim to score 20-plus marks in this section. If that can be achieved, you are well on your way to passing the overall examination.

In **Section B**, the candidate has to answer a compulsory question and another question from a choice of three. This section is often seen to be the real test of whether a candidate is able to deliver to the necessary standard. The case study will test you on a number of different fronts. It is bound to include references to UK and international regulatory knowledge. It will certainly test your management skills and business approach and will also undoubtedly address risk management. Thus, the case study questions are those intended to straddle various areas. With 40 marks on offer in Section B, you should ideally be aiming to pick up about 25.

In **Section C**, a choice is offered, and this gives you the opportunity to demonstrate your knowledge, views, know-how and practical experience, with respect to questions posed against the backdrop of the current industry and its challenges. In preparing for this section, therefore, you should seek to keep on top of current issues and be aware of developments in the industry.

In Section C, with two questions each worth 15 marks, 10 marks or more for each would see you through to passing the exam, providing that your scores in the other sections are satisfactory.

This calls, therefore, for careful management of time, which is addressed elsewhere in these notes.



5. Studying and Preparation

Passing the examination will depend on your ability to prepare sufficiently well in the time available. This workbook is intended to support you in that process. In itself, it will not be sufficient. Students can take a training course provided by an accredited CISI training provider or prepare on their own as self-study. Whichever approach is selected by candidates, they will require outside reading and study in order, particularly, to keep abreast of current regulatory developments.

It is desirable for you to have, or to develop, an awareness of the big picture of the financial services sector in order to be ready for the exam. It is important to read articles in the financial press, both newspapers and industry magazines, such as the Financial Times and The Economist. It is well worth reading articles from specialist publications, such as the CISI's The Review, law firms and regulatory practices of accountancy firms. Quite often, exam question topics will show some correlation with topical industry issues.

Preparation for the Regulation and Compliance examination requires a broad, diverse knowledge of markets and practices, and an ability to understand and implement processes, procedures and controls that reflect the diverse nature of the international markets.

Although not specifically required by the syllabus, the internet has a wealth of useful information, and search engines can be used to find information on key

words and topics. The CISI syllabus gives examples of further reading and useful external websites.

Remember that these exams are aimed to test higher skills, and successful candidates will be expected to show a keen interest in the subject matter and its development.



6. Exam Technique

Candidates must read the question, understand what is being asked and answer the questions being asked, not what they think it should mean. All too often, candidates do not answer the question being asked, wasting valuable time.

Section A contains the most questions, but they are short and should be addressed concisely. Some questions may be for one mark only. There are also compulsory questions, and the failure to address any question will leave a gap in your ability to attain marks. A lot of the questions in Section A may ask you to define something, do a simple calculation or explain something straightforwardly. No single question should take that long and collectively this 30-mark section should be achievable within 45 minutes. There is no need to write plans in Section A. Do not exceed this time estimate, as it will eat into valuable planning and execution time for the other sections.

Section A is also quite likely to address aspects to do with risk and elements of regulation, but in a short concise manner. It is useful to utilise glossaries in order to learn and be able to define product names, well-known abbreviations and other industry jargon.

Sections B and C are intended to test the student's overall knowledge and management ability with respect to regulations. Questions can address the UK regulatory structure, but may also examine international regulatory regimes and

approaches. You are recommended to bring your own experience to bear, and in the exam you should be able to demonstrate the ability to analyse information, to construct an opinion, and to be able to express your thoughts, conclusions and recommendations about scenarios posed. Again, as indicated repeatedly, the planning step for these questions is of great importance.

Check your work as you go, and certainly reread it to make sure that it all fits together properly and makes sense.

Be prepared to justify your opinions solidly. If you make assumptions, define what they are; otherwise the examiner will not know. In Section C, you will need to allow for reading time to address all questions from which you may choose. This will take a little bit of time and finally you will need to address two of the four questions set.

Pay attention to the way you present your work. Examiners have to mark the papers so make sure your handwriting is clear and legible. **Space your work carefully, use headings and do not write in lists or sets of bullet points.** Remember that your answers must be relevant to the question asked and refer to any of the important matters, including regulatory and risk issues as defined in the question.

6.1 Presentation of Your Scripts

As this is a written exam, a candidate's ability to use English effectively is essential. You are advised to take as much care as you can to ensure that your grammar, spelling and punctuation are addressed well. Professional exams require answers that are of a professional standard.

6.2 Sensible Use of Time

This is where planning helps. You do not want to run out of time so that you are unable to answer one of the, for example, Section C questions with 15 marks. Remember that the examiner cannot award marks unless there is evidence in your work that knowledge exists and is demonstrated. They cannot anticipate

what you might have said; although a plan might indicate what you intended to write about.

Don't underestimate the time it takes to write a few brief pages of hand-written text. The accent must be on quality rather than quantity. People's capacities vary, of course, and it may be that your ability exceeds that of others, but don't be too ambitious. Planning will help you to concentrate on what is important and bring out those facts in a logical manner and in the format that is requested for the question you are answering. See further comments below.

The exam is three hours overall and time will pass quickly. However, some elements of the exam paper will take more time than others, so a recommended allocation of your time might be as follows:

- **Section A** – minimum of 30 minutes, maximum of 45 minutes.
- **Section B** – aim for 45 minutes but no more than 60 minutes.
- **Section C** – no more than 45 minutes for each of the two questions to be answered.

These suggested times above indicate that you need to be flexible, because some people will spend too long on Section A and put themselves under pressure in other sections. Some students take far longer than 60 minutes for Section B, but this will always compromise time available elsewhere and may lead to disappointment. It is most important to monitor and plan time carefully and allocate that time according to how many marks are available. For example, in Section A, if a question is worth 2 marks, then write a short answer, making it clear to the examiner that you understand the facts that they are looking for. Do not write half a page; this is pointless because only 2 marks are available.

You will need to develop your own style for time management based upon previous exam experience or indeed by practice exam writing, possibly using past questions or mock exams which accredited training providers can provide for you. It is also necessary not to forget that time should be managed and allocated carefully within a multi-part question, such as a case study which might have three or four subsections to it.

6.3 Types of Questions

Section A will always be a series of short compulsory questions to test a student's overall knowledge. These may include:

- **Definitions** – effectively of any word or industry phrase.
- **Names** (including abbreviations) – examples of this might be: what is Section 165 of FSMA, and how does it impact regulated firms?
- **Outlines or lists** – the examiner might ask you to state four types of regulated and permitted activities, or to list four defences against the charge of market abuse/insider dealing.
- **Similarities and differences** – the examiner might ask you to compare and contrast two related or similarly related services, for example comparing and contrasting the UK and the US regulatory approach and legislation in respect of insider dealing, market abuse or short selling.

Section B:

- **Case studies** – as indicated earlier, Section B will always take the form of a semi-authentic case study.

Section C:

- **Real-life case studies** – in Section C, you may be asked to comment on something that has really happened in the industry, for example, the change to the UK regulatory structure following Brexit, the rise and importance of 'ESG', increased scrutiny of conduct (both financial and non-financial misconduct), or other major stories.
- **Technical questions** – although it has been stated that a great deal of detailed knowledge is not generally required in the exam, it will be necessary for candidates to understand why certain technical matters are important and to be able to weigh up the scale of these impacts in an answer, and therefore, to draw the necessary conclusions from the questions asked.
- **Questions on topical issues** – these will be selected in order to pose questions about industry events, major developments or issues of debate in the industry. For example, recent exams have pointed at the issues

presented by the change to UK regulatory structure post-Brexit, the rise and importance of ESG, and even on cryptoassets. A question might ask for benefits and disadvantages and then for your recommendations. If this is the case, you must make sure that you present a balanced view, and indeed have enough information and opinion to state your recommendations clearly. Should you be asked about priorities, it is important that you identify those and state with clarity how you would rank them and indeed how you would address them. Always seek to be as explicit as possible; this engenders clarity in your thought processes, avoids confusion and ambiguity and will gain you marks.

- Occasionally an exam question might make a **statement** or even include a **quotation** from a well- known individual or from a more theoretical origin. Candidates should be able to express their own view and be able to compose and state a satisfactory response. For example, Warren Buffett once famously said: 'Derivatives are financial weapons of mass destruction.' If you had to discuss that statement you would need to be able to present both sides of the argument and draw your own conclusion. Another example might be to express a view on the UK's approach to changing the regulatory landscape post-Brexit. You need to understand what this means and to have your own view about to what extent you agree with the statement.
- Many questions will focus on **topical issues**; you are, therefore, advised to read the financial press in order to keep up to date with major developments from the compliance angle.

6.4 Risk Management and Controls

Risk management is a key issue in regulation and compliance. In the exam, whenever you are faced with a question about risk, always contemplate how the risk can be controlled. The examiner may well ask you to identify risks and to put forward suggestions on how the risks can be mitigated and managed. This is symptomatic of real business life, where a compliance manager will be requested to provide information to other senior management colleagues in a firm, in order

to state the operational challenges, opportunities or difficulties with respect to a potential business development.

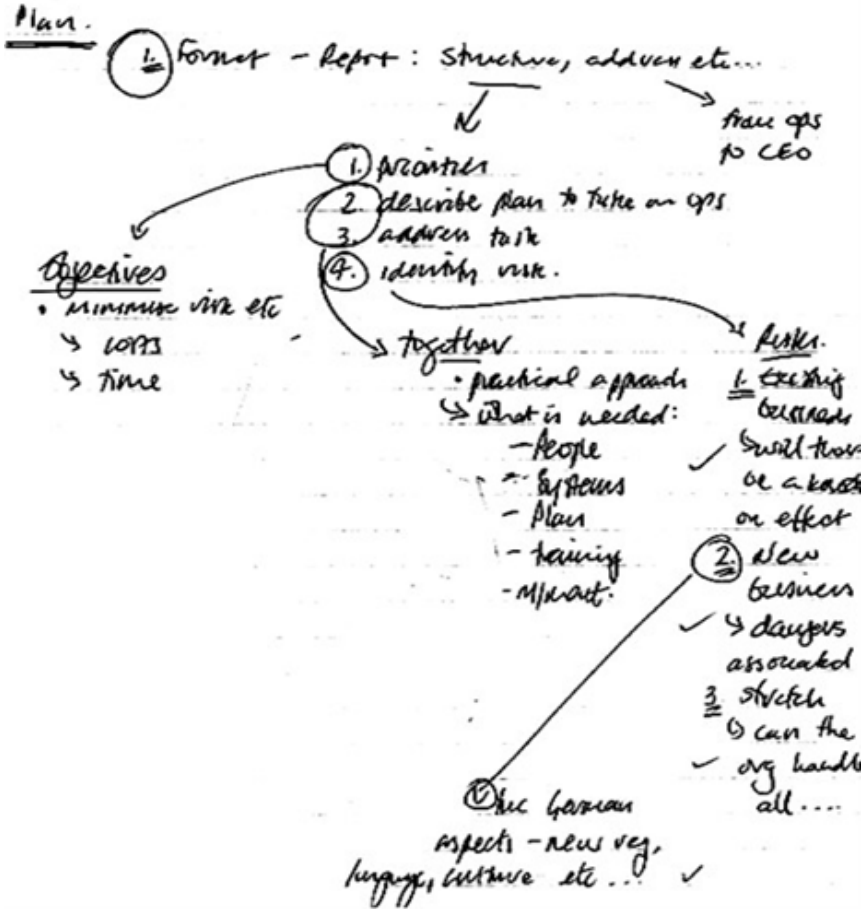
6.5 Answer Planning

It is important for students to plan their answers, and examiners expect this particularly in Sections B and C. It is not necessary for Section A.

The purpose of a plan is to coordinate your thoughts so that there is no need to repeat your thinking when executing the writing of the answers, which can be laborious for many people. None of us is much used to writing longhand for the best part of three hours. A simple example plan is suggested below to illustrate a possible approach. You might decide to draw up a plan using shapes or arrows or analyse the question using a mind map. Many other people just prefer to make a bulleted list of their thoughts. Develop your own method that works for you.

Whatever decision you take, it is essential to spend two or three minutes, with a maximum of, say, five minutes, at the start of the time allotted to marshal your thoughts and to set in your answer script a working document for reference during the exercise of writing out the answer. Leave it in the answer script, but separated from the body of your actual answer. Do not obliterate it, as it will be to your advantage if the examiner can browse the plan, but make sure it is evidently marked as your plan and does not appear to form part of your actual answer. It may often be the case that you will decide not to state certain facts that you had thought of in the plan and to concentrate instead on those points that you feel carry greater weight in the answer. Examiners like to see plans, as indicated, but do not like to see candidates present a good plan and then be unable to go on to write an answer that fulfils the expectations of the plan. Planning is a tool to help you to set out a well-structured answer and thus maximise your chances of doing well in the exam.

An Example of a Plan



This is purely an example to show a possible approach to drawing up an answer plan. It is anonymous and the question upon which it is based is not particularly important. What matters is that the plan should be simple, concise and quick to execute. It is a set of thoughts about the question you are analysing. It helps you to think clearly and to record those thoughts. From that point onwards, the plan becomes a source of reference to guide you as you write your answer. It saves you having to repeat your thought processes and allows you to concentrate on the relatively more laborious task of actually writing your answer down.

Chapter One
Regulatory Framework

Section 1	UK Statutory Structure
Section 2	European Financial Services
Section 3	International Financial Services Structure, Operation and Legislation



Overall Learning Objective

To demonstrate a knowledge and understanding of the regulatory framework of the financial services sector, including the roles of the regulators in relation to the major London markets, both as currently organised and incorporating planned future changes.

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1. UK Statutory Structure

1.1 Financial Services and Markets Act (FSMA) 2000

The **Financial Services and Markets Act (FSMA) 2000** is the UK Act of Parliament which created the Financial Services Authority (FSA), which was subsequently split into the **Financial Conduct Authority (FCA)** and the **Prudential Regulation Authority (PRA)**.

Throughout this workbook the term 'FSMA' is used, which means the Financial Services and Markets Act 2000, as amended.

Although the FSA has been replaced by the FCA and the PRA, the FSMA still exists and is still relevant to UK financial services legislation. Parts of FSMA were amended by the **Financial Services Act 2012**, which created the FCA and the PRA as the new regulators for financial services in the UK.

FSMA was enacted in 2000 and its purpose was to:

- establish a new single regulator (the Financial Services Authority FSA)
- make provisions for the regulation of financial services and markets, and
- provide for the transfer of certain statutory functions relating to building societies, friendly societies, industrial and provident societies and certain other mutual societies, and for connected purposes.

FSMA imposed four statutory objectives on the then regulator (the FSA) which are still in place:

- **Market confidence** – maintaining confidence in the financial system.
- **Public awareness** – promoting public understanding of the financial system.
- **Consumer protection** – securing the appropriate degree of protection for consumers.
- **Reduction of financial crime** – reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime.

Refer to chapter 2 for the statutory objectives and organisational requirements of the PRA and the FCA.

The statutory objectives are supported by a set of Principles of Good Regulation to be considered by the FCA and the PRA when discharging their functions (these are explained in more detail in chapter 2).

These are:

- efficiency and economy
- the role of management
- proportionality
- innovation
- international character
- competition, and
- public awareness.

1.2 Regulated and Prohibited Activities (Part II)

FSMA is subdivided into 30 parts. Part II, Regulated and Prohibited Activities, includes the general prohibition, which simply states that no person can carry out a **regulated activity** in the UK, or purport to do so, unless they are either authorised or exempt. It is left to a separate statutory instrument, known as the **Regulated Activities Order 2001 (RAO)**, to clarify precisely what these regulated activities are.

The most relevant parts of the legislation are summarised over the next few pages.

For a person to become authorised, that person must first apply to the regulator(s) (depending on whether the firm is single or dual regulated) for permission to perform particular regulated activities. If that person satisfies the **threshold conditions**, they will be granted permission.

Note that the term 'person' here means the trading entity or firm, which could be incorporated as a company, or an unincorporated entity such as a sole trader or partnership or an individual.

Breaches occurring within the regulatory 'perimeter' are investigated by the FCA.

1.2.1 The General Prohibition

Section 23 of FSMA makes it a criminal offence to carry on regulated activities in breach of the general prohibition – in other words, it is a criminal offence to carry on regulated activities without first being authorised or being subject to one of the exemptions. The offence is punishable by a maximum sentence of two years in prison and/or an unlimited fine. It may be a defence to show that the individual had taken all reasonable precautions and exercised all due diligence to avoid committing the offence.

FSMA gives the FCA the power to make an order (**prohibition order**) barring an individual from performing a specified function. The prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description, all regulated activities by authorised persons generally, or to any

person within a specified class of authorised person. An authorised person must take reasonable care to ensure that no function, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

Any agreement made by a person in contravention of the general prohibition is unenforceable by that person against the other party. This is also the case for agreements made as a result of the activities of someone who was contravening the general prohibition, even if that person is not a party to the agreement. The other party is entitled to recover any money or property transferred under the agreement, and to be compensated for any loss suffered.

In order to understand whether someone is in breach of the FSMA general prohibition rules, it is necessary to understand what constitutes regulated activities. FSMA provides that these will be defined by reference to two sets of criteria:

1. A **range of investments** (including assets which we might typically think of as investments, for example, shares and bonds, but also other assets such as deposits and **contracts of insurance**), and
2. A **range of activities** which may be carried on in connection with those investments, for example, dealing, managing or advising on investments, accepting deposits and effecting contracts of insurance. Not all of the activities can be related to all the investments – some are specific to just one type, eg, effecting a contract of insurance relates only to contracts of insurance.

If a person is performing one (or more) of these specified activities in relation to one (or more) of the specified investments, then that person is performing a regulated activity and requires either **authorisation** or an exemption. It is the combination of carrying on a specified activity in relation to a specified investment which gives rise to regulated activity.

The investments and activities are detailed in secondary legislation issued under FSMA – principally the RAO 2001, as amended in following years.

Find out more about The General Prohibition...



1.2.2 Specified Investments

The following are defined as specified investments within the RAO (as contained in the PERG sourcebook – PERG 2.6):

1. **Deposits** – that is, money paid by one person to another, with or without interest being earned on it, and on terms that it will be repaid when a specified event occurs (eg, when a demand is made). The obvious example is deposits held with banks and building societies. For clarity, the RAO sets out certain exclusions – eg, electronic money (covered separately below), money paid in advance for the provision of goods or services and money paid as a security deposit.
2. **Electronic money** – that is, monetary value (as represented by a claim on the e-money issuer) which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by third parties. It is classified as a specified investment when issued by a credit institution, a credit union, a municipal bank, a person granted authorisation under

Article 74 of the Electronic Money Regulations or who falls within Article 76)(1).

3. **Rights under contracts of insurance** – which includes both long-term insurance contracts (eg, life assurance and endowment policies) and general insurance (eg, motor and building insurance). The FCA provides guidance on identifying a contract of insurance in its Perimeter Guidance Sourcebook (PERG), since the identification process is not always as straightforward as you might think.
4. **Shares** – defined widely as shares or stock in any company (wherever incorporated) or in any unincorporated body formed outside the UK. The RAO definition excludes shares in open-ended investment companies (OEICs), since an OEIC is a **collective investment scheme (CIS)** and is captured under a separate definition. It also excludes some building society shares, since these can behave like, and are therefore captured under the definition of deposits.
5. **Instruments creating or acknowledging indebtedness** – this includes debentures, debenture stock and loan stock and, as a 'mopping-up' clause, specifies '*any other instrument creating or acknowledging debt*'. Again, the definition is wide, so the RAO provides for some exclusions, eg, trade bills, cheques and other bills of exchange, and (because they are separately captured) contracts of insurance and government and public securities.
6. **Government and public securities (debt instruments)** – eg, gilts and US treasuries, and local authority/municipal loan stocks. Again, certain instruments are excluded, for example, trade bills issued by government bodies, and National Savings & Investments (NS&I) deposits and products.
7. **Alternative finance, investment bonds/alternative debentures** – a form of Shariah-compliant bond or sukuk. Shariah is defined as 'the moral code and religious law of a prophetic religion' (Islam).
8. **Instruments giving entitlements to investments** – warrants and similar instruments entitling the holder to subscribe in shares, debentures, government and public securities at a set price, and on or between set date(s) in the future.
9. **Certificates representing certain securities** – certificates and the like which confer rights in other instruments such as shares, debentures, gilts and

warrants. It would include, for example, American depositary receipts (ADRs), which typically give the holder rights over a certain number of a UK company's shares. These ADRs are designed to offer the investor (typically US-based) a more convenient way to invest in UK shares, because the shares are dealt in, and pay dividends in, US dollars. Also covered here are other depositary receipts, for example, global depositary receipts (GDRs).

10. **Units in a collective investment scheme** – covers holdings in any CIS, whether it is an authorised scheme or an unregulated scheme – for example, units in an authorised **unit trust** or shares in an OEIC, which may also be described as an investment company with variable capital (ICVC). This is why OEICs are specifically excluded from the heading of 'shares' (in point 4). Unregulated schemes can also take other legal forms, for example, limited partnerships; therefore, rights in such partnerships fall within the scope of units in a CIS.
11. **Rights under a pension scheme (stakeholder and personal)** – stakeholder pensions are pension schemes set up under the Welfare Reform and Pensions Act 1999 which have to meet certain criteria and be run in a particular way. Personal pension schemes are designed for individuals who do not belong to a company scheme and/or who wish to take control of their own investment decisions for their pension provisions, for example, self-invested personal pensions (SIPPs). A wide range of investments may be held within a personal pension scheme.
12. **Options** – are the right, but not the obligation, to buy or sell a fixed quantity of an underlying asset for a fixed price on or between fixed dates. **Options** are only covered if they relate to:

    - securities or contractually-based investments (eg, stocks, shares, bonds, or **futures** on similar instruments)
    - currencies
    - certain precious metals, including gold and silver, or
    - options on futures contracts and other **contracts for difference (CFDs)**; see point 14 below.

13. **Futures** – contracts for the sale, or purchase of an asset if delivery and settlement will be made at a future date, at a price agreed when the

contract is made. The RAO excludes futures agreed for commercial, as opposed to investment/speculative purposes; so, a contract to buy cocoa at an agreed price at some future date will not be caught if it is carried out by a chocolate maker to help them secure a certain price for the raw materials needed.

14. **Contracts for differences (CFDs)** – for example, spread bets and interest rate swaps. These are contracts where the investor's aim is to secure a profit (or avoid a loss) by making money by reference to fluctuations in the value of an index, or from the price of some other underlying property. The RAO excludes futures and options since these are separately caught under the provisions already detailed.
15. **Lloyd's syndicate capacity and syndicate membership** – relates in the main to the activities of the Lloyd's members' agents and managing agents.
16. **Funeral plan contracts** – ie, certain plans under which the customer pays for benefits which will pay for their, or someone else's, funeral upon their death.
17. **Regulated mortgage contracts*** – ie, mortgage loans secured by a first legal charge on the property, where at least 40% of the property is to be used for the borrower's, or some related party's, dwelling. This specified investment also includes lifetime mortgages, a type of equity release transaction.
18. **Home reversion plan*** – another type of equity release transaction, whereby the customer sells part or all of their home to the plan provider in return for a lump sum or series of payments. They retain the right to stay in their home until they die or move into residential care.
19. **Home purchase plan*** – are alternatives to mortgages, which allow people to buy their homes while complying with Islamic principles, because financing via an interest-bearing mortgage is not permitted (under the strict interpretation of these Islamic principles).
20. **Regulated sale and rent back agreement*** – whereby a person sells all or part of their qualifying interest in land, or property, but remains in occupation of at least 40% of the land or property.
21. **Credit agreement (including Article 36H agreement)** – with respect to the regulated activities of entering into a regulated credit agreement as lender

and exercising (or having the right to exercise) the lender's rights and duties under a regulated credit agreement. This is sub-divided into four different types.

22. **Consumer hire agreement** – an agreement between a person (the owner) and an individual. This does not include a hire-purchase agreement.
23. **Greenhouse gas emission allowance** – there are two specified investments relating to the scheme for greenhouse gas emission allowance trading within the EU: the first kind comprises emission allowances that are auctioned as financial instruments or two-day emission spots; the second kind is an emission allowance itself.
24. **Rights to or interests in investments** – rights in anything that is a specified investment listed, excluding rights in home finance transactions, are themselves a specified investment.
25. **Emission allowances** – an allowance consisting of units recognised for compliance with an 'Emission Trading Scheme.
26. **Qualifying cryptoassets** – these are defined in the RAO as fungible and transferable and also include qualifying stablecoin. Excluded from this definition are tokenised versions of existing specified investments.
27. **Qualifying stablecoin** – these are defined as a qualifying cryptoasset that references a national currency and seeks to hold currency and other assets as backing to maintain a stable value.

The investments marked * are collectively known as 'home finance transactions'.

Following publication in February 2026 of the Financial Services and Markets Act 2000 (Cryptoassets Regulations 2026 Statutory Instrument), the RAO has been updated to include 'qualifying cryptoassets' and 'qualifying stablecoin'. However, the FCA's cryptoassets regime (rules, guidance) does not come into effect until 25 October 2027.

1.2.3 Specified Activities

These include both classes of activity and categories of investment. An activity is a regulated activity for the purposes of FSMA if it is an activity of a specified kind which is carried on by way of business and relates to an investment of a specified

kind. Investment includes any asset, right or interest, and 'specified' means laid down and identified in an order made by **HM Treasury**.

The RAO defines regulated activities by reference first to the range of specified investments, and secondly, the activities a firm may carry on in relation to those investments. An activity which is listed, but which is carried out in relation to an asset which is not a specified investment, is not a regulated activity. We also know that if a business is carrying on a regulated activity, then according to the General Prohibition (Article 19, Part II of FSMA), they must be either authorised or exempt.

The regulated activities themselves are as follows (as contained in the PERG sourcebook – PERG 2.7, and in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001):

1. **Accepting deposits** – mainly the preserve of banks and building societies, but other firms may find themselves caught under this activity.
2. **Issuing e-money** – ie, acting as the issuer of e-money, as has already been described in point 2 of section 1.2.2.
3. **Effecting or carrying out contracts of insurance as principal** – this essentially applies to insurers.
4. **Insurance risk transformation** – the activity of assuming risk from an undertaking, under a contract of insurance.
5. **Dealing in investments as principal or agent** – this applies only to certain specified investments. 'Dealing' means buying, selling, subscribing for or underwriting the investments concerned. When the firm deals as principal (eg, on its own account), it applies only to those investments which are:

    - **securities** – shares, debentures and warrants, or
    - **contractually-based investments**, such as options, futures, CFDs and life policies. When the firm deals as an agent (ie, on behalf of someone else), it applies to **securities** (in the same way as that for dealing as principal) and **relevant investments**. Relevant investments include contractually-based investments (again, in the same way as that for dealing as principal), and/or rights under pure protection and general insurance contracts.

6. **Bidding in emission auctions** – the bidding for emission allowances on an auction platform.
7. **Arranging deals in investments** – this covers:

    - bringing about deals in investments – that is, the involvement of the person is essential to bringing about or concluding the contract, and also
    - making arrangements with a view to transacting in investments, which may be quite widely interpreted as any arrangement pursuant to transactions in investments, for example making introductions.

    The 'arranging' activities relate only to specified investments which:

    - are securities (eg, shares, debentures or warrants)
    - are relevant investments (eg, options, futures, CFDs and rights under insurance contracts)
    - have the underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate, and
    - have rights to or interests in any of the above.

    A typical example might be a broker making arrangements for its **client** to enter into a specific insurance contract.

8. **Arranging home finance transactions** – this covers the arranging and making of arrangements in relation to regulated mortgage contracts, lifetime mortgage contracts, home reversion contracts, home purchase plans, and regulated sale and rent back agreements. These transactions are captured in the same way as those for arranging deals in investments.
9. **Operating a multilateral trading facility (MTF)** – an MTF is any system run by an investment firm or a market operator which brings together multiple third-party buying and selling interests in financial instruments, through the system and in accordance with non-discretionary rules. MTFs can be assimilated to alternative trading exchanges, providing additional pools of liquidity to their members (usually banks, major mutual funds and large insurance companies).

10. **Operating an organised trading facility (OTF)** – an OTF is a new type of regulated trading venue that came into force following the implementation of the **Markets in Financial Instruments Directive (MiFID II)**. OTFs permit the trading of derivatives and other non-equity financial instruments. Equity-like financial instruments are not permitted to be traded on an OTF.
11. **Credit broking activities relating to entering forms of consumer credit as lender** – rights under any contract under which one person provides another with credit and contracts for hire of goods, rights under a contract for the bailment or hiring of goods to a person other than a body corporate.
12. **Operating an electronic system in relation to lending activities relating to consumer credit (credit agreement and/or consumer hire agreement)** – entering into a regulated consumer hire agreement as owner; exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement; credit broking; operating an electronic system in relation to lending; debt adjusting; debt counselling; debt collecting and debt administration.
13. **Managing investments** – applies in respect of investments belonging to someone other than the investment manager, for example, the customer, and/or when the investment manager exercises discretion over the management of the portfolio, on the customer's behalf. The investment portfolio must include either securities or contractually-based investments, or a mixture of both. A typical example is a portfolio manager. Non-discretionary management (where the investment firm does not take the final investment decision on a portfolio) is not covered under this heading. Non- discretionary management is captured under the separately defined regulated activities of dealing in investments and advising on investments.
14. **Assisting in the administration and performance of a contract of insurance** – the activities carried on by intermediaries after the conclusion of a contract of insurance and for/or behalf of policyholders, in particular in the event of a claim.
15. **Activities in relation to debt (consumer credit)**

i. adjusting – negotiating with the lender of the owner, on behalf of the borrower or hirer; taking over, in return for payments by the borrower or hirer and any other activity concerned with the liquidation of a debt

ii. counselling – providing advice to a borrower about liquidation of a debt due under a credit agreement

iii. debt counselling

iv. debt collecting, and

v. debt administration.

16. **Safeguarding and administering investments** – this applies in the context of securities (eg, shares and debentures) and contractually-based investments (eg, options, futures, CFDs, and other qualifying insurance contracts). This section is subdivided into: safeguarding and the administration of assets, and arranging, safeguarding and the administration of assets. In addition, the firm must also be holding the assets for someone else, and must be both safeguarding and administering the assets, categorised under this heading. A typical example could be a custodian bank, which might hold title documents to investments, hold dematerialised investments in its name, and administer the collection of interest, and/or dividends, or the application of corporate actions.

17. **Advising on investments** – this covers giving advice on securities and relevant investments. It does not extend to giving advice about deposits or generic advice (eg, 'invest in the US, not in Europe'). Neither does it extend to giving information – facts, which are not tailored to constitute a recommendation – instead of advice. This does not apply to advice given in the course of carrying on the regulated activity of providing basic advice on stakeholder products. This includes advising on peer-to-peer (P2P) agreements and conversion or transfer of pension benefits. This is sub-divided into: advising on investments (except pension transfers and pension opt-outs) and advising on pension transfers and pension opt-outs.

18. **Sending dematerialised instructions and allowing dematerialised instructions to be sent** – this covers firms operating systems which allow for the electronic transfer of the title in certain investments (again, securities and contractually-based investments), and those which trigger

instructions to be sent on those systems. An example of such a system is CREST.

19. **Managing Undertakings for Collective Investment in Transferable Securities (UCITS); acting as a trustee or depository of a UCITS; managing an alternative investment fund (AIF) (where the AIF is authorised/unauthorised); acting as a trustee or depository of an AIF (where the AIF is authorised/unauthorised) and establishing, operating and winding up a collective investment scheme** – this activity captures persons who set up, operate/administer and wind-up any type of CIS, whether an authorised or an unregulated scheme. Acting as a trustee of an AUT (authorised unit trust), or as the depository or sole director of an OEIC are also separate regulated activities.

20. **Establishing, operating and winding up a pension scheme (stakeholder pension scheme and personal pension scheme)** – this activity captures those who set up, operate, or administer and wind up stakeholder pension schemes, SIPPs and personal pension schemes. These activities may be carried out by the scheme trustees and/or the scheme administrators.

21. **Providing basic advice on stakeholder products** – this is a specialist-regulated activity, for those who advise on stakeholder products only. Stakeholder products conform to certain specific criteria for cost and accessibility.

22. **Advising on the conversion or transfer of pension benefits** – this covers advising people on the transfer of funds from occupational pension schemes. Note that advising on transfers from personal or stakeholder pension schemes would be covered under other categories.

23. **Providing a Pension dashboard service** – the information requested in order for the provision of a pensions dashboard service.

24. **Lloyd's market activities** – advising on syndicate participation at Lloyd's; arranging (bringing about) deals in investments; making arrangements with a view to transactions in investments; managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's and the activity of arranging deals in contracts of insurance written at Lloyd's.

25. **Entering into a funeral plan contract** – the 'provider' is the person to whom the prepayments are made and who undertakes to provide, or secure the

provision of, the funeral at some future point, for example, the funeral director or a third party who arranges for another person to provide the funeral.

26. **Advising home finance transactions** – this covers advising on the merits of entering into, or varying the terms of, a regulated mortgage contract, a lifetime mortgage contract, a regulated home reversion plan, a regulated home purchase plan, or a regulated sale, and rent back agreement and regulated credit agreements for the acquisition of land. All of these home finance transactions constitute regulated activity.
27. **Agreeing to carry on specified kinds of activity** – entering into a legally binding agreement to provide the service that it concerns
28. **Activities of reclaim funds** – 'dormant' account funds.
29. **Specified benchmarks** – the activity of operating and managing a benchmark.
30. **Issuing qualifying stablecoin** – there are three components to this activity, which are the offering; the redemption and the maintaining the value of a qualifying stablecoin.
31. **Safeguarding and arranging safeguarding of qualifying cryptoassets and relevant specified investment cryptoassets** – safeguarding or 'custody' of cryptoassets refers to the method that holders of cryptoassets choose to store their assets and their means of access to them.
32. **Operating qualifying cryptoasset trading platform** – this is defined as a system in which multiple third-party buying and selling trading interests in qualifying cryptoassets are able to interact within the system and which brings together multiple third-party buying and selling interests in qualifying cryptoassets in a way that results in a contract for the exchange of qualifying cryptoassets for: money, including electronic money; or other qualifying cryptoassets.
33. **Dealing in cryptoassets as principal, agent, or arranging deals** – these arrangements also include (capture) cryptoassets lending and borrowing services.
34. **Qualifying cryptoasset staking** – the term staking means validating blockchain transaction.

35. **Providing targeted support** – this means that where a person is providing targeted support, then they will not be undertaking the existing activity of advising on investments. This will enable firms to provide targeted support to customers without charge, whereas investment advice must generally be charged for.
36. **ESG ratings** – the provision of an ESG rating, where that rating is likely to influence a decision to make an investment decision.

Advising, dealing and arranging activities, when carried on in connection with a contract of insurance, and the activity of assisting in the administration and performance of a contract of insurance, are collectively known as 'insurance mediation activities' and are subject to the provisions of the Insurance Mediation Directive (IMD).

The following is a link to an FCA website page that lists the financial activities that it regulates: *https://www.fca.org.uk/firms/authorisation/how-to-apply/activities.*

The FCA's Perimeter Guidance sourcebook also contains details on authorisation and regulated activities (chapter 2); this is located in the 'Regulatory/Registry Guide' block of the Handbook.

Following publication in February 2026 of the Financial Services and Markets Act 2000 (Cryptoassets Regulations 2026 Statutory Instrument, the RAO has been updated to include 'qualifying cryptoassets' and 'qualifying stablecoin'. However, the FCA's cryptoassets regime (rules, Guidance) will not come into effect until 25 October 2027.

1.2.4 Regulated Activities Order (RAO) – PRA

The RAO specifies, for the purposes of FSMA, whose regulated activities are PRA-regulated activities and are, therefore, the regulated activities which are subject to prudential regulation by the PRA, rather than by the FCA.
The activities are:

a. the activity of accepting deposits as specified by Article 5 of the RAO

b. the activity of effecting a contract of insurance as principal as specified by Article 10(1) of the RAO

c. the activity of carrying out a contract of insurance as principal as specified by Article 10(2) of the RAO

d. dealing in investments as principal when carried on by a person designated by the PRA under Article 14 of the Order

e. the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified by Article 57 of the RAO

f. the activity of arranging, by the society incorporated by Lloyd's Act 1871(b) by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's as specified by Article 58 of the RAO:

- any other regulated activity carried on by that society in connection with, or for the purposes of, the activity specified in (f) above.

1.3 Authorisation and Exemption (Part III)

Firms wishing to carry on regulated activities in the UK need to be either authorised or exempt, unless they are subject to one of the exclusions outlined in section 1.3.2 below. The term 'firm' includes individuals, bodies corporate (companies), branches of companies, partnerships and unincorporated associations.

Authorisation is provided under Part IV of FSMA (as amended by the Financial Services Act 2012, now referred to as 'Part 4A' permission). Part 4A permission is given by the FCA and/or the PRA, and, once granted, the firm becomes an authorised person. As an authorised person, the firm can carry on regulated activities of which it is authorised without breaching the general prohibition and committing a criminal offence.

However, permission is not normally granted for all regulated activities. The Part 4A permission specifies which regulated activities the firm can carry on, those investments to which the activities relate, and any further requirements or special conditions (for example, a requirement that the firm should report to the FCA/PRA more frequently than is normally the case).

The regulated activities which a firm is given permission to conduct can be limited. For example, it may be permitted to deal as principal, but only for a particular type of client.

1.3.1 Guidance for Authorisation

Under Section 23 of FSMA (Contravention of the general prohibition), a person commits a criminal offence if they carry on regulated activities in breach of the general prohibition set out in Section 19 of the Act (the General Prohibition). Although a person who commits the criminal offence can be subject to a maximum of two years' imprisonment and an unlimited fine, it is a defence for a person to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Another consequence of a breach of the general prohibition is that certain agreements entered into by such persons could be unenforceable (see Sections 26 to 29 of the Act). This applies to agreements entered into by persons who are in breach of the general prohibition, but also applies to any agreement entered into by an authorised person, if the agreement is made as a result of the activities of a person who is in breach of the general prohibition.

Under Section 22 of FSMA, for an activity to be regarded as a regulated activity, it must be carried on by way of business. Whether or not an activity is carried on by way of business is ultimately a question of fact taking into account several factors. These include the degree of continuity, the existence of a commercial element, the scale of the regulated activity, the proportion which the activity represents of other activities carried on by the same person, but which are not regulated. The nature of the particular regulated activity which is carried on will also be relevant to the factual analysis.

1.3.2 Exclusions

Activities that fall under these exclusions need not be submitted to the regulator for authorisation.

Exclusions from Dealing as Principal – Absence of Holding Out

Dealing in investments as principal is a regulated activity, which (on the face of it) means that persons dealing for themselves in the hope of making profits are required to be authorised or exempt.

This regulated activity is, however, restricted to those persons who are holding themselves out as and acting as market makers. The result is that a person buying shares for only themselves does not need to be authorised or exempt, unless they hold themselves out to be a dealer in investments.

In other words:

- firms which are professional dealers, for example market makers, and hold themselves out as such, are carrying on a regulated activity, but
- individuals or companies who are not in the business of dealing in investments, and who invest only for themselves in the hope of making profit, are excluded.

This exclusion relates to both securities (shares and bonds) and contractually based investments (futures, options and CFDs), as long as they are entered into by an unauthorised person.

Other Exclusions

There are other exclusions covering situations where dealing as principal is not classified as a regulated activity:

1. A bank providing finance to another person and accepting an instrument acknowledging the debt.
2. A company or other organisation issuing its own shares, warrants or debentures.
3. Using options, futures and CFDs for risk-management purposes, as long as the company's business is mainly unregulated activities and the sole or main purpose of the deals is to limit identifiable risks.
4. Entering into transactions as principal for, or in connection with, the following:

    - the sale of goods or supply of services
    - the sale of a company
    - acting as a bare trustee (or in Scotland, as nominee)

- an employee share scheme
- an overseas person
- an incoming electronic commerce provider.

Exclusions for Advice in Newspapers

There is a specific exclusion in relation to newspapers and other media from the regulated activity of advising on investments. If a newspaper includes investment advice, and that advice is not the principle purpose of the newspaper, then the newspaper is excluded from the regulated activity of advising on investments.

The existence of money, financial and city pages, or subsections of such material within a newspaper does not make the principle purpose of the newspaper anything other than the provision of news, so there is no requirement for authorisation.

If the principal purpose of a publication is the provision of investment advice, with a view to encouraging investors or prospective investors to undertake investment activity, then authorisation is required. This is the case for periodicals which 'tip' certain investments and are often sold on a subscription basis. They are often referred to as tipsheets and include publications, for example, Warrants Alert (highlighting those warrants which offer good value to the investor).

Trustees, Nominees and Personal Representatives

There is an exclusion from the need for authorisation if the person carrying on the regulated activity is:

- acting as representative of another party
- not generally holding themselves out as carrying on regulated activities, or
- not receiving additional remuneration for providing these investment services.

This exclusion can apply to the following types of regulated activity:

- dealing in investments as principal
- arranging deals in investments
- managing investments
- safeguarding and administering investments

- sending dematerialised instructions
- advising on investments
- assisting in the administration and performance of a contract of insurance, and
- advising on, entering into, or administering a home finance transaction.

Employee Share Schemes

In order to encourage companies to set up schemes enabling their employees to hold shares in the company they work for, there are exclusions from the company's need to be authorised to operate such schemes.

The exclusion covers four types of activity, which are:

- dealing in investments as principal
- dealing in investments as agent
- arranging deals in investments, and
- safeguarding and administering investments.

Overseas Persons

There are a number of exclusions for overseas persons carrying on regulated activities, providing they do not do so from a permanent place of business in the UK. These exclusions apply only if the business is completed through an authorised, or exempt, UK person, or if the business is the result of a legitimate approach, such as a UK client approaching an overseas person in an unsolicited manner. The exclusions cover mainly the following types of activity:

- dealing in investments as principal
- dealing in investments as agent
- arranging deals in investments
- advising on investments
- agreeing to carry on the regulated activities of managing investments, arranging deals in investments, and safeguarding and administering investments or sending dematerialised instructions
- operating an MTF or an OTF
- entering into, or administering, a home finance transaction.

1.3.3 Exemptions

Certain sections of FSMA, and a statutory instrument called the FSMA Exemption Order 2001, disapply the general prohibition for certain persons when they are carrying on particular regulated activities. This means that such persons are exempt from the need to be authorised, even though some of the activities they carry on are, in theory, regulated activities.

The extent to which any exemption may apply may also be limited to specified circumstances (for example, another person who is authorised and has the relevant regulatory permissions, has accepted responsibility for the regulated activities in question) or subject to specified conditions (for example, a requirement that the activity is not carried on for financial gain).

FSMA provides that appointed representatives, recognised investment exchanges (RIEs) and recognised clearing houses (RCHs), and certain other persons exempt under the miscellaneous provisions, are exempt persons. Members of Lloyd's and members of the other professions are not exempt persons as such, but the general prohibition in Section 19 of FSMA only applies to them under certain circumstances.

The distinction is significant in relation to various provisions (for example, those in the RAO) which apply only to transactions and other activities which involve exempt persons. An example of an exemption subject to certain conditions might be a requirement that the activity is not carried on to make a profit.

These exemptions can be split into two groups:

- Those described as exempt persons under FSMA, for example, RCHs and RIEs.
- Those not described as exempt persons, but who may nonetheless be exempt from the need to apply to the FCA for authorisation, for example, a member of a designated professional body (DPB), carrying on the regulated activities under particular circumstances.

This distinction is significant. Certain legal provisions apply only to transactions involving exempt persons, and not to non-exempt persons, who are only free

from the need to apply for authorisation because of the specific circumstances of their activity.

Exempt Persons

Those exempt persons who are appointed representatives, or miscellaneous persons, cannot be both exempt in relation to some regulated activities and authorised in relation to others. If a firm is already authorised and wishes to perform additional regulated activities, which might otherwise have fallen under the appointed representative, or the miscellaneous persons exemptions, it cannot claim those exemptions; the firm must extend its authorisation to include all the regulated activities it carries on.

Appointed Representatives (AR)

Section 39 of FSMA and the FSMA (Appointed Representatives) Regulations 2001 exempts Appointed Representatives (ARs) from the need to obtain authorisation in order to carry out certain activities. Under this exemption, the AR's principal firm is given the overall responsibility for vetting and monitoring the ARs, which the FCA would normally conduct itself. The Appointed Representative Regulations 2001 provides that exempt appointed representatives can only carry on the following activities:

- arranging deals in investments
- advising on investments
- safeguarding and administering assets
- dealing in investments as agent in long-term insurance contracts meeting specified conditions
- advising on and arranging regulated mortgage contracts
- advising on and arranging regulated home revision and home purchase plans
- assisting in the administration and performance of a contract of insurance
- providing basic advice on stakeholder products.

In particular, appointed representatives are not permitted to deal in investments either as agent or principal, or manage investments.

Following the publication in 2021 of its consultation, the FCA published its Policy Statement (PS22/11) in August 2022, which came into effect at the end of 2022.

While the FCA has broad powers in relation to setting the requirements that apply to principals, more fundamental reforms of the AR regime would require the government to propose amendments to the legislation – hence the purpose of HM's Treasury call for evidence.

HM Treasury noted that if reform was required, there are four key elements of the regulatory approach which need to be changed for the legislation to be enacted:

- the overall scope of the Section 39 exemption, including the regulated activities which ARs are permitted to carry on
- the regulatory tools available to the FCA, should it be concluded that the FCA should be empowered to do more to prevent abuse of the AR regime
- whether more direct regulatory requirements should be placed on ARs in order to strengthen incentives for regulatory compliance and high standards of conduct, and
- the role of the **Financial Ombudsman Service (FOS)** in relation to ARs and their principals where consumers have experienced detriment while dealing with an AR.

The following changes came into effect:

- Additional information on ARs and notification requirements for principals:
    - This will allow the FCA to easily identify potential risks within principals and ARs.
    - It will also help it to assess whether the principal has the expertise, systems and controls to effectively oversee its ARs.
    - The FCA will be able to target its supervisory interventions more effectively.
- Clarifying and strengthening the responsibilities and expectations of principals:
    - Providing additional guidance for principals on their responsibilities.
    - Providing FCA expectations on how they should act and oversee their ARs.

In February 2026 HM Treasury published a consultation paper on reforming the Appointed Representatives (AR) regime. The consultation period closed on 9 April 2026.

The government (via HM Treasury) intends to adapt the legislative framework for the AR regime to provide a proportionate level of protection for consumers of AR firms, while ensuring that the current broad scope of the AR regime is preserved, enabling the financial services sector, and the UK economy as a whole, to continue benefitting from the regime well into the future.

HM Treasury is proposing the following amendments to the AR Framework:

- Principal firms (authorised firms) will need to obtain permission from the FCA before becoming ARs – this will enable the FCA to ensure that these firms have appropriate expertise and resource to effectively oversee their ARs and ensure they act responsibly.
- Consumers/customers of an AR will be able to take a complaint to the Financial Ombudsman Service (FOS) if they are unable to resolve a dispute involving an AR where an authorised firm is not responsible for the issue in dispute.
- Apply the Senior Managers & Certification Regime (SM&CR) to ARs – rationalising the conduct and fitness & propriety frameworks that apply so that they are better aligned with the frameworks applying to all FSMA authorised and regulated firms.

Recognised Investment Exchanges (RIEs) and Recognised Clearing Houses (RCHs)

Trading in, and issuance of, securities is conducted through formal exchanges; for example, the **London Stock Exchange (LSE)**. There are often separate clearing systems connected to these formal exchanges which facilitate the settlement of the trades which take place. The firms operating these systems are referred to as clearing houses.

FSMA gives the FCA the responsibility of recognising, regulating and supervising these exchanges and clearing houses.

Once recognised, these exchanges are referred to as RIEs, and clearing houses are referred to as RCHs. RIEs and RCHs are classified as exempt persons in that they do not need to seek authorisation from the FCA in order to carry on their regulated activities; they are, instead, recognised.

Miscellaneous Exempt Persons

HM Treasury has established certain exemptions from which certain persons do not need to be authorised. Some of these exemptions are restricted in that they only apply under certain circumstances. For example, supranational bodies of which the UK or another **European Economic Area (EEA)** member state is a member, and both the UK central bank or a central bank of an EEA member state, are exempted from the need to be authorised to carry on any regulated activity, apart from the need to effect, or carry out contracts of insurance.

In contrast, certain bodies are exempted from the need to be authorised for the sole regulated activity of accepting deposits; these include municipal banks, local authorities and charities. As stated in FSMA 2000 (Exemption) Order 2001, the main organisations that are exempt in respect of any regulated activity other than for insurance business, are:

- the **Bank of England (BoE)**
- the central banks of EEA member states
- the European Central Bank (ECB)
- the European Investment Bank (EIB)
- the International Bank for Reconstruction and Development (IBRD)
- the International Monetary Fund (IMF), and
- the European Bank for Reconstruction and Development (EBRD).

Exemption from the General Prohibition

Certain persons are able to perform limited regulated activities without the need to be authorised or exempt. In effect, the general prohibition section within FSMA does not apply to them. Such persons include the members of Lloyd's insurance market and certain DPBs.

Members of Lloyd's

Several activities carried on in connection with business at Lloyd's are regulated activities. These include:

- advising on syndicate participation
- acting as a managing agent for one or more syndicates, and
- arranging deals in insurance contracts.

However, FSMA disapplies the general prohibition for members of Lloyd's in relation to contracts of insurance written at Lloyd's.

The reason why the general prohibition does not apply here is because the FCA expects the activities at Lloyd's to be suitably supervised and executed by the Society of Lloyd's, and therefore additional FCA authorisation of its members is unnecessary. The FCA does, however, have certain powers to impose additional rules on the members (or former members) of Lloyd's if it is felt necessary.

Members of the Professions

There are five professions where individual firms are permitted to carry on particular regulated activities without the need to apply to the FCA for regulated permission. Professional firms are required to apply to their relevant professional body for permission to conduct these regulated activities. The individual professions include:

- accountants
- solicitors
- actuaries
- chartered surveyors, and
- licensed conveyancers.

Designated Professional Bodies (DPBs) are the professional bodies which are able to grant permissions. They include the Institute of Chartered Accountants in England and Wales (ICAEW), the Law Society, the Institute and Faculty of Actuaries and the Royal Institution of Chartered Surveyors (RICS).

The DPB must operate a set of rules with which its members must comply, and the regulated activity must be incidental to the provision of its professional services. For example, a firm of accountants providing tax advice might give a client advice in relation to which investments might best be sold to avoid the accrual of a tax liability. There are other restrictions to the activities carried out by DPBs member firms. For example, such firms are allowed to receive a financial

reward only from the client (ie, they should not receive commissions from the providers of products held or bought by the client); and certain regulated activities may not be carried out by the members, namely:

- accepting deposits
- dealing in investments as principal
- establishing, operating or winding up CISs or stakeholder pension schemes
- effecting or carrying out contracts of insurance (including Lloyd's business)
- providing funeral plan contracts
- issuing electronic money (e-money)
- providing basic advice on stakeholder products, and
- establishing a pension scheme.

1.4 Permission to Carry on Regulated Activities (Part IV)

In granting the permission to carry on a regulated activity, the regulator must be satisfied that the applicant will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which they will have permission. See chapter 2, section 8.

The regulator may incorporate in the description of the regulated activity such limitations (as to the circumstances in which the activity may, or may not, be carried on) as it considers appropriate, or specify a narrower or wider description of regulated activity than that to which the application relates. It could also give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

The regulator may, on receipt of an application of an authorised person, vary the permission by:

- adding a regulated activity for which it gives permission
- removing a regulated activity from those for which it gives permission
- cancelling a requirement imposed under Section 43 (Imposition of Requirements), or
- varying such a requirement.

The regulator may exercise its powers in relation to an authorised person if it appears that:

- they are failing, or are likely to fail, to satisfy the threshold conditions, or
- they have failed, during a period of at least 12 months, to carry on a regulated activity for which they have a permission.

When control of an authorised person changes hands, if it believes that the effect of the acquisition is uncertain, the regulator may vary the authorised person's permission by imposing a requirement or varying a requirement included in the authorised person's permission.

1.5 Performance of Regulated Activities (Part V)

The regulators (ie, the PRA and/or FCA) may make an order (prohibition order) prohibiting an individual from performing a specified function, any function falling within a specified description, or simply any function.

A prohibition order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities, to an authorised person generally.

The regulators must provide the individual concerned with a warning notice, informing them that they propose to make a prohibition order. If the regulators decide to make a prohibition order, they must give the individual concerned a decision notice. The individual concerned may refer the matter to the Upper Tribunal, which deals with appeals by firms and/or individuals against FCA decision notices or supervisory notices.

Authorised persons must take reasonable care to ensure that a person does not perform either a Senior Management Function (defined under the SM&CR – refer to chapter 2, section 2) or a Controlled Function (defined under the Approved Persons Regime (APER), refer to chapter 2, section 3), under an arrangement entered into by the authorised person (including a contractor of the authorised person) in relation to the carrying on by the authorised person of a regulated activity, unless approved by the PRA and/or the FCA.

The regulators may impose a penalty if they are satisfied that a person has at any time performed the activity requiring approval where at the time the person knew, or could reasonably be expected to have known, that they were performing an activity without the required approval.

The regulators are very likely to take action against a person if it appears that they are guilty of misconduct and if the regulators are satisfied that it is appropriate in all circumstances to take action against the person involved.

1.6 Disciplinary Measures (Part XIV)

If the regulators consider that an authorised person has contravened a requirement imposed on them under FSMA or UK law (ie, EU regulation onshored under the European Union (Withdrawal Agreement) Act), then they may publish a statement to that effect.

In addition, FSMA also gives the regulators the power to impose a financial penalty in respect of a contravention, of whatever amount is appropriate.

FSMA also gives the regulators the power to suspend or impose limitations on the authorised person, for a period of time, when regulators consider that the individual has contravened a requirement imposed on them.

FSMA dictates that the authorities must provide a warning notice to the authorised person if the regulators are going to take, or are proposing to take, disciplinary action.

1.7 General Rule-Making Power (Part X)

FSMA provides the regulators (the PRA and the FCA) with general rule-making powers that apply to authorised persons carrying out all activities whether regulated or not.

In this respect, the regulators have the power to make rules regarding:

- the handling of client money

- the requirement for firms to have a remuneration policy
- recovery and resolution plans for banking institutions
- insurance business rules
- price-stabilising rules, including the manner in which they are permitted, the conditions, circumstances and times when, and/or the period during which they are permitted
- financial promotion rules
- **money laundering (ML)** rules
- control of information rules
- modification of waiver
- contravention of rules, including the evidential provisions, action for damages and the limits on effect of contravening rules, and
- procedural provisions, including the notification of rules to the Treasury, rule-making instruments, verification of rules and consultation and general supplementary powers.

1.8 Injunctions and Restitution (Part XXV) and Penalties for Market Abuse (Part VIII)

FSMA empowers the FCA to be able to take action against individuals, and/or firms for carrying out or conducting market abuse. Under these circumstances, the FCA is responsible for applying to the courts to seek an injunction against any individual, and/or firm conducting such market abuse.

FSMA provides the FCA with the power to impose penalties for market abuse, which also includes **inside information** and **insider dealing**.

Refer to chapter 3, section 4 for more details on the UK's money laundering regulation and rules.

1.9 Offences (Part XXVII)

FSMA provides the FCA with powers in relation to how the regulator should deal with individuals, and/ or authorised persons who have made **misleading statements** or undertaken unacceptable practices. It also gives the regulator the power to instigate proceedings for an offence under: Part V of the **Criminal Justice Act (CJA) 1993** (insider dealing); prescribed regulations relating to ML; and Schedule 7 of the Counter-Terrorism Act 2008 (terrorist financing or money laundering).

Refer to chapter 3, section 4 for more details on the UK's money laundering regulation and rules.

1.10 Collective Investment Schemes (CISs) (Part XVII)

FSMA defines what is meant by the arrangements for and identifies the restrictions in place in relation to the promotion of CISs.

FSMA also provides powers in order to review, approve, and refuse applications on authorised unit trust (AUT) schemes.

1.11 Additional Powers Granted under the Financial Services Act 2010

The Financial Services Act 2010, effective from 8 June 2010, gave additional powers to the then regulator, the FSA, (which also included amendments to FSMA). The additional powers were:

- the power to impose suspensions or restrictions on authorised persons, under s206A FSMA, and on **approved persons**, under s66 FSMA (the suspension power), and
- the power to impose penalties on persons which perform controlled functions without approval, under s63A FSMA (the non-approved person's penalty power).

1.11.1 The Power to Suspend

If any authorised person breaches any regulatory rules or requirements, the power to suspend enables the regulator to suspend any permissions the person may have to carry on a regulated activity, or impose restrictions on that person carrying on a regulated activity.

The suspension power enables the regulator to suspend an approved person from performing one or more controlled functions for which they are approved, or restrict the performance of the controlled function by them.

In addition, the regulators can impose a suspension on an authorised person for a period of up to 12 months and on an approved person for a period of up to two years.

The suspension power is an alternative sanction to a financial penalty which could be imposed by the regulator.

The suspension power has been seen as a major change of emphasis and focus by industry, including the way in which the regulator can operate. To alleviate industry concerns, the regulator states that it would only use this power when it considers that the imposition of a suspension would be the most effective and persuasive deterrent, rather than the imposition of a financial penalty alone.

The Regulatory Decisions Committee (RDC) is responsible for providing warning and decision notices when the suspension power is used.

1.11.2 The Non-Approved Persons Penalty Power

The non-approved persons penalty power provides the regulator with the ability to impose a financial penalty on a person, of an amount the regulator considers appropriate, when it is satisfied that:

- the person has at any time performed a controlled function without approval, and
- at that time the person knew, or could reasonably be expected to have known, that they were performing a controlled function without approval.

1.12 Financial Promotions Order (FPO)

A financial promotion is defined in Section 21 of the Financial Services and Markets Act 2000 (FSMA) as:

> *'an invitation or inducement to engage in investment activity, communicated by a person in the course of business.'*

The effect of section 21 of the Act (Restrictions on financial promotion) is that in the course of business, an unauthorised person must not communicate an invitation or inducement to engage in investment activity or to engage in claims management activity unless either the content of the communication is approved for the purposes of Section 21 by an authorised person or it is exempt.

The FPO is made up of the following parts:

- **Part I** – Citation, Commencement and interpretation
- Part II – Controlled Activities and Controlled Investments
- **Part III** – Exemptions: Interpretation and Application
- **Part IV** – Exempt communications: All controlled Activities
- **Part V** – Exempt Communications: Deposits and Insurance
- **Part VI** – Exempt Communications: Certain Controlled Activities
- Part 6A – Exempt Communications: Controlled Claims Management Activities.

In the UK, it is a criminal offence to communicate a financial promotion unless it has been made or approved by a firm authorised under the UK Financial Services and Markets Act 2000 (FSMA) or it qualifies for an exemption.

An investment activity is defined as a controlled activity that is performed in respect of a controlled investment. This means that the regime not only covers promotions for the straightforward sale of a controlled investment, but also promotions as it pertains to investments.

Controlled investments include shares, bonds and derivatives, and controlled activities include dealing, providing portfolio management or providing investment advice.

The UK regime covers all financial promotions that are capable of having an effect in the UK, including adverts from abroad that are targeted at UK investors.

1.13 Bank of England (BoE) Act 1988

The Bank of England (BoE) Act makes provisions in relation to the constitution, regulation, financial arrangements and functions of the BoE. This also includes the provision for the transfer of supervisory functions and to amend the Banking Act 1987.

The Act provides an objective in relation to the Bank to protect and enhance the stability of the financial systems of the UK.

In doing so, the Bank created an oversight committee, the functions of which are to keep under review the Bank's performance in relation to:

- the Bank's objective
- monitoring the extent to which the Bank's financial management has been met in relation to the court's set objectives for the directors of the Bank, and
- keeping the internal controls of the Bank under review, with a view to securing the proper conduct of its financial affairs.

The Bank must provide HM Treasury with a copy of reports prepared by the oversight committee.

The Bank must also make available to the Chancellor of the Exchequer a report of its activities.

The court of directors determines the Bank's strategy in relation to the financial stability objective, and from time to time to time reviews this strategy. Before determining or revising the Bank's financial strategy, the court of directors must consult on the revised strategy with the **Financial Policy Committee (FPC)** and HM Treasury.

The Bank set up an 'FPC' as a subcommittee of the Bank.

1.14 Banking Act 2009

The Banking Act 2009 created a Special Resolution Regime (SRR) which gave the UK regulators a permanent framework, providing the regulatory resolution tools for dealing with UK banks and building societies at serious risk of failure. The SRR powers came into force in 2009.

The Act sets out seven key objectives which must be considered when choosing which resolution tools to use to:

- protect and enhance the stability of the UK financial system
- protect and enhance public confidence in the stability of the banking systems of the UK
- protect depositors and investors covered by relevant compensation schemes
- protect, where relevant, **client assets**
- protect public funds, and minimise reliance on public financial support
- avoid interfering with property rights in contravention of the Human Rights Act 1998, and
- ensure the continuity of banking services and critical functions in the UK.

The SRR powers allows the regulatory authorities to:

- transfer all or part of a bank's business (its shares or property, ie, assets and liabilities) to a private sector purchaser
- transfer all or part of a bank's property to a bridge bank – a subsidiary of the BoE – pending a future sale
- place a bank into temporary public ownership (this is a Treasury decision)
- apply to place a bank into the bank insolvency procedure (BIP), which is designed to allow for rapid payments to the **Financial Services Compensation Scheme (FSCS)**, insured depositors (or transfer of their accounts to a healthy bank), and/or
- apply to use the bank administration procedure (BAP) to deal with a part of a bank which has not transferred and has been put into administration.

The Banking Act creates clearly defined roles for the operation of the SRR. The PRA, in consultation with the Bank and Treasury, will make the ultimate decision whether to place a bank into the SRR. The Treasury decides whether to place a bank into temporary public ownership.

1.15 Financial Services Act 2012 – 'Twin Peaks' Regulatory Structure

The Prudential Regulation Authority (PRA)

The Bank of England and Financial Services (BEFSA) Act 2016 (the Act) ended the status of the PRA as a subsidiary of the BoE by making the BoE the PRA. The Act also created the Prudential Regulation Committee (PRC), through which the BoE exercises its functions as the PRA.

The PRA is a focused prudential regulator, with responsibility for the prudential supervision of banks, building societies, insurers, friendly societies, credit unions, Lloyd's of London and its managing agents, and certain significant investment firms.

The PRA's role is to contribute to the promotion of the stability of the UK financial system through the microprudential regulation of those firms within its regulatory remit. It has an overall objective to promote the safety and soundness of regulated firms and will meet this objective primarily by seeking to minimise any adverse effects of firm failure on the UK financial system, by ensuring that firms carry on their business in a way that avoids adverse effects on the UK financial system.

In relation to insurance supervision, the PRA has two complementary objectives:

- Firstly, to **secure an appropriate degree** of protection for policyholders.
- Secondly, and as needed, to **minimise the adverse impact** that the failure of an insurer, or the way in which an insurer carries out its business, could have on the stability of the UK financial system.

The PRA will achieve this by:

- aiming to avoid failures which are a cost to the economy

- emphasising resolution planning in order to permit orderly failure
- cooperating closely with the FPC and the FCA to ensure macro and microprudential regulation is aligned across all markets, and
- working with the FCA and others to ensure the UK authorities have a strong voice in international policy-making.

The Financial Conduct Authority (FCA)

The FCA's role is to ensure that the relevant markets for financial services in the UK function well. It will achieve this strategic objective by:

- securing an appropriate degree of protection for consumers
- protecting and enhancing the integrity of the UK financial system, and
- promoting effective competition in the interests of consumers.

It takes a proportionate approach to regulation, adapting to the needs of different consumers and market participants, and sets and enforces clear expectations for firms and market participants.

The FCA has a duty to promote competition unless this is incompatible with its strategic and operational objectives. It also has a separate duty to minimise the extent to which regulated businesses may be used for purposes connected with financial crime.

In addition to its stated objective, the FCA:

- focuses on the conduct regulation of all firms, covering their dealings with retail customers through to their activities in the wholesale markets. The FCA regulates over 50,000 firms, including those prudentially supervised by the PRA
- is responsible for the prudential supervision of all firms not prudentially supervised by the PRA
- supervises trading infrastructure, including the investment exchanges and over-the-counter (OTC) markets, and monitors firms' compliance with the UK Market Abuse regime
- has criminal powers to investigate and prosecute insider dealing
- acts as the UK Listing Authority (UKLA), and

- is responsible for overseeing the Financial Ombudsman Service (FOS) and jointly responsible with the PRA for the FSCS.

Following the **Financial Services and Markets Act 2023 (FSMA 2023)** being published, and the publication of the FSMA (Commencement No.1) Regulations – from 29 August 2023, the FCA (along with the PRA) have a new secondary objective to facilitate the international competitiveness of the UK economy (in particular, the financial services sector) and its medium- to long-term growth, subject to aligning with relevant international standards.

1.15.1 The Financial Services Act 2012

The Act is divided into two volumes. Volume I contains the clauses and Volume II contains the Schedules to the Act. The Act replaces and amends parts of FSMA 2000.

Below is a list of the main changes contained in Volume I of the Act which impact FSMA-regulated firms. *Note: Large parts of the Act refer simply to the 'authority', which meant at the time the Financial Services Authority (FSA); following the restructure of financial services in the UK in 2013, the reference to 'authority' now means either the FCA or the PRA.*

Volume I

Part 1 – Bank of England (BoE)

- **Deputy governors**
  The Act specifies that, in addition to the Governor of the BoE, there should also be a deputy governor for financial stability, monetary policy and prudential regulation. In addition, there should be no more than nine non-executive directors (NEDs).
- **Bank's financial stability objective**
  The Act amends the stability objective for the BoE. Instead of 'contribute to protecting and enhancing' financial stability, the Bank is now tasked to 'protect and enhance' the financial stability in the UK.
- **Financial stability strategy and Financial Policy Committee (FPC)**
  The BoE created a subcommittee (the Oversight Committee) consisting of the NEDs, with the purpose of keeping under review the Bank's

performance in relation to its objectives, the duty of the FPC and the Bank's strategy. In addition, the Committee will monitor the extent to which the objectives have been met, keeping under review the internal financial controls of the Bank, with a view to securing the proper conduct of the Bank's financial affairs.

Part 2 – Amendments of the Financial Services and Markets Act 2000 (FSMA)

- **The regulators (FCA/PRA)**
  The FCA's strategic objective is ensuring that the relevant markets function well. In addition, it also has a number of operational objectives which relate to consumer protection, integrity and competition.

  - In terms of its consumer protection, this means securing an 'appropriate degree of protection for consumers'.
  - In terms of integrity, this refers to protecting and enhancing the integrity of the UK financial system.
  - The competition objective promotes effective competition in the interests of consumers in the markets for regulated financial services, and services provided by RIEs. The FCA must maintain arrangements to supervise, monitor and be able to take appropriate enforcement action against authorised persons. It must consult practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties. In satisfying these requirements, the FCA must also make arrangements to establish a practitioner panel, a smaller business practitioner panel, a markets practitioner panel and a consumer panel.
  - The PRA's general objective is promoting the safety and soundness of PRA-authorised persons. The PRA will seek to satisfy this objective by looking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system and seeks to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.

- The PRA also has an insurance objective, which is to contribute to the securing of an appropriate degree of protection for those who are or who may become policyholders. The PRA must make arrangements to establish a practitioner panel.

- **Extension of scope of regulation**
  The Act added two new regulated activities:

  1. Where a regulated activity is carried on by way of business.
  2. Relating to information about a person's financial standing and the setting of financial benchmarks.

This draws into regulated business the need for a person to be an approved person, and includes anyone who contributes to the setting of financial benchmarks. This change occurred because of the LIBOR (London Interbank Offered Rate) rate-setting issue.

- **Designation of activities requiring prudential regulation by the PRA**
  HM Treasury can specify which regulated activities will be supervised by the PRA, and therefore become PRA-regulated activities, although the PRA can also provide for appropriate exceptions to be applied.
- **Permission to carry on regulated activities**
  The Act highlights that regulatory permission to carry on one or more permitted regulated activities must be made to the appropriate regulator; for example, the PRA where the regulated activities consist of PRA-regulated activities or the applicant (firm) is a PRA-authorised person, and to the FCA in any other case. This could mean that an authorised firm could be dually authorised by the PRA and the FCA depending on the type of firm and the regulated activities which it undertakes. Other firms would be authorised by either the PRA or the FCA.
- **Prohibition orders**
  FSMA Section 56 is amended so that both the FCA and the PRA are able to make a prohibition order if the regulators can evidence that an individual is not a fit and proper person to perform their functions in relation to a regulated activity.
- **Rules and guidance (general rule-making powers of the FCA and PRA)**
  The Act provides the FCA and the PRA with powers allowing them to make

rules applying to authorised persons, with respect to the carrying on by them of regulated activities or the carrying on by them of activities which are not regulated activities.
The FCA also has powers to set rules requiring authorised persons to take specified steps in connection with the setting of a financial benchmark by a specified person.

- **Powers in relation to RIEs and clearing houses**
The Act identifies that the FCA is the appropriate regulator for RIEs, and the BoE is the appropriate regulator for RCHs.
- **Power to take disciplinary measures against recognised bodies**
The Act provides public censure powers to both the regulators to publish a statement if they consider that a recognised body has contravened a relevant requirement imposed on that body. Both regulators can impose a financial penalty upon that body, an amount of which the regulators may consider appropriate.
- **Discipline and enforcement**
The Act provides that, where HM Treasury considers it necessary, no public disclosure will be made in respect of a warning notice made by the regulators, in addition to the fact that the person receiving the warning notice must not publish any details concerning the notice issued.
- **Provisions about consumer protection and competition**
The Act provides for a designated consumer body to make a complaint to the FCA if it believes a feature, or a combination of features appear to be significantly damaging the interest of consumers and/or the market for financial services. Consumer bodies are designated by HM Treasury.

Part 4 – Collaboration between the HM Treasury and the BoE, FCA or PRA

- Duty of Bank to notify the HM Treasury of the possible need for public funds
When it appears to the BoE that there is a material risk of the following happening, then it must notify HM Treasury:
    - when it is expected to provide financial assistance to or in respect of a financial institution

    - when there is an expectation that there will be an exercise of the respective powers provided under Parts 1 to 3 of the Banking Act 2009 and the costs associated with the exercise of these powers, and
    - when the manager of the FSCS might reasonably request a loan from the National Loans Fund or financial assistance from HM Treasury.
- Duty of the HM Treasury, Bank and PRA to coordinate discharge of function
  The Act specifies that HM Treasury and the BoE (including the PRA) must arrange to coordinate the discharge of their respective functions so far as they relate to the stability of the UK financial system and affect public interest.
- Memorandum of understanding (MoU): crisis management
  HM Treasury, the BoE and the PRA must prepare and maintain a memorandum describing in general terms how they intend to comply with their duty to coordinate their supervisory activities. HM Treasury must lay before parliament a copy of this memorandum.
- MoU: international organisations
  The Act stipulates that HM Treasury, the BoE and the FCA/PRA must prepare and maintain a memorandum describing how they intend to coordinate the exercise of their relevant functions so far as they relate to their engagement on and with international organisations.

Part 5 – Inquiries and Investigations

- **Cases in which the HM Treasury may arrange independent inquiries**
  HM Treasury may arrange separate inquiries which may relate to events occurring in respect of CISs, a person carrying on a regulated activity, listed securities or an issuer of listed securities, particularly when the events may pose a threat to the stability of the UK financial system. In addition, HM Treasury may arrange an inquiry in relation to an event which occurs in respect of an RCH, or a recognised interbank payment system, which poses or could pose a serious threat to the financial stability of, or confidence in, the UK financial system.
- **Power to appoint a person to hold an inquiry**
  The Act provides the framework for HM Treasury in respect of the scope of

any inquiry, the period, conduct, and the direction of the inquiry, including the making of any reports.

- **Powers of appointed person and procedure**
  The Act details the powers the person has who is appointed to hold an inquiry and the procedures to be followed, including obtaining such information as is required.
- **Duty of the FCA and the PRA to investigate and report on possible regulatory failure**
  The Act provides for instances where the regulators must undertake an investigation when an event has occurred in relation to a regulated person or a CIS which indicates a significant failure to secure an appropriate degree of protection for consumers, or which could have a significant effect on the integrity of the UK financial system.
- **Conduct of investigation**
  The Act states that it is for the regulators to decide how best such investigations are to be carried out. HM Treasury may, however, direct the regulators in relation to the control of the scope and period over which the investigation is to be carried out, the conduct of the investigation and the making of the report.
- **Statements of policy**
  The Act requires both regulators to prepare and issue a statement of their policy intentions in relation to the exercise of their functions under the duty to conduct an investigation.

Part 6 – Investigation of Complaints against Regulators

- **Arrangements for the investigation of complaints**
  The Act requires both the FCA, and/or the PRA to make the necessary arrangements for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant regulatory functions, and in doing so, to appoint an independent person to be responsible and accountable for the conduct of investigations in accordance with the complaint's regulators scheme.
- **Investigation of complaints**
  The Act provides that the regulators are not necessarily obliged to investigate a complaint, in accordance with the complaints scheme,

particularly if the regulators reasonably consider it would be more appropriate for the complaint to be dealt with in another way (ie, referring the complaint to the Upper Tribunal or by the issuing of other legal proceedings).

1.16 Financial Services (Banking Reform) Act 2013

The **Financial Services (Banking Reform) Act 2013** implemented some of the recommendations provided by the Independent Commission on Banking, chaired by Sir John Vickers, in relation to the ring-fencing requirements for the banking sector. Other reforms include the closer regulation of banking executives and the creation of individual accountability by establishing the **Senior Managers & Certification Regime (SM&CR)**, and the creation of a new criminal offence in relation to mismanagement leading to the failure of a bank. The Act also introduced a bail-in **stabilisation** option which forms part of the special resolution regime (SRR), the introduction of a payment systems regulator, and further powers which allow the FCA to take measures to limit the special resolution regime, and further allow for the introduction of the payment systems regulator.

It also implemented the key recommendations of the Parliamentary Commission on Banking Standards (PCBS), which tackled and provided an urgent review of the professional standards and culture in the banking industry following the revelations of the LIBOR rate manipulation.

The Banking Reform Act is made up of eight parts. These are as follows:

- **Part 1** – Ring-fencing.
- **Part 2** – Depositor preference and the Financial Services Compensation Scheme.
- **Part 3** – Bail-in stabilisation option.
- **Part 4** – Conduct of persons working in financial services sector.
- **Part 5** – Regulation of payment systems.
- **Part 6** – Special administration for operators of certain infrastructure systems.

- **Part 7** – Miscellaneous.
- **Part 8** – Final provisions.

The most relevant parts of the Act are as follows.

Part 1 – Ring-Fencing

The underlying rationale of the ring-fencing regime is to insulate critical banking services from shocks to the financial system. The ring-fencing regime separates core retail banking services, which are of most importance to private individuals as well as smaller companies, from the investment banking services.

Core activities presently consist of accepting deposits or other payments, facilities for withdrawing money and for overdrafts. A UK-incorporated institution, which carries on these activities (a ring-fenced bank) will be subject to the regime unless it is regarded as a type of entity which is exempted; for example, certain categories of deposit-taking institutions, including building societies, credit unions, or banks which hold deposits below £25 billion. UK branches of non-UK banks will not be subject to the ring-fencing regime requirements, although UK-incorporated bank subsidiaries of non-UK banking groups are within its scope. These provisions came into force in 2019.

HM Treasury proposed a review of the 'ring-fencing' requirements as part of its Edinburgh Reform Regime – refer to chapter 5, section 1.3 for more details.

Part 4 – Conduct of a Person Working in the Financial Services Sector

This is known as 'SM&CR', which initially applied to banks, UK branches of foreign banks, and insurance companies, but has been extended to apply to most regulated firms.

This is discussed in greater detail in chapter 2, section 2.

1.17 Bank of England and Financial Services Act (BEFSA) 2016

The Act is the third major piece of legislation that the government made to fundamentally reform the financial sector.

Of relevance is Sections 21 to 26, as they relate to the conduct of a person working in the financial services sector:

- **Section 21** – extending to authorised persons provisions of Part 5 of the FSMA 2000 (performance of regulated activities) which applies only to relevant authorised persons.
- **Section 22** – provides powers to the FCA and the PRA to make transitional provisions.
- **Section 23** – inserts the PRA and the FCA as the administrators of the Senior Managers Regime.
- **Section 24** – rules of conduct (minor cosmetic changes).
- **Section 25** – misconduct (minor cosmetic changes).
- **Section 26** – decisions causing a financial institution to fail: meaning of insolvency.

1.18 UK Financial Services Act 2001

The 2019 Queen's Speech background paper expressed a desire to bring forward, in the upcoming parliamentary session, legislation to:

> *'ensure that the UK maintains its world-leading regulatory standards and remains open to international markets after we leave the EU'.*

When introduced to the House of Commons, the Bill's stated objectives were to: enhance the UK's world-leading prudential standards and promote financial stability, promote openness between the UK and international markets, and maintain an effective financial services regulatory framework and sound capital markets. However, HM Treasury added a fourth objective in recognition of amendments made during the Bill's passage through Parliament, which is to: '*protect consumers who use a range of financial services*'.

In April 2021, the **Financial Services Act 2021** received Royal Assent and came into effect.

It was the UK's first step, post-Brexit, in re-establishing control of financial services regulations and ensuring that the UK remains an 'open and dynamic financial centre'.

Although most of the Act seeks to shape the regulatory framework for UK financial services, it also contains a range of measures unconnected to Brexit. These included the following:

- Part 4A Permissions
- Duty of care
    - Refer to chapter 2, section 6 for further details on the FCA's 'Consumer Duty' initiative and rules.
- Money laundering
    - Offences, forfeiture of money and overseas trustees
- Debt respite scheme
- Help to save
- Buy now, pay later (BNPL) products
- Financial collateral
- Payment services and the provision of cash.

The post-Brexit reforms included the following:

- UK Prudential framework
    - Investment firm's Prudential regime, ie, the FCA's Investment Firms Prudential requirements for MiFID firms
    - Basel III and 3.1 standards
- Access to financial markets
    - Overseas funds regime
    - UK MiFIR equivalence
    - PRIIPS
    - UK EMIR

- Insider dealing and market abuse
    - Maintaining insider lists
    - Transactions by senior managers
    - Personal data
- 'IBOR'
    - Providing the FCA with the necessary powers to manage the cessation of critical 'LIBOR' benchmarks in a manner to protect consumers and ensures market integrity.

Further details on 'insider dealing and market abuse' can be found in section 3 of chapter 3.

With regards to 'UK Prudential Framework', the following is a summary of the Investment Firms Prudential Regime (IFPR).

The UK IFPR follows the EU's Investment Firms Directive and Regulations, which came into effect in June 2021, given the UK was heavily involved with the development of the legislation.

However, following Brexit, the UK undertook some minor amendments to ensure that it is fit for purpose for the UK market.

The UK Regime came into effect in January 2022.

The approach under the IFPR is to consider the harm an FCA investment firm can cause to others based on the activities that it carries out and ensures that the amount of capital and liquid assets it holds is sufficient to undertake an orderly wind-down.

The following are the outcomes that were sought:

- A prudential regime that is aligned to the way that investment firms run their business:
    - taking into account the different business models of FCA investment firms, and

    - better protecting consumers and markets from the harm these firms may pose.

- FCA investment firms are subject to meaningful and consistent prudential requirements.
- FCA investment firms spend less time on complex capital requirement calculations that do little to help them to manage risk:
    - allowing a firm's management more time to focus on running the business, managing and mitigating any harm and risk, and
    - allowing the FCA to focus on how a firm is managing itself.
- Prudential rules that are understandable and accessible, with most rules brought into a new single prudential sourcebook (MIFIDPRU).

1.18.1 Sections of the FCA MIFIDPRU Sourcebook

Application (MIFIDPRU1)

The FCA removed the current definitions of FCA investment firms in BIPRU, IFPRU and exempt-CAD.

Rather, there will be two broad categories of FCA investment firm – a 'small and non-interconnected' investment (SNI) firm or a 'non-SNI' firm.

The prudential requirements in the IFPR are designed to scale with the size and complexity of the firm.

Prudential Consolidation and the Group Capital Test (MIFIDPRU2)

Prudential consolidation will apply where there is an investment form group that comprises of a UK parent undertaking and its subsidiaries.

Own Funds Resources (MIFIDPRU3)

The types and treatment of own funds under the UK IFPR will follow the same requirements as under the UK CRR (with some minor amendments) and will comprise the following three classes of capital:

- Common Equity Tier 1 (or CET1) capital.
- Additional Tier 1 (or AT1) capital.

- Tier 2 (or T2) capital.

Own Funds Requirements (MIFIDPRU4)

The own funds requirements of FCA investment firms are based on a permanent minimum capital requirement ('PMR') and requirements based on the activities and services that the firm undertakes.

There are a number of transitional provisions to assist firms to adjust to the capital requirements of the UK IFPR – especially where there is a relatively large increase from their previous capital requirements.

Concentration Risk (MIFIDPRU5)

General provisions on monitoring and control of concentration risk apply to all firms, with limited exemptions.

Provisions on limits and own funds requirements for concentration risk (K-CON) only apply to firms with a trading book, ie, trading as principal.

Liquidity (MIFIDPRU6)

The UK IFPR applies a basic liquid asset requirement for firms which must hold liquid assets.

The FCA has noted that core liquid assets to be used to meet the basic liquid assets requirement must be denominated in sterling – as it considers that firms liquidity needs are in sterling.

The basic liquidity requirements form part of the overall framework that a firm must adopt for assessing its individual liquidity needs – this framework is called the 'Internal Capital and Risk Assessment (ICARA)'.

Risk Management and Governance, ICARA and SREP (MIFIDPRU7)

The FCA approach is underpinned by the following principles:

- Firms must consider and account for the risk of harm they pose to consumers and markets.
- The 'ICARA' process is the centrepiece of a firm's risk management processes.
- Senior management is responsible for ensuring the appropriateness of the firm's governance and risk management.

- The FCA will intervene at given intervention points if firms fail to act appropriately, or their actions prove unsuccessful.
- The FCA expectations on firms are proportionate to the risk of harm posed.

Overall Financial Adequacy Rule (OFAR)

Firms' financial and non-financial resources must be appropriate to the regulated activities that they undertake.

The requirements provide a link between financial resources required under the OIFPR and the FCA's Threshold Conditions for permissions.

Firms determine the OFAR through their ICARA process, which represents what is required to meet the OFAR, unless otherwise advised by the FCA.

Internal Capital Adequacy and Risk Assessment (ICARA)

All firms will be required to undertake an 'ICARA', which should be monitored/updated on a continuous process.

Disclosure and ESG (MIFIDPRU8)

The FCA sets out the disclosures that are required for both 'SNI' and 'non-SNI' firms. Disclosure will be required for:

- risk management
- own funds
- own funds requirements
- investment policy
- governance requirements, and
- remuneration.

Regulatory Reporting (MIFIDPRU9)

The FCAs intention is to only collect data that will let it supervise firms against the requirements of the UK IFPR.

Firms will be required to complete financial reporting on a quarterly basis.

1.19 Brexit - The Implications for the UK and Europe

Brexit is the term used to define the UK's exit from the EU, although the UK left the EU on 31 January 2020, it remained subject to EU laws/rules until 31 December 2020.

The European Union (Withdrawal) Act 2018 ('EUWA') gives the government powers to amend current legislation to ensure that it functions when the UK is no longer an EU member state. The intention is that the same rules and laws apply on the day after the exit as on the day before, as far as possible.

Following Brexit, UK firms lost their ability to access the EU single market on the basis of '**passporting**'; this means that UK firms are limited in their ability to provide financial services to EU clients, likewise for EU firms to UK clients.

UK firms may look for exemptions in local law that allow for access by firms from non-EU countries or apply for permission from the European Commission, or other EU bodies under the access regimes for third countries provided in EU legislation.

To explain what this means to existing EU regulations:

- With respect to MiFIR, from 1 January 2021, the onshored (retained) 'UK MiFIR' legislation applies to all UK regulated firms.
- UK MiFIR means the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 as it forms part of domestic law of the UK by virtue of the European Union (Withdrawal) Act 2018.
- UK MiFIR, together with the Markets in Financial Instruments Directive 2014/65/EU, as implemented in the UK by the FCA in its FCA rules (UK MiFID) ensure UK firms are complying with the same legislation as EU firms (although, over time, regulatory divergence will have an impact).

However, there were some areas where the FCA expected firms to be compliant with the UK onshored version of EU Regulations from 31 December 2020, they were:

- MiFID II Transaction Reporting
- EMIR Reporting

- SFTR Reporting
- certain MAR requirements
- CASS rules, and
- market-making exemption under the Short Selling Rules (SSR).

1.19.1 European Union (Withdrawal) Act 2018

The European Union (Withdrawal) Act 2018 ('EUWA') created the ability for EU Regulations that were in existence before the Brexit transitional date of 31 December 2020, to be retained as primary legislation in UK law – and can only be updated by an Act of Parliament or any other primary legislation.

The European Union (Withdrawal Agreement) Act 2020 is an Act of the Parliament of the UK that makes legal provision for both the ratification of the Brexit Withdrawal Agreement and implements it into British domestic law. The Withdrawal Agreement was the result of Brexit negotiations.

Onshoring, through the EUWA, provides a basis for directly applicable EU law to continue to be effective in the UK after Brexit. For financial services, this means that EMIR, MAR and MiFIR have been 'onshored' in the UK and are now part of UK law – they are referred to as UK regimes ('UK EMIR', 'UK MiFIR' and 'UK MAR').

With regards to financial services, for the time being, the UK and the EU have the same regulations that apply – however, as noted in chapter 5 of the workbook, the UK is undertaking a review of financial services regulation now that the UK is no longer a member of the EU.

1.20 Financial Services and Markets Act (FSMA) 2023

As noted by HM Treasury, the FSMA 2023:

- implements the outcomes of the Future Regulatory Framework (FRF) review
    - this is now referred to as the Smarter Regulatory Framework (SRF)
- maintains the UK's position as an open and global financial hub

- harnesses the opportunities of innovative technologies in financial services
- bolsters the competitiveness of UK markets and promotes the effective use of capital, and
- supports the levelling up agenda, and promotes financial inclusion and consumer protection.

Source of information: HM Treasury

The following are the sections of the Act:

Part 1 (Regulatory Framework)

- Chapter 1 (revocation of EU laws)
    - Revocation of retained EU Law
- Chapter 2 (new regulatory powers)
    - New regulatory powers (designated activities regime)
        - Section 8
    - Financial market infrastructure: general rules and requirements
        - Section 9 to 12
    - Financial market infrastructure: piloting powers
        - Sections 13 to 17
    - Powers in relation to critical third parties
        - Sections 18 and 19
    - Financial Promotion
        - Section 20
    - Sustainability disclosure requirements
        - Section 21
    - Digital settlement assets

- Sections 22 and 23

  - Mutual recognition

    - Section 24

- Chapter 3 (accountability of regulators)

  - FCA and PRA objectives and regulatory principles

    - Sections 25 to 28

  - FCA and PRA powers to make rules, etc

    - Sections 29 to 34

  - FCA and PRA engagement

    - Sections 35 to 39

  - Co-operation of FCA, PRA and others

    - Section 40

  - FCA and PRA panels and policy statements

    - Sections 41 to 47

  - Bank of England (BoE) regulatory powers

    - Sections 48 to 50

  - Payment Systems Regulator

    - Sections 51 and 52

  - Consultation on rules

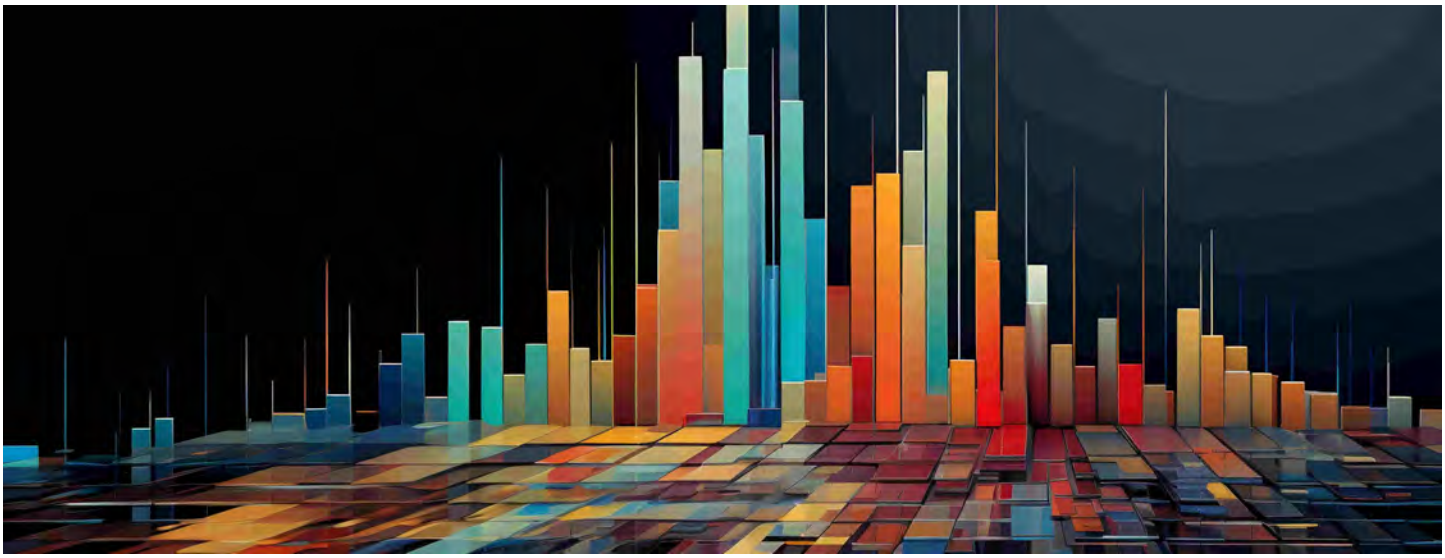
    - Section 53

  - Part 2 (Access to cash)

    - Sections 54 and 55

- Part 3 (Performance of functions relating to financial market infrastructure)
  - Section 56
- Part 4 (Central counterparties in financial difficulties)
  - Section 57
- Part 5 (Insurers in financial difficulties)
  - Section 58

- Part 6 (Miscellaneous)
  - Amendments to FSMA 2000
    - Sections 59 to 69
  - BoE levy
    - Section 70 and 71
  - Other Miscellaneous
    - Credit unions, Reinsurance for acts of terrorism, Banking Act 2009 amendments, Arrangements for the investigation of complaints, Politically exposed persons – money laundering and terrorist financing, Forest risk commodities – review.
  - Part 7 (General)
    - Sections 80 to 87.



2. European Financial Services

This section of the chapter highlights the main EU legislation and laws (Regulations and **Directives**) that are relevant to the UK Financial Services industry due to their application and scope being extraterritorial.

A single market in financial services has long been an objective of the EU. In a single market, financial institutions authorised to provide financial services in one member state are able to provide the same services throughout the EU, competing on a level playing field within a consistent regulatory environment.

From a financial services perspective, this should mean that, in terms of investor protection, it makes no difference to a customer whether they buy a financial product from a provider in their home, or from another member state.

2.1 European Financial Services Structure, Operation and Legislation

2.1.1 The European Commission (EC)

The European Commission is independent of national governments; it represents and upholds the interests of the EU as a whole (collective).

Its main tasks are:

- right of legislative initiative – all legislative decisions taken by the European Council have to be based on a proposal from the Commission. It acts as the engine of integration, drawing up proposals for the development of EU policy and building steps towards harmonisation
- guardian of the treaties
- executive authority for the implementation of EU policy, and
- enacting technical standards drafted by ESMA.

The EC is steered by a group of 27 Commissioners, one from each member state, known as 'the College'. Together, they take or make decisions on the Commission's political and strategic direction. A new College of Commissioners is appointed every five years.

2.1.2 The European Parliament (EP)

It is a multinational chamber Parliament, consisting of Members of European Parliament (MEPs) with seats allocated on the basis of population. The Parliament is supposed to express the democratic wishes of EU citizens and represents their interests in discussions with other EU institutions. MEPs sit in Europe-wide political groups rather than in national blocks.

The MEP's principal roles are:

- examine and adopt European legislation, sharing this with the European Council (Council of the EU)
- approve the EU budget, and
- exercise democratic control over the other EU institutions by setting up committees of inquiry.

2.1.3 The Council of the EU (the European Council)

The European Council defines the EU's overall political direction and priorities. It is not one of the EU's legislating institutions, so does not negotiate or adopt EU laws

(the Council of the EU and the EP are responsible for adopting laws proposed by the Commission). Each member state has a representative in the Council.

2.1.4 EU Legislation

Primary legislation consists of the various treaties which have been negotiated and ratified by the member states.

Secondary legislation consists of regulations, directives, decisions, recommendations and opinions. All are binding with the exception of recommendations and opinions. Decisions can be addressed to both member states and/or individuals and businesses. Regulations are directly applicable and binding throughout the EU. They do not need to be transposed into national law; rather, member states are directly bound by such measures once they are implemented into EU law.

A directive is binding on member states in relation to the objectives to be achieved, but gives member states discretion in determining how the legal measure should be incorporated into national and/or domestic law.

2.2 Financial Supervision in Europe

As part of the overall response to the financial crisis of 2007–08, the EU Commission enhanced the legal framework in relation to the oversight of financial services in the EU. The below framework has been operational since 2010.

The Commission adopted an architecture that created the following:

- **European Systemic Risk Council or Board (ESRB)**, to assess the risks to the stability of the financial system as a whole and provide early warning of any systemic risks and, where necessary, recommendations for action.
- **European System of Financial Supervisors**, to supervise financial institutions, which consists of a network of national financial supervisors working with three **European Supervisory Authorities (ESAs)**.

- banking (European Banking Authority – EBA)
- securities (European Securities and Markets Authority – ESMA), and
- insurance and occupational pensions sectors (European Insurance and Occupational Pensions Authority – EIOPA).

The ESRB has three main objectives. They are:

- to develop a European macroprudential perspective to address the problem of fragmented individual risk analysis at a national level
- to enhance the effectiveness of early warning mechanisms by improving the interaction between microprudential analysis, and
- to allow for risk assessments to be translated into action by the relevant authorities.

The objectives of the ESAs are to contribute to:

- improving the functioning of the internal market, which includes a high, effective and consistent level of regulation and supervision
- protecting depositors, investors, policyholders and other beneficiaries
- ensuring the integrity, efficiency and orderly functioning of financial markets
- safeguarding the stability of the financial system, and
- strengthening international supervisory coordination.

2.2.1 Implementation and Enforcement

Level 1

- Framework legislation is proposed by the Commission and adopted by the Council and the EP. The directive or regulation specifies whether legislative power is delegated to the Commission to adopt Level 2 measures.

Level 2

- Secondary legislation is drafted and adopted by the Commission in line with the delegation of legislative competence in the Level 1 text.

- This is done by four specialist committees of finance ministry experts. These are the European Banking Committee (EBC), the European Securities Committee (ESC), the European Insurance and Occupational Pensions Committee (EIOPC) and the European Financial Conglomerates Committee (EFCC).
- The Commission may seek advice from the relevant ESA on implementing measures.
- The ESAs would advise on detailed Level 2 requirements.

Level 3

- The ESAs are empowered to adopt guidance, and/or guidelines, which is treated on a 'comply or explain' basis by national supervisors. The ESAs are required to consult and undertake cost/benefit analysis on this 'where appropriate'.
- These are commonly produced in the form of 'Q&As' or opinion letters/statements.

Level 4 Enforcement

- The Commission is responsible for ensuring that directives are properly transposed and that EU legal requirements are then applied, undertaking enforcement action where necessary.

2.3 The European Supervisory Authorities (ESAs)

The main purpose of the ESAs is to create a single EU rulebook, by developing draft technical standards which will be adopted by the EU Commission.

A key change in the introduction of the ESAs is that they have much stronger powers, having the ability to bind the member states in ways that their predecessors did not, with the trend being towards greater EU control. In the frequently asked questions (FAQs) section of its website, ESMA states:

> *'ESMA's work on securities legislation contributes to the development of a single rule book in Europe…'*

The FAQs also state:

> *'As part of its role in standard-setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory cooperation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan-European reach.'*

The ESAs also issue guidance, and/or guidelines, including recommendations with which national supervisors and firms must make every effort to comply, or explain why they are not able to ensure compliance with the requirements.

The ESAs have the power to investigate a national supervisory authority if they believe that the national authority is either failing to apply EU law, or is doing so in a way which appears to be in breach of EU law (or not in the spirit of the guidance, and/or guidelines which the EU has provided). Following an investigation, the ESA may issue a recommendation to the national supervisory authority, as well as obtaining formal opinion from the Commission. It is at this stage that the ESA will take appropriate decisions, binding on firms or market participants to ensure they comply with EU law.

ESAs can temporarily ban certain financial activities.

2.3.1 European Banking Authority (EBA)

The European Banking Authority (EBA) is composed of high-level representatives from the banking supervisory authorities and central banks of the European Union. Their role is to:

- advise the EU Commission, either at the Commission's request, within a time limit which the Commission may lay down according to the urgency of the matter, or on the Committee's own initiative; in particular, with regards to the preparation of draft-implementing measures in the field of banking activities, and
- contribute to the consistent implementation of Community directives and to the convergence of member states' supervisory practices throughout the Community, enhancing supervisory cooperation, including the exchange of information.

2.3.2 European Insurance and Occupational Pensions Authority (EIOPA)

The European Insurance and Occupational Pensions Authority (EIOPA) is an independent advisory body to the EP and the Council of the EU. EIOPA's core responsibilities are to support the stability of the financial system, including the transparency of markets and financial products, as well as the protection of insurance policyholders, pension scheme members and beneficiaries.

2.3.3 European Securities and Markets Authority (ESMA)

The European Securities and Markets Authority (ESMA) is an independent authority which helps underpin the stability of the EU's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA encourages supervisory convergence both among securities regulators, and across financial sectors by working with the other ESAs.

As noted on the ESMA website, it contributes to the development of a single rulebook in Europe. This:

- ensures the consistent treatment of investors across the EU, enabling an adequate level of protection, and
- promotes equal conditions for the competition of financial service providers, as well as ensuring the effectiveness and cost-efficiency of supervision for supervised companies.

ESMA also contributes to the financial stability of the EU, identifying potential risks and providing advice. ESMA is also responsible for coordinating the actions of securities supervisors (with each EEA member state) and adopting emergency measures in a crisis.

While ESMA is independent, it is fully accountable to the European Parliament, where it will appear before the relevant committee, known as the Committee on Economic and Monetary Affairs (ECON), at its request, and for formal hearings. ESMA is also accountable to the European Council and the European Commission.

ESMA reports on its activities regularly at meetings, but also through an annual report.

ESMA's competencies and powers include:

- a supervisory role in relation to credit rating agencies
- drafting legally binding technical standards in EU member states
- launching a fast-track procedure to ensure consistent application of EU law
- participation in Colleges of Supervisors and on-site inspections
- resolving disagreements between national authorities
- consumer protection responsibilities, including the ability to prohibit, for a period of three months, financial products which in its view pose a threat to financial stability or the orderly functioning of financial markets
- entering into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, and
- monitoring systemic risk of cross-border financial institutions.

Level 1 directives and regulations continue to set out the high-level political objectives and goals in the area concerned by the legislation. ESMA now has a bigger role in Level 2 in relation to the drafting of regulatory technical standards (delegated acts and implementing acts). Delegated acts relate to the substantive content of the legislative requirement, ie, setting out what authorisation information firms must provide to competent authorities, while implementing acts give effect to the substantive requirements. This includes standard templates and procedures for communicating information between competent authorities.

ESMA will develop guidelines and recommendations at Level 3 to ensure a consistent and effective supervisory approach. These guidelines and recommendations are addressed to competent authorities and/or financial market participants. While they are not legally binding, competent authorities must explain if they do not intend to comply with such requirements, and regulated firms would need to be able to explain to their competent authorities why they are not complying with the Level 3 requirements.

At Level 4, ESMA can, by a national competent authority, the EP, the Council, the Commission or by a relevant stakeholder group, be requested to launch an inquiry, or issue a recommendation addressed to the national authority. The

Commission can also follow its usual procedures for referring a case against a member state to the EU Court of Justice.

2.4 The European Central Bank (ECB)

The ECB is the central bank for Europe's single currency, the 'euro'. The ECB's main task is to maintain the euro's purchasing power, and thus price stability in the eurozone area. The euro area comprises of the 21 EU countries which have adopted the euro since 1999.

The ECB and the national central banks together constitute the Eurosystem, the central banking system of the eurozone area. The main objective of the Eurosystem is to maintain price stability, safeguarding the value of the euro. The ECB is committed to performing all central bank tasks entrusted to it effectively. In doing so, it strives for the highest level of integrity, competence, efficiency and transparency.

2.4.1 Why a System Instead of a Single Central Bank?

There are three main reasons for having a system of central banking in Europe:

1. To build on the existing competencies of the NCBs, their institutional set-up, infrastructure, expertise and excellent operational capabilities. Moreover, several central banks perform tasks which are in addition to those of the Eurosystem.
2. It is appropriate for credit institutions to have an access point to central banking facilities in each participating member state.
3. Given the multitude of nations, languages and cultures in the euro area, NCBs are best placed to serve as access points of the Eurosystem.

2.4.2 Objective of the ECB

The objective of the ECB is to maintain price stability, in doing so to protect the value of the euro.

The Eurosystem comprises the ECB and the national central banks of the other 'euro areas' member states, with responsibility for:

- defining and implementing monetary policy
- conducting foreign exchange operations
- holding and managing the euro area's foreign currency reserves, and
- promoting the smooth operation of payment systems.

In addition, the ECB also undertakes additional tasks in the areas of banking supervisions, banknotes, statistics, macroprudential policy and financial stability, as well as international and European cooperation.

2.5 The Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR)

MiFID provisions came into force in 2007. One of the key aims of MiFID was to provide investor protection rules across the EEA. Investor protection is ensured, inter alia, via the obligation to obtain the best possible result for the client, information disclosure requirements, client-specific rules on suitability and appropriateness and rules on inducements. As a general principle, MiFID placed significant importance on the fiduciary duties of firms.

This is why MiFID established a general obligation for firms to act in the client's best interest. MiFID was designed to support two key policy goals of the EU, which at the time were:

- extending the scope of the passport rules within the EEA to include a wider range of services, and
- removing a major hurdle to cross-border business by the application of home state rules.

As noted below, MiFID was repealed and replaced by a new Directive (MiFID II) and a Regulation (MiFIR) in 2018.

Within the workbook, reference to 'MiFID' means MiFID II and MiFIR.

Further enhancements were made to MiFID. In March 2024 the revised MiFID regime (MiFID 3 and MiFIR 2) was published, MiFIR 2 came into effect in March 2024 (unless Level 2 measures are required to be developed by ESMA), while EU member states had to transpose MiFID 3 into national law by the end of September 2025.

2.5.1 Activities that can be Passported under MiFID

MiFID Activity

- Receipt and transmission of orders in relation to one or more financial instruments.
- Execution of orders on behalf of clients.
- Dealing on own account.
- Portfolio management.
- Investment advice.
- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
- Placing of financial instruments without a firm commitment basis.
- Operation of MTFs.
- Operation of OTFs.

Ancillary Activities

The following services cannot be passported in their own right; they can only be passported if they are being provided in conjunction with a core investment service from the above list.

MiFID Ancillary Activity

- Safekeeping and administration of financial instruments for the accounts of clients, including custodianship. Also related services such as the management of cash and collateral.
- Granting credits or loans to an investor to allow them to carry out a transaction in one or more financial instruments when the firm granting the credit or loan is involved in the transaction.

- Advice to undertakings on capital structure, industrial strategy and related matters; also, advice, and/or services relating to mergers and the purchase of undertakings.
- Foreign exchange services (but only if these are connected with the provision of investment services).
- Investment research and financial analysis, or other forms of general recommendation in relation to transactions in financial instruments.
- Services in relation to underwriting.
- Investment services and activities, and ancillary services, related to the underlying assets of certain derivatives when these are connected to the provision of investment or ancillary services.

2.5.2 Financial Instruments Covered by MiFID

MiFID applies only to activities in relation to a specified list of financial instruments. These are:

- transferable securities
- money market instruments
- units in collective investment undertakings
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash
- options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event
- options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled providing that they are traded on a regulated market, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled
- options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in

point 6 of this section and not being for commercial purposes, which have the characteristics of other derivative financial instruments

- derivative instruments for the transfer of credit risk
- financial contracts for differences (CFDs)
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF, and
- emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

Financial instruments not covered by MiFID include the following:

- Foreign Exchange (FX spot and the conversion related to settlement of a security where the settlement date is greater than two business days).
- However, this would not include where it relates to the provision of an investment activity or service (ie, entering into an FX forward contract or an FX option or future).

2.5.3 MiFID – Home versus Host State Regulation

The concept of **passporting** under MiFID relies on the concept of home state and **host state** regulators. In essence, the home state is where the firm carrying out the activities is established; the host state is the state in which provides services as a guest.

MiFID tackles the hurdle to a single market in the following ways:

- It allows firms to carry out cross-border business from their home state, solely on the basis of their home country rules.

- It harmonises these home country rules so that they are all sufficiently similar, meaning that an investor is, in theory, just as well-protected under the rules of one EEA member state as they are under the rules of another. There are common standards of investor protection.
- Host state conduct of business rules apply where a passported MiFID branch of a firm conducts business with host state residents.
- Home state rules will apply where the services of the passported MiFID branch in the previous bullet point are provided from the host state to residents in another EEA member state.

2.5.4 MiFID II and MiFIR

Since MiFID came into force (2007), financial markets had changed substantially. New factors (for example, new types of trading venues) and products came onto the scene and technological developments, such as high-frequency trading (HFT), altered the landscape dramatically. All these revealed shortcomings in MiFID, which is why the European Commission undertook a review of MiFID, and it was replaced by 'MiFID II' and 'MiFIR'.

Refer to chapter 5, section 2 for details on the EU's revision of the MiFID framework (MiFID 3 and MiFIR 2), which was published in the EU Official Journal in March 2024.

The MiFID II framework contained two separate pieces of European legislation:

- **A revised Directive (MiFID II)** – an amendment and restatement of MiFID. This covered a number of areas, including market structure, the scope of exemptions from financial regulation, organisational and conduct of business requirements for investment firms and trading venues, powers of national authorities, sanctions, and rules for third-country (non-EEA) firms operating through a branch.
- **A Regulation (MiFIR)** – setting out requirements for trade transparency, the mandatory trading of derivatives on organised venues and the provision of services by third-country firms without a branch.

The key elements of the framework are:

Scope

- Expansion of firms subject to authorisation – now captures certain commodity firms, data providers and third-country firms.
- Additional instruments brought into the scope of MiFID II, such as structured deposits and emissions allowances.
- Position limits for commodity derivatives – powers for regulators to require existing positions to be reduced.

Electronic Trading

- Derivatives, which are sufficiently liquid and eligible for clearing to be traded on trading venues (ie, either MTFs of OTFs).
- A new category of trading venues – OTFs.

Transparency and Transaction Reporting

- Transparency requirements extended, to include bonds and derivatives.
- Trade reports published in real time (one minute for equities and five minutes for non-equity financial instruments) through approved publication arrangement (APA) firms.
- Transaction reports capturing additional information, ie, personal information on the investment decision-maker and execution decision-maker within firms.

Third-Country Firms

- Equivalence decisions to be made by the European Commission in respect of third countries before firms from these jurisdictions can request to provide services.
- As a minimum, third-country firms seeking to access the retail market required to establish branches.

Investor Protection

- Receipt of monetary inducements by certain firms, such as portfolio managers and firms giving independent investment advice is banned.
- Advice must meet certain criteria in order to be classified as independent and additional information will need to be provided to clients.
- The definition of non-complex instruments is updated to remove structured UCITS, to prevent these funds from being sold without an assessment of their appropriateness for the client.

- National regulators granted powers to permanently ban products, in coordination with the ESMA, who will also be able to temporarily ban products.
- Introduction for position limits for commodity derivatives, including powers to require existing positions to be reduced.

2.6 UCITS Directive – Selling Cross-Border CISs

The family of UCITS Directives is aimed at securing a common set of regulatory standards for open-ended funds (commonly known as OEICs and unit trusts in the UK) or sociétés d'investissement à capital variable (SICAVs) with the aim of removing barriers to cross-border trade.

Put simply, if a collective fund is set up in accordance with the UCITS rules, it should be able to be sold across the EU, subject only to local tax and marketing laws. So, a UCITS scheme can gain a single authorisation from its home state regulator; and need not apply for further authorisation in other member states before being sold to the public there.

However, only a relatively limited range of scheme types could qualify as UCITS and, therefore, be freely marketed throughout the EU. The requirements which needed to be satisfied included the following:

- The scheme had to be solely invested in transferable securities.
- No more than 10% of the fund could be in the shares or bonds of a single issuer.
- No more than 5% of the assets of the scheme were allowed to be invested in other CISs.
- The scheme was only able to hold money in bank deposits as ancillary liquid assets and not as a major part of the investment strategy of the scheme.
- The scheme was only able to invest in, or utilise, financial derivatives for efficient portfolio management or hedging purposes.

Demand for a wider variety of funds marketable throughout the EU rendered these investment restrictions somewhat out of date. As a result, 'new' UCITS Directives were developed, a summary of which is noted below:

UCITS III

- Impacting the operators of funds (the **Management Directive**).
- One broadening the range of underlying investments and strategies that could qualify as UCITS (the **Products Directive**).

The Management Directive deals mainly with the management companies operating UCITS funds; for example, the degree to which they can delegate activities, their capitalisation, internal administration and accounting requirements. It widens the previous investment powers of UCITS schemes, to enable them to invest in money market instruments, other CISs, deposits and financial derivatives. It also allows certain UCITS to use strategies designed to replicate the performance of stock market indices (index tracker funds).

The Products Directive permitted the following:

- Investment in money market instruments such as Treasury bills and certificates of deposit. This enables money market funds to be UCITS-compliant for the first time, as long as no more than 10% of the fund is invested in instruments from any single issuer.
- Up to 100% of a fund to be invested in other UCITS schemes, or up to 30% in a non-UCITS retail scheme which is a regulated scheme. This gives the ability for funds of funds (FOFs) to be UCITS- compliant.
- Investment in bank deposits, providing that no more than 20% of the scheme's assets are held with the same institution.
- Investment in financial derivatives (for example, warrants) as part of the scheme's investment policy, rather than just for efficient portfolio management. There are conditions that look through the derivatives, requiring that the underlying instruments must be capable of being held directly by the scheme.
- Index tracker funds which are intended to replicate the performance of an index are, under UCITS III, permitted to invest up to 20% of their value in a

single issue. This can be raised to a maximum of 35% if justified by exceptional market conditions.

UCITS IV

UICTS IV introduced the following:

- **Notification procedure** – the previous process of cross-border fund notification took a minimum of two months, although it was not uncommon for some member states to ask for more information and so delay the registration process. The Commission proposed to clarify member state supervisory responsibilities and ensure that a duly authorised UCITS has the right to access the market of another member state. Notification is by a simple electronic regulator-to-regulator communication, which effectively means that a UCITS has a right to access the market of another member state without delay.
- **Fund mergers** – the average fund size in Europe is much lower than in the US, while fund charges are higher. The ability of a UCITS to merge and pool assets should bring economies of scale and specialisation.
- **Asset pooling (master/feeder structure)** – master/feeder structures enables fund managers to pool similar funds into a master fund while still preserving the different funds' labels (as opposed to merging the funds). The structure should benefit investors with economies of scale when pooling assets of the feeder/master funds, centralising the core investment management activity and preserving greater tax-efficiency for the end investor.
- **Simplified prospectus** – the previous simplified prospectus was too long and complex. The new proposal replaced this with a short and easily readable Key Investor Information Document (KIID).
- **Management company passport** – this was the most controversial of the Commission's proposals. This allows the activities performed by the management company to be undertaken in a member state other than where the funds are domiciled and/or registered. This permits fund managers, and outsourced fund administrators who perform the activities of the management company, to centralise the administration of fund ranges in one location within the EEA.

UCITS V

UCITS V introduced the following:

A UCITS will need to appoint a single depositary which must be located in the same member state as the UCITS.

The requirements also bring in specific depositary duties, such as:

- safekeeping functions
- harmonised oversight functions
- cash flow monitoring
- delegation
- liability, and
- investors' rights of actions against the depositaries.

UCITS V also introduced remuneration requirements for UCITS managers; in particular, governance arrangements, identified staff, remuneration structures and proportionate application.

UCITS VI

In 2021, the European Commission published a legislative proposal for an omnibus directive amending AIFMD and, for some developments, the UCITS Directive.

The review of AIFMD and UCITS aimed to address a limited number of areas where further improvements could be introduced while integrating the lessons of recent crises.

Directive 2024/927, which amends AIFMD and the UCITS Directive, was published in the Official Journal in March 2024. It must now be transposed into national law before April 2026 and April 2027 for the supervisory reporting provisions.

The main changes made to AIFMD and transposed to the UCITS Directive include:

- The improvement of the availability and use of liquidity management tools
- The improvement of AIFMD regulatory reporting and the introduction of equivalent reporting for UCITS
- Information provided to authorities about asset managers' delegated activities. The delegation framework under AIFMD remains largely unchanged but it is specified that an AIMF must notify the national

competent authority of the intra and extra EU delegation of any of the functions listed in the Directive, in particular the portfolio management or risk management delegation. Asset managers must also control delegated activities.

Directive 2024/927 which amends AIFMD and the UCITS Directive must be complemented by implementing measures clarifying operational details on regulatory technical standards (RTS) and guidelines on liquidity management tools (LMT).

The objective is to improve and homogenise the use of liquidity management tools within the EU to allow better protection for investors in the event of crisis or market tensions. Asset managers shall include two LMTs in the fund/sub-funds rules, considering the investment strategy, the liquidity profile, the redemption policy of the fund and the market conditions (except for money market funds, which may set up only one LMT).

Liquidity management tools are divided into three categories:

- **Anti-dilution tools (ADTs)**: their objective is to allocate the cost of liquidity to incoming and outgoing investors and avoid the cost being supported by remaining investors. ADTs include:
    - Redemption fees, acquired in the fund.
    - Swing pricing, by adjusting the net-asset value (NAV).
    - Anti-dilution levy (ADL), which refers to adjustable rights acquired in the fund.
    - Dual pricing by determining two NAVs (bid and ask NAVs).
- **Quantitative LMTs**:
    - Suspension of subscriptions/redemptions.
    - Gates, cap of redemptions request and redemption payments spread over several NAVs.
    - Extension of notice period.
- **Other LMTs**:

- Redemption in kind, by transferring securities representing the portfolio to the investor. The final RTS will confirm if this tool should only be allowed for institutional investors.
- Side pockets to isolate illiquid asset from healthy assets.

Regulatory Technical Standards and Implementing Technical Standards on Supervisory Reporting

Guidelines on Funds' Names Using ESG or Sustainability-Related Terms

ESMA was mandated to issue guidelines on the naming of funds which can be unfair, unclear, or misleading. Published in May 2024, the purpose of the guidelines on fund names using ESG or sustainability-related terms is to fight against greenwashing practices. The name of a fund is often the first point of reference for investors, and it can even guide their investment decisions.

To use ESG or sustainability-related terms in fund names, the asset manager must respect two conditions:

- Asset managers must respect a minimum threshold of 80% of the fund's investments which should meet environmental or social characteristics, or sustainable investments objectives.
- Asset managers should apply exclusion criteria depending on the terms used in the fund's name:
    - The use of 'Environmental', 'Impact' and 'Sustainability' related terms will require exclusions according to the rules applicable to the Paris Aligned Benchmark (PAB).
    - Whereas 'Transition', 'Social' or 'Governance' related terms will require exclusions according to the rules applicable to the Climate Transition Benchmark (CTB).
    - For funds using different related terms in the fund's name, the rules can be cumulative.
        - For example, a fund using ESG terminology will have to comply with both PAB and CTB exclusion.
        - The same rationale is applicable to a social sustainable fund.

The entry into application of the Guidelines was November 2024 for funds created from this date, Funds created before this date will have to comply before

21 May 2025.

ESMA's Call for Evidence on the Eligible Asset Directive (EAD) Review

The Eligible Asset Directive (EAD) 2007/16/EC is a delegated directive which supplements the UCITS Directive. It was published in March 2007 to clarify concepts such as transferable securities or Money Market Instruments that were not clear through the 1985 UCITS Directive. The initial objective of the EAD was to help market participants and national competent authorities develop a common understanding of key concepts and have clarity as to whether a given asset class was eligible to a UCITS or not.

Since 2007, the number, type and variety of financial instruments have increased, leading to uncertainty on whether certain categories of assets are eligible to UCITS or not. Therefore, the European Commission asked ESMA for a technical opinion.

ESMA launched a call for evidence in May 2024 with a twofold objective:

- Analyse the application of the criteria set out in the Directive: are these criteria still relevant, complete, and applied uniformly by member states?
- Assess the current exposure of UCITS with a list of certain asset classes that are not currently directly eligible to a UCITS. ESMA is aware of divergent analyses across the EU with some member states allowing the eligibility of embedded derivatives, catastrophe bonds or commodities via exchange traded commodities for example. ESMA's assessment also includes assets such as loans, crypto assets or emission allowances. The aim is to analyse whether these exposures are adequate for UCITS considering the underlying asset's criteria, such as valuation availability, liquidity or the custody conditions.

The call for evidence closed in 2024. ESMA published its Final Report (technical advice) to the European Commission in October 2025.

The ESMA Final Report sets out its views on direct and indirect investments by UCITS, the consistent application of look through to the underlying assets and UCITS exposure to alternative assets, including structured/leveraged loans, catastrophe bonds, commodities, crypto assets, and emission allowances. The

Final Report included recommendations for the reform of the UCITS Eligible Assets Directive (EAD).

The UCITS I Directive provided a rather narrow list of assets eligible for investments, mainly limited to the broad category of 'transferable securities'. But, over the past decades the variety of financial instruments traded on financial markets has increased significantly, and with this diversification uncertainties and differing views on the eligibility of these asset classes have emerged.

ESMA's mandate for the report on the EAD included:

- gathering insights on the manner and the extent to which UCITS have gained direct and indirect exposures to certain asset classes that may give rise to divergent interpretations and/or risk for retail investors, and
- analysing the risks and benefits of UCITS gaining exposures to asset classes that are not directly investable for UCITS.

ESMA recognised in its Final Report the demand for exposure to alternative assets through collective investment schemes. However, it noted the limitations of the current AIFMD framework, under which marketing to retail investors is left to national discretion. ESMA suggests two possible future work streams:

- reforming the rules on marketing AIFs to permit adoption of an ELTIF (European Long-term Investment Funds) style retail passport, or
- creation of a new EU harmonised AIF product for investments in alternatives.

2.7 Prospectus Directive – Selling Securities Cross-Border

The Prospectus Directive is another example of a directive aimed at creating common standards across the EU, this time with the aim of simplifying the issue of a prospectus throughout the EEA.

The Prospectus Directive sets out common standards in terms of the information that must be provided about the issuer and the securities being issued or admitted for listing. It can be thought of as a single passport for issuers. It means that, once a prospectus has been approved by a home state listing authority, it

must be accepted for the purpose of listing or public offers throughout the EU. The purpose of the Prospective Directive is, therefore, to make it easier and cheaper for companies (issuers) to raise capital in Europe.

In November 2024 an amending Regulation was published in the Official Journal as part of the EU's 'Listing Act' package. Among other things, the Regulation makes a number of important amendments to the EU Prospectus Regulation regime, including changes to:

- Enable the incorporation by reference into a base prospectus of annual or interim financial information published after the date of the base prospectus without the need for a prospectus supplement.
- Prohibit risk factors that are generic or only serve as disclaimers.
- Restore the temporary amendments concerning prospectus supplements and their effects which applied through most of 2021 and 2022 in response to the Covid pandemic, including the extension of the period during which withdrawal rights may be exercised from two to three working days.
- Clarify that a supplement to a base prospectus may not be used to introduce to the programme a new type of security for which the necessary information has not already been included in that base prospectus.
- Include provisions with the aim of making prospectuses shorter, particularly for issuers of shares, for SMEs and for follow-on issuances.
- Extend exemptions for follow-on or 'fungible' offerings and for shares resulting from the conversion or exchange of other securities.
- Standardise the format of prospectuses and the sequence in which information is presented.
- Specify the ESG-related information to be included in the prospectus in respect of prospectuses relating to non-equity securities that are advertised as taking into account ESG factors or pursuing.

A number of the amendments do not apply until 5 June 2026, transitional provisions have the effect that prospectuses approved before that date will continue to be governed until the end of their validity.

Shorter Prospectuses

The main focus of the amending Regulation is to seek to make it easier and less expensive for companies, particularly small and medium sized enterprises (SMEs), to offer shares to the public for the first time (IPOs) or make follow-on offerings shortly after their initial offering. To this end, effective from 5 March 2026 it introduced:

- a new **EU Growth issuance prospectus**, which will replace the current EU Growth prospectus. An EU Growth issuance prospectus will be primarily for (a) SMEs, (b) other issuers whose securities are, or are to be, admitted to trading on an SME growth market and (c) other issuers where the total consideration for the securities offered is less than EUR 50,000,000, and
- a new **EU Follow-on prospectus**, which will replace the current simplified prospectus for secondary issuances of equity or non-equity securities. For share issuances, an EU Follow-on prospectus must have a maximum length of 50 sides of A4-sized paper. It will also have a standardised format and present the required information in a standardised sequence.

The amending Regulation introduced, from 5 June 2026, a 300-page limit for a prospectus that relates to shares, the European Commission is empowered to develop rules to require prospectuses to be in a standardised format and to disclose information in a standardised sequence.
However, the 300-page limit will not apply to a prospectus that relates to non-equity securities.

Exemptions for Follow-On Offering Shorter Prospectuses

The amending Regulation introduces a new exemption from the obligation to publish a prospectus for an offer of securities which are to be admitted to trading on a regulated market or an SME growth market and are fungible with securities already admitted to trading on the same market, provided that they represent less than 30% of the number of securities already admitted to trading on the same market (calculated over a 12-month period).

Prospectus Supplements and Withdrawal Rights

In 2021, the Commission's Capital Markets Recovery Package response to the Covid pandemic introduced some temporary amendments concerning prospectus supplements and their effects. These temporary measures expired on 31 December 2022 but the amending Regulation reinstates and extends them. In

particular, the extension of the period during which withdrawal rights may be exercised from two to three working days is made permanent.

Currently, a prospectus must be delivered to any potential investor, upon request and free of charge, 'on a durable medium' and printed on paper if the investor requests. The amending Regulation abolishes the requirement for a printed prospectus and replaces the current obligation with an obligation to deliver a copy of the prospectus in electronic format upon request and free of charge.

2.8 Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR)

The **Capital Requirements Directive (CRD)** requires firms to satisfy certain financial requirements. In particular, firms need to have financial resources in excess of their regulatory financial resource requirements. These requirements aim to minimise the risk of a firm's collapsing by being unable to pay its debts, and are generally referred to as prudential rules.

The aim of the CRD is to ensure the financial soundness of credit institutions (essentially, banks and building societies, but also investment firms). The CRD stipulates how much of their own financial resources such firms must have in order to cover their risks and protect their depositors.

The CRD is a major piece of legislation that introduces a modern prudential framework, relating capital levels more closely to risks.

2.8.1 The Basel Committee on Banking Supervision (BCBS)

The Basel Committee on Banking Supervision (BCBS) was established by various central banks. The BCBS has no legal powers but creates common standards and guidelines of best practice with the aim that individual states will implement these in their own law.

The Committee tries to reduce divergences in international supervisory standards.

The Basel Capital Accord was implemented in 1988, with the aim of introducing a standardised strategy for measuring certain risks, such as credit risk, for credit institutions to comply with.

In 1999, the Committee issued a proposal for a new capital adequacy framework to replace the 1988 Accord – it updated the existing requirements to reflect the changing nature of financial institutions. The revised Basel Capital Accord (referred to as Basel II) was implemented in the EU via the CRD.

Basel II Overview

Basel II revised the existing prudential framework to make the framework more risk-sensitive and more representative of banks' risk management practices.

The revised framework included a measure for operational risk and more risk-sensitive weightings against credit risk. Basel II provided incentives for firms to improve their risk management practices.

However, Basel II left the overall level of capital held by banks collectively broadly unchanged.

Following the banking and financial crisis that started in 2007, it was thought that the Basel II regime partly led to the problems, because it is a rule-driven system based on 'letter rating' of risks, and is arguably by its nature backward-looking. Following the banking crisis, the BCBS encouraged banks to boost capital reserves by making provisions for bad debts throughout the economic cycle.

Basel II Implementation

Basel II (which only applies to internationally active banks) was implemented in the EU via the CRD for credit institutions and investment firms.

The CRD amended two existing EU directives: the Capital Adequacy Directive (CAD) and the Banking Consolidation Directive (BCD).

The CRD implements in the EU the revised Basel framework, which is based on three pillars:

- **Pillar 1** – minimum capital requirements for credit, market and operational risks.
- **Pillar 2** – supervisory review, establishing a constructive dialogue between a firm and the regulator on the risks within, the risk management of and the

capital requirements of the firm.

- **Pillar 3** – market discipline, robust requirements on public disclosure intended to give the market a stronger role in ensuring that firms hold an appropriate level of capital.

Pillar 1 – Minimum Capital Requirements

There is a two-stage process to assess a firm's capital requirement, reflecting market, credit and operational risk.

First stage – to assess the category of a firm. It could be:

- an own-account dealer
- a broker/manager, or
- an adviser/arranger.

Second stage – to assess how to calculate the capital requirement, dependent on whether the firm is:

- a limited licence firm
- a limited activity firm, or
- a full-scope firm.

Pillar 2 – Supervisory Review

Under Pillar 2, a firm must constantly assess the internal capital it considers adequate and appropriate to cover all the risks it is exposed to within the context of its overall risk management framework.

The regulators determine the overall supervisory assessment, including risk mitigation programmes and the giving of individual capital guidance.

Pillar 3 – Market Disclosure

Pillar 3 is designed to change behaviour and encourage market discipline by the development of disclosure requirements which will allow firms to assess their capital, risk exposures and risk assessment processes. Disclosures are to be made on an annual basis, or when there are changes of a material nature, which could be considered as material if their omission or misstatement could change the assessment.

Basel III (CRD IV)

Basel III is the update to the Basel Accords, designed to prevent a repeat of the banking financial crisis. Basel III introduced more stringent requirements on banks in major G20 financial centres.

This represents the Commission's plan for implementing the Basel III regulations, making the global financial system more resilient in the event of a crisis such as that of the global banking crisis of 2007–08.

Requirements under Basel III include the following:

- A tighter definition of common equity – banks will need to hold 7%, which includes a 2.5% capital conservation buffer.
- Counter-cyclical capital buffers – banks with a capital ratio below 2.5% face restrictions on paying dividends, undertaking buy-backs and the payment of staff bonuses.
- Limiting counterparty credit risk.
- Firms to comply with short- and medium-term quantitative liquidity ratios.
- An internationally harmonised leverage ratio, acting as backstop to risk-based capital measures.
- In 2023, the following risk coverage events came into effect:
    - Revised Standardised Approach for Credit Risk
    - Revised IRB Framework
    - Revised CVA Framework
    - Revised Operational Risk Framework, and
    - Revised Market Risk Framework.
- From 2023, the risk coverage output floor starts at 50%; and by 2025 it will reach 72.5%.

CRD Changes

The 'CRD' has been updated and amended over the years. The changes are to address lessons learnt from the financial crisis.

In particular, CRD II aimed to improve the quality of firms' capital by establishing criteria for assessing the eligibility of hybrid capital that will be counted as part of

firms' overall capital. In addition, it also developed rules to enhance the management of firms' large exposures, restricting lending beyond a set limit. Lastly, it improved a firm's risk management of securitisation, by requiring the originator of an issue to retain an investment in the issue.

Changes implemented under CRD III included strengthening the capital requirements for the trading book, so that it reflects potential losses from adverse market movements, and imposing higher capital requirements for re-securitisations, to ensure appropriate accounting of risks of investing in complex financial products.

It also includes rules to tackle pay incentives by requiring firms to have sound remuneration policies, as well as practices that do not encourage or reward excessive risk-taking.

CRD V

The global financial crisis of 2007–08 highlighted problems in risk management frameworks of banks. In 2013, CRD IV and CRR (EU legislation that implemented Basel III) were introduced to address these problems – in particular, the quantity and quality of banks' capital and liquidity resources.

CRD V introduced further measures, implementing Basel III's enhanced Pillar 2 approach to the management and control of interest rate risk in the banking book.

CRD V achieves the objectives by:

- clarifying the application of supervisory requirements and guidance under Pillar 2
- adjusting requirements applied to remuneration policies
- requiring the establishment of intermediate parent undertakings, and
- updating the governance requirements applied to firms.

CRD VI/CRR III

In 2021, the European Commission published a review of EU banking rules (the CRR and the CRD), implementing the Basel 3.1 framework.

The Commission's proposed changes will primarily implement certain Basel II standards within the EEA, as well as firms providing cross-border financial services

within the EEA.

Of particular concern to the industry was the requirement to establish a branch in order to provide banking services within the EEA – this would prevent a wide range of financial institutions from providing services within the EEA on a cross-border basis which are permitted under EEA member states' local laws (ie, reverse solicitation by existing client). Although, these proposals were slightly watered down in the published CRD6 due to the existence of certain exemptions provided to third country firms undertaking certain business in the EU.

Following the publication in the EU Official Journal, the revised Capital Requirements Regulation (CRR3) came into effect on 1 January 2025 and the revised Capital Requirements Directive (CRD6) will come into effect on 11 January 2026. Although the requirements relating to the provision of services in the EU by third country entities and the requirement to establish a branch in the EU do not come into effect until 12 months later (11 January 2027) – EU member states must transpose the requirements into national law by 11 January 2026.

The current version of the CRR, CRR3, came into effect on 1 January 2025, whereas the current version of the CRD (CRD6) was to be transposed into national law by EU member states by 11 January 2026. Article 21c (Requirement to establish a branch for the provision of banking services by third country undertakings) comes into effect on 11 January 2027 – although EU member states must transpose the requirements into national law by 11 January 2026.

Article 21c of CRD6 will require non-EU entities intending to provide 'core banking services' in an EU member state to establish an authorised local branch in that member state unless one of the limited exemptions applies – restricting the cross-border provision of loans or credit and guarantees or commitments by non-EU banks and the taking of deposits or other borrowing in the EU by any non-EU entity.

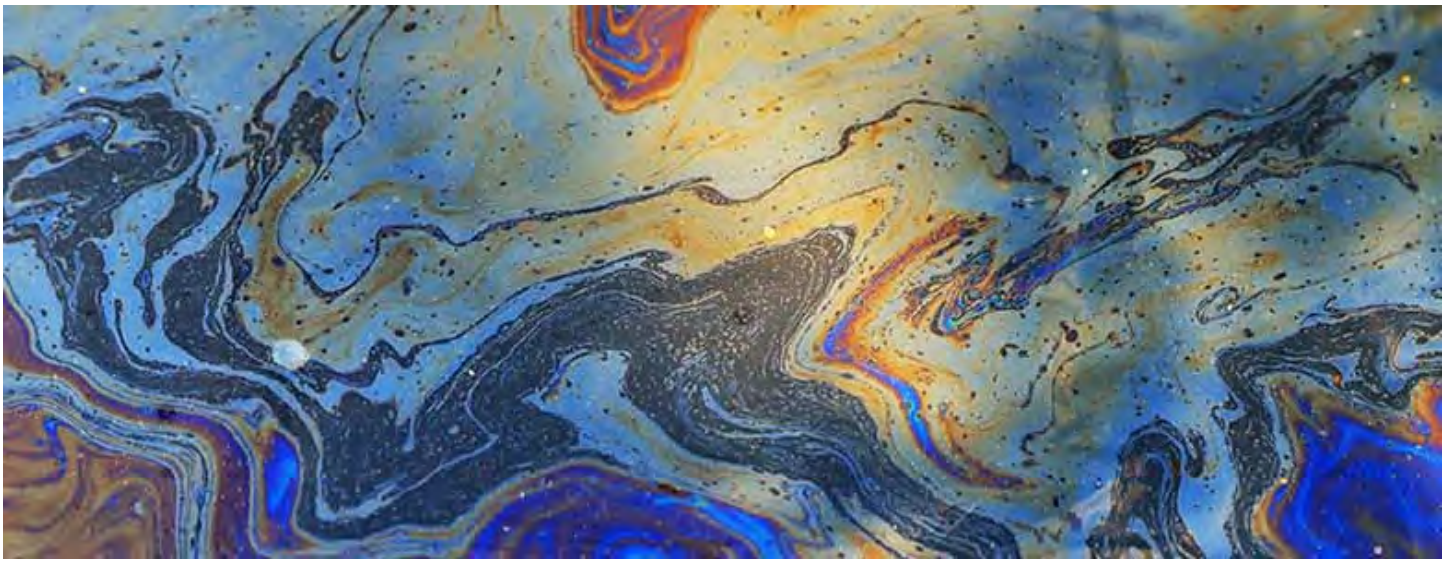
Article 21c includes several narrow exemptions and carve-outs, such as:

- **Interbank transactions** – services provided to other EU-licensed credit institutions.
- **Intra-group transactions** – services between entities within the same corporate group.

- **Reverse solicitation** – the client must exclusively initiate the service themselves, without any marketing or solicitation from the third-country firm or anyone acting on its behalf.
- **Ancillary MiFID services** – core banking activities that are purely ancillary to the provision of MiFID (Markets in Financial Instruments Directive) investment services are also excluded from the scope of Article 21c.
- **Grandfathering** – contracts entered into before 11 July 2026 are generally grandfathered, allowing them to continue under previous rules to facilitate a smooth transition.

The term core banking services is defined as:

- taking deposits and other repayable funds
- lending (including consumer credit, real estate loans and trade finance)
- providing guarantees and commitments.



3. International Financial Services Structure, Operation and Legislation

The following section of this chapter highlights international financial regulation as relevant to the UK financial, services industry (ie, UK regulated firms undertaking business in these countries) in terms of structure and operation.

3.1 Financial Services in the US

The US financial services sector is heavily regulated. The regulatory structure is quite complicated, with myriad regulatory agencies and overlapping responsibilities. This structure is daunting and confusing, and it has its costs and complications. However, one great advantage of this complicated and duplicative system is that it gives someone with an innovative idea an opportunity to exploit likely regulatory gaps within the system. There is no monopoly regulator.

3.1.1 The Regulatory Agencies

There are five federal regulators of depository institutions, as well as one or more regulators in each of the 50 states. The states also regulate lenders and mortgage originators that are not depositories.

- There is a separate federal agency that has the responsibility for regulating Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. (Fannie Mae and Freddie Mac are government- sponsored enterprises that provide a secondary market in home mortgages in the US. They purchase mortgages from the lenders who originate them; they hold some of these mortgages and some are 'securitised' – sold in the form of securities, which they guarantee.)
- There are two federal regulators of the securities markets and financial instruments, as well as 50 state regulators (and 50 state attorney generals, who are prepared to bring lawsuits against securities firms on behalf of their respective states' citizens).
- The regulation of insurance companies is exclusively the domain of the 50 states.
- Pension funds are regulated by two federal agencies, and, again, the 50 states have a say.
- Consumer fraud in financial products can be the responsibility of yet another federal agency, as well as the 50 states.

There are overlapping responsibilities and jurisdictional disputes throughout this framework. For example, federal bank regulators and the 50 state bank regulators are constantly struggling for jurisdiction with respect to consumer protection issues. As another example of regulatory complexity, a commercial bank's holding company is usually regulated by the Federal Reserve, while the primary safety-and-soundness regulator for the bank itself is the federal Office for the Comptroller of the Currency (OCC), or one of the 50 state bank regulators. Until recently, if the bank was a savings institution, the regulator of its holding company would have been the federal Office of Thrift Supervision (OTS). But since July 2011, the OCC assumed responsibility from the OTS for the ongoing examination, supervision and regulation of federal savings associations and rule-making for all savings associations, state and federal. The OCC republished under its own name all the previous rules of the OTS so that firms would have consistency.

3.1.2 The Securities and Exchange Commission (SEC)

The mission of the US SEC is to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. The laws and rules that govern the securities industry in the US derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell or hold a particular security. Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions.

The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisers and mutual funds. The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing and protecting against fraud.

It is the responsibility of the SEC to:

- interpret federal securities laws
- issue new, and amend existing rules
- oversee the inspection of securities firms, brokers, investment advisers, and ratings agencies
- oversee private regulatory organisations in the securities, accounting, and auditing fields, and
- coordinate US securities regulation with federal, state and foreign authorities.

Key Legislation

- **Investment Company Act of 1940** – this act regulates the organisation of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities, and whose own securities are offered to the investing public. The regulation is designed to minimise the conflicts of interest that arise in these complex operations.

- **Investment Advisers Act of 1940** – this law regulates investment advisers. With certain exceptions, this act requires that firms or sole practitioners compensated for advising others about securities investments must register with the SEC and conform to regulations designed to protect investors.
- **Sarbanes-Oxley Act of 2002** – this act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the Public Company Accounting Oversight Board (PCAOB), to oversee the activities of the auditing profession.
- **Dodd-Frank (Volcker Rule)** – financial regulators have been considering imposing restrictions on proprietary trading, especially where investment banks trade on their own account to generate profits for the firm. In the US in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed – it included the Volcker rule, which limits proprietary trading or sponsorship of hedge funds by banks. This will prohibit a bank, or institution that owns a bank, from engaging in proprietary trading that is not arrived at from a relationship with a client, or from owning or investing in a hedge fund or private equity fund, as well as limiting banks' liabilities. The implementation date of the rule was delayed until July 2014. Revisions to the Volcker rule in the US have meant that banks are permitted to invest up to 3% of their Tier 1 capital in private equity and hedge funds.

    - Proprietary trading in Treasury bonds and bonds in other government-backed or municipal entities is also excluded. This was changed as the original idea would have caused problems globally as the US banks are active primary government bond dealers in markets around the globe.
    - Proprietary trading is seen by many as a conflict of interest with clients, as the firm may be betting/taking positions which contradict client positions. Most banks, not just US banks, have scaled back their proprietary trading desks over the years since the financial crisis started in 2007.

3.1.3 The Federal Reserve

Federal Reserve banks were established by Congress as the operating arms of the nation's central banking system. Many of the services provided by this network to depository institutions and the government are similar to services provided by banks and thrift institutions to business customers and individuals.

Reserve banks hold the cash reserves of depository institutions and make loans to them. They move currency and coin into and out of circulation and collect and process millions of cheques each day. They provide cheque accounts for the Treasury, issue and redeem government securities, and act in other ways as fiscal agents for the US government. They supervise and examine member banks for safety and soundness.

The Reserve banks also participate in the activity that is the primary responsibility of the Federal Reserve system: the setting of monetary policy.

3.1.4 The Office of the Comptroller of the Currency (OCC)

The OCC charters, regulates and supervises all national banks. It also supervises the federal branches and agencies of foreign banks. Headquartered in Washington DC, the OCC has four district offices, plus an office in London to supervise the international activities of national banks.

The OCC's nationwide staff of examiners conduct on-site reviews of national banks and provide sustained supervision of bank operations. The agency issues rules, legal interpretations and corporate decisions concerning banking, bank investments, bank community development activities and other aspects of bank operations.

3.1.5 The US Treasury

The US Treasury department is the executive agency responsible for promoting economic prosperity and ensuring the financial security of the US. It is responsible for a wide range of activities, such as advising the president on economic and financial issues, encouraging sustainable economic growth, and

fostering improved governance in financial institutions. It operates and maintains systems that are critical to the nation's financial infrastructure, such as the production of coin and currency, the disbursement of payments to the American public, revenue collection, and the borrowing of funds necessary to run the federal government. The department works with other federal agencies, foreign governments and international financial institutions to encourage global economic growth, raise standards of living, and, as far as possible, predict and prevent economic and financial crises.

The Treasury also performs a critical and far-reaching role in enhancing national security by implementing economic sanctions against foreign threats to the US, identifying and targeting the financial support networks of national security threats, and improving the safeguards of the financial systems of the US.

3.1.6 The Financial Industry Regulatory Authority (FINRA)

The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the US. FINRA oversees 3,250 firms and around 625,000 registered securities brokers.

FINRA touches virtually every aspect of the securities business, from registering and educating industry participants to examining securities firms; writing rules; enforcing those rules and the federal securities laws; informing and educating the investing public; providing trade reporting and other industry utilities; and administering the largest dispute-resolution forum for investors and registered firms. It also performs market regulation under contract for the National Association of Securities Dealers Automated Quotation (NASDAQ) stock market, the American Stock Exchange (AMEX), the International Securities Exchange (ISE) and the Chicago Climate Exchange (CCX).

The role of FINRA:

- Safeguards the investing public against fraud and bad practices.
- Enforces industry rules and federal securities laws.
- Registers, tests and educates brokers.
- Works to ensure investors are not misled.

- Keeps an eye on the markets.
- Educates and informs investors.
- Demands fairness.

3.1.7 Consumer Financial Protection Bureau (CFPB)

The Consumer Financial Protection Bureau (CFPB) is the federal agency that has primary responsibility for regulating consumer protection in the US. It was founded as a result of the Dodd–Frank Wall Street Reform and Consumer Protection Act.

3.1.8 The US Commodity Futures Trading Commission (CFTC)

The mission of the Commodity Futures Trading Commission (CFTC) is to foster open, transparent, competitive, and financially sound markets, to avoid systemic risk, and to protect the market users and their funds, consumers, and the public from fraud, manipulation, and abusive practices related to derivatives and other products that are subject to the Commodity Exchange Act (CEA).

In carrying out this mission and to promote market integrity, the CFTC polices the derivatives markets for various abuses and works to ensure the protection of customer funds. Further, the agency seeks to lower the risk of the futures and swaps markets to the economy and the public.

To fulfil these roles, the CFTC oversees designated contract markets, swap execution facilities, derivatives clearing organisations, swap data repositories, swap dealers, futures commission merchants, commodity pool operators and other intermediaries.

The CFTC historically had been charged by the CEA with regulatory authority over the commodity futures markets. These markets have existed since the 1860s, beginning with agricultural commodities, such as wheat, corn and cotton. Over time, the markets regulated by the CFTC have grown to include contracts on energy and metals commodities, such as crude oil, heating oil, gasoline, copper, gold and silver, and contracts on financial products, such as interest rates, stock indexes and foreign currency.

In the aftermath of the 2007–08 financial crisis, caused in part by the unregulated swaps market, President Obama and Congress charged the CFTC with reforming this market. The agency now also has regulatory oversight of over $400 trillion swaps market, which is about a dozen times the size of the futures market. The futures and swaps markets are essential to our economy and the way that businesses and investors manage risk. Farmers, ranchers, producers, commercial companies, municipalities, pension funds and others use these markets to lock in a price or a rate and focus on what they do best, innovating, producing goods and services for the economy, and creating jobs.

The CFTC works to ensure these hedgers and other market participants can use these markets with confidence. The CFTC is responsible for Title VII of the Dodd-Frank Act as it relates to derivatives.

3.2 Financial Services in Asia

3.2.1 China

The main bodies responsible for regulating financial services in China are:

- the China Securities Regulatory Commission (CSRC)
- China Banking and Insurance Regulatory Commission (CBIRC), and
- the People's Bank of China (PBOC).

The CSRC has ultimate responsibility for regulation in relation to the stock markets in Shanghai and Shenzhen, the futures exchange in Shanghai and the commodities exchanges in Zhengzhou and Dalian, with the local exchanges retaining certain front-line regulatory functions under CSRC supervision.

The CSRC:

- sets regulations governing the markets
- regulates listed companies, securities and futures brokers
- oversees stock and bond issues
- supervises the establishment and operation of investment funds

- has jurisdiction over the auditors of publicly listed companies and law firms which provide advice in relation to the issue, listing or trade of securities
- appoints the head of each exchange, and
- approves the directors and senior officers of securities companies.

The CBIRC is mandated to regulate and supervise banking and insurance institutions in China and oversee their market conduct, maintain fair competition and protect legitimate rights and interests of stakeholders (including depositors and insurance policyholders).

Among its responsibilities, it licenses banking and insurance institutions and sets their business scope, approves the qualification of senior management and formulates codes of conduct for banking and insurance employees.

The functions of the PBOC include controlling monetary policy and regulating financial institutions in the capacity of a central bank. In addition to its role in relation to monetary policy, the PBOC retains responsibility for the interbank lending, bonds and foreign exchange markets, and is the lead agency for **anti-money laundering (AML)** activities.

3.2.2 Hong Kong

The main bodies responsible for regulating financial services in Hong Kong are as follows:

- Securities and Futures Commission (SFC)
- Stock Exchange of Hong Kong (SEHK)
- Hong Kong Futures Exchange (HKFE)
- Hong Kong Monetary Authority (HKMA)
- Insurance Authority (IA).

The SFC is responsible for regulating the securities and futures market. It is responsible for issuing licences to all corporations and individuals wishing to engage or engaging in a wide range of activities, namely dealing in securities and futures contracts and leveraged foreign exchange trading, advising on securities, futures contracts and corporate finance, and providing automated

trading services, securities margin financing and asset management. The SFC also oversees the Hong Kong Exchanges and Clearing (HKEx), which is the holding company of the SEHK and the HKFE.

- The SEHK is the frontline regulator of stock exchange participants and companies listed on the main board and growth enterprise market (GEM) of the stock exchange.
- The HKFE is primarily responsible for regulating futures exchange participants.

The SFC is also responsible for the discipline and sanctioning of sponsors and compliance advisers, and regulates all persons participating in securities and futures trading, by investigating and taking action in respect of market misconduct and other breaches of securities and futures law.

The HKMA regulates the banking industry and generally performs the obligations of a central bank.

The IA supervises a self-regulation system governing the insurance industry, with a view to protecting the interests of policyholders. Insurance intermediaries, such as agents and brokers, are required to be registered with various self-regulatory bodies that ensure their proper conduct. It is responsible for granting authorisation to insurers to carry out insurance business and examines their financial statements and returns.

3.2.3 Japan

The main bodies responsible for regulating financial services in Japan are as follows:

- The Financial Services Agency (FSA), which includes planning, supervisory and inspection functions.
- Self-regulatory organisations (SROs), such as the various Japanese securities exchanges and the Japan Securities Dealers Association (JSDA).

The FSA is an external organ of the Cabinet Office and is responsible for financial services supervision. This includes:

- maintaining the stability of the financial system in Japan, protecting depositors, insurance policy holders and securities investors
- planning and policy-making concerning financial systems
- inspecting and supervising private sector financial institutions (such as banks, securities companies, insurance companies and market participants, including securities exchanges)
- establishing rules for trading in securities markets
- participating in international forums and contributing to the coordination of international financial administration policy
- engaging in surveillance of compliance with rules governing securities markets, and
- administering financial regulations by issuing orders of revocation or suspension of licences
- imposing disciplinary sanctions or ordering remedial measures.

The FSA consists of a number of organs, including the SESC and the Certified Public Accountants and Auditing Oversight Board (CPAAOB), each of which is responsible for a particular area of financial regulation.

3.2.4 Singapore

The main bodies responsible for regulating financial services in Singapore are as follows:

- Monetary Authority of Singapore (MAS)
- Singapore Exchange (SGX) Limited
- Securities Industry Council (SIC).

The MAS is Singapore's central bank. It also regulates the securities, banking and insurance sectors. The role of the MAS is to:

- conduct monetary policy and issue currency
- administer various statutes pertaining to monetary policy, banking, insurance, securities and the financial sector in general
- supervise the banking, insurance, securities and futures industries

- manage the official foreign reserves and the issuance of government securities, and
- develop strategies in partnership with the private sector to promote Singapore as an international financial centre.

The SGX is Asia Pacific's first demutualised and integrated securities and derivatives exchange. Its members include derivatives and securities trading organisations. The SGX operates the securities and derivatives exchange and the respective clearing houses and securities depository. The SGX performs all steps in the value chain of businesses, order routing, trading, matching, clearing, settlement and depository functions. The SGX is responsible for:

- regulating the stock market
- approving applications for listing
- provision and administration of business and listing rules
- supervising admission of members, and compliance by listed companies with the listing rules and corporate disclosure policies
- market surveillance and risk management for clearing of securities and derivatives, and
- overseeing the capital requirements of brokers and investigating brokers as and when it deems necessary.

The SIC is an advisory body that assists the Minister of Finance on all matters relating to the securities industry. The SIC remains a non-statutory body consisting of representatives from the MAS, private and public sectors or such persons as the Minister may appoint. The SIC's role is to:

- administer and enforce the Singapore Code on Takeovers and Mergers (Takeover Code)
- supervise the application of the Takeover Code where a takeover or merger occurs
- investigate any dealing in securities connected with a takeover or merger transaction
- issue rulings on the interpretation of the Takeover Code and lay down the practice to be followed by the parties in a takeover or merger, and

- review the takeover rules and practices periodically and recommend changes.

3.3 Supranational Financial Services

3.3.1 Bank for International Settlements (BIS)

The mission and purpose of the BIS is to support central banks' pursuit of monetary and financial stability through international cooperation, and to act as a 'bank' for the central banks. The BIS is owned and governed by central banks.

To achieve this, the BIS provides central banks with:

A Forum for Dialogue and Broad International Cooperation

- The BIS provides central banks and financial supervisory authorities with a forum for dialogue and cooperation, where they can freely exchange information, forge a common understanding and decide on common actions.
- Through regular meetings and support to the main global standard setters for the international financial system, the BIS helps to promote dialogue among central banks and supervisory authorities to foster global monetary and financial stability.
- The BIS promotes international cooperation in the area of financial stability through its Financial Stability Institute, which supports central banks and other financial authorities in the implementation of global regulatory standards and sound supervisory practices.

A Platform for Responsible Innovation and Knowledge-sharing

- To respond to the increasing need for central banks to collaborate in this space, the BIS Innovation Hub Centres provide a platform for responsible innovation, and the Cyber Resilience Coordination Centre enables central banks to protect themselves from the associated risks.
- The BIS works together with central banks to explore the technological innovation that is rapidly transforming the financial landscape, to help

them realise its benefits while avoiding the associated risk.

In-depth Analysis and Insights on Core Policy Issues

- The BIS draws on its unique position at the intersection of research and policy.
- Their economic analysis responds to pressing short-term issues while exploring themes of strategic importance for central banks and financial supervisory authorities.
- In this role, the BIS supports central bank cooperation and provide an independent voice to sound policymaking.
- Working closely with central banks, the BIS produce in-depth research and statistical analysis which is made freely available to the public.

Sound and Competitive Financial Services

- The BIS provides financial services exclusively to central banks, monetary authorities and international organisations, mainly to assist them in the management of their foreign exchange assets.
- Banking transactions fund their activities and provide first-hand insights into current financial market conditions, which contribute to their research activities.

Governance Structure of the BIS

Board of Directors

The Board is responsible for determining the strategic and policy direction of the BIS, supervising BIS Management, and fulfilling the specific tasks given to it by the Bank's Statutes. It meets at least six times a year.

The Board may have up to 18 members, including six 'ex officio' Directors, comprising the Central Bank Governors of Belgium, France, Germany, Italy, the UK and the USA. They may jointly appoint one other member of the nationality of one of their central banks. 11 Governors of other member central banks may be elected to the Board.

The Board elects a Chair and may elect a Vice-Chair from among its members, each for a three-year term.

BIS Member Central Banks

Sixty-three central banks and monetary authorities are currently members of the BIS and have rights of voting and representation at General Meetings.

The Governor of the BoE represents the UK.

Source of information: BIS website: https://www.bis.org/

3.3.2 Financial Stability Board (FSB)

The FSB was established in 2009, succeeding the Financial Stability Forum (FSF). The FSB is an international body that monitors and makes recommendations about the global financial system.

Promoting international financial stability, it coordinates national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial sector policies.

The FSB, working through its members, seeks to strengthen financial systems and increase the stability of international financial markets. The policies developed in the pursuit of this agenda are implemented by jurisdictions and national authorities. More specifically, the FSB was established to do the following:

- Assess vulnerabilities affecting the global financial system as well as to identify and review, on a timely and ongoing basis within a macroprudential perspective, the regulatory, supervisory and related actions needed to address these vulnerabilities and their outcomes.
- Promote coordination and information exchange among authorities responsible for financial stability.
- Monitor and advise on market developments and their implications for regulatory policy.
- Monitor and advise on best practice in meeting regulatory standards.
- Undertake joint strategic reviews of the international standard-setting bodies and coordinate their respective policy development work to ensure this work is timely, coordinated, focused on priorities and addresses gaps.
- Set guidelines for establishing and supporting supervisory colleges.

- Support contingency planning for cross-border crisis management, particularly with regard to systemically important firms.
- Collaborate with the International Monetary Fund (IMF) to conduct Early Warning Exercises.
- Promote member jurisdictions' implementation of agreed commitments, standards and policy recommendations, through monitoring of implementation, peer review and disclosure.

Embedded in the FSB's structure is a framework for the identification of systemic risk in the financial sector, for framing the policy sector policy actions that can address these risks, and for overseeing implementation of those responses.

The FSB's structure comprises the following:

- Plenary as the sole decision-making body.
- Steering Committee to take forward operational work in between Plenary meetings.
- Standing Committees, each with specific but complementary responsibilities towards the above process.

The FSB's work priorities aim to address financial challenges that are global in nature and affect the financial system as a whole, including digitalisation, climate change, and the consequences of shifts in the macroeconomic and interest rate environment. Priority areas of work and new initiatives include:

- supporting global cooperation on financial stability
- enhancing the resilience of non-bank financial intermediation (NBFI), while preserving its benefits
- enhancing cross-border payments
- harnessing the benefits of digital innovation while containing its risks
- addressing financial risks from climate change, and
- cyber and operational resilience.

Source of information: FSB website: https://www.fsb.org.uk/

3.3.3 International Organisation of Securities Commissions (IOSCO)

IOSCO is the international body that brings together the world's securities regulators and is recognised as the global standard setter for the securities sector. It develops, implements and promotes adherence to internationally recognised standards for securities regulation. It works intensively with the G20 and the FSB on the global regulatory reform agenda.

IOSCO was established in 1983. Its membership regulates more than 95% of the world's securities markets in more than 130 jurisdictions: securities regulators in emerging markets account for 75% of its ordinary membership.

The IOSCO Objectives and Principles of Securities Regulation have been endorsed by both the G20 and the FSB as the relevant standards in this area. They are the overarching core principles that guide IOSCO in the development and implementation of internationally recognised and consistent standards of regulation, oversight and enforcement. They form the basis for the evaluation of the securities sector for the Financial Sector Assessment Programs (FSAPs) of the International Monetary Fund (IMF) and the World Bank.

IOSCO members have resolved:

- to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks
- to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries, and
- to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

In its last published annual report (for 2024), it noted 120 member, 33 associate members and 72 affiliate members. The IOSCO Board is the governing and

standard-setting body of the International Organization of Securities Commissions (IOSCO) and comprises of 35 securities regulators. The members of the IOSCO Board are the securities regulatory authorities of Argentina, Australia, the Bahamas, Belgium, Brazil, China, Egypt, France, Germany, Greece, Hong Kong, India, Ireland, Italy, Japan, Kuwait, Malaysia, Mauritius, Mexico, Nigeria, Ontario, Quebec, Republic of Korea, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, the Netherlands, Turkey, United Arab Emirates, United Kingdom, and the United States of America.

The CEO of the FCA represents the UK.

Source of information: IOSCO website: https://www.iosco.org/

3.3.4 Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) leads global action to tackle money laundering, terrorist and proliferation financing, it researches how money is laundered and terrorism is funded, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action.

FATF continuously monitors how criminals and terrorists raise, use and move funds. As countries put in place effective measures to disrupt illicit financial flows, criminals find alternative ways to launder their dirty money. FATF regularly publishes reports that raise awareness about the latest money laundering, terrorist financing and proliferation financing techniques so that countries and private sector can take the necessary steps to mitigate these risks.

The FATF Recommendations ensure a coordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes.

The FATF monitors countries to ensure they implement the FATF standards fully and effectively. In total, more than 200 countries and jurisdictions have committed to implement the FATF's standards and they are assessed with the help of nine FATF Associate Member organisations and other global partners, the IMF and World Bank.

The FATF holds countries to account that do not comply with the FATF Standards. If a country repeatedly fails to implement FATF Standards then it can be named a Jurisdiction under Increased Monitoring or a High Risk Jurisdiction. (These are often externally referred to as 'the grey and blacklists'.)

The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.

The FATF Recommendations therefore set an international standard, which countries should implement through measures adapted to their particular circumstances. The FATF Standards comprise the Recommendations themselves and their Interpretive Notes, together with the applicable definitions in the Glossary.

Source of information: FATF website: https://www.fatf-gafi.org/en/home.html

3.3.5 Financial Markets Standards Board (FMSB)

The Fair and Effective Markets Review by HM Treasury, the Bank of England and the FCA highlighted serious concerns about poor market practice in fixed income, currencies and commodities markets.

It recommended the setting up of a body to address the 'regulatory void' between high-level principles and low-level operational rules.

Therefore, the 'FMSB' was created in 2015 to bring market practitioners together to develop clearer guidance that could work across all asset classes and jurisdictions, increase market discipline and prevent the repetition of bad behaviours – areas that laws and regulations sometimes failed to reach.

Originally named the FICC Markets Standards Board (FMSB) it changed its name in 2022 to the 'Financial Markets Standards Board' to reflect the broader remit which now covers all areas of strategic importance to the wholesale markets, including post-trade.

The FMSB is a practitioner-led standards setter, working directly with markets practitioners from banks, asset managers, corporates, exchanges, infrastructure providers, pension funds and regulators.

The FMSB develops standards, statement of good practice and spotlight reviews. Its mission is noted as:

> *'we seek to improve the transparency, fairness and effectiveness of global wholesale financial markets.'*

By improving transparency, fairness and effectiveness, FMSB seeks to support well-functioning, trusted global wholesale financial markets that in turn support sustainable economic growth for governments, corporations and investors.

The FMSB's strategic priorities are to:

- collaborate selectively with other like-minded organisations in order to increase the impact and reach of our work
- broaden our territorial reach through collaboration, membership (engaging with new members in local markets) and building relationships with global regulators, and
- retain and attract the breadth of membership central to the process of setting authoritative standards.

Source of information: FMSB website: https://fmsb.com/

3.3.6 Basel Committee on Banking Supervision (BCBS)

The Basel Committee on Banking Supervision (BCBS) is the primary global standard setter for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters. Its 45 members comprise central banks and bank supervisors from 28 jurisdictions.

The UK is represented by the Bank of England and the PRA.

Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability. The BCBS seeks to achieve its mandate through the following activities:

- Exchanging information on developments in the banking sector and financial markets, to help identify current or emerging risks for the global financial system.
- Sharing supervisory issues, approaches and techniques to promote common understanding and to improve cross-border cooperation.
- Establishing and promoting global standards for the regulation and supervision of banks as well as guidelines and sound practices
- Addressing regulatory and supervisory gaps that pose risks to financial stability.
- Monitoring the implementation of BCBS standards in member countries and beyond with the purpose of ensuring their timely, consistent and effective implementation and contributing to a 'level playing field' among internationally active banks.
- Consulting with central banks and bank supervisory authorities which are not members of the BCBS to benefit from their input into the BCBS policy formulation process and to promote the implementation of BCBS standards, guidelines and sound practices beyond BCBS member countries.
- Coordinating and cooperating with other financial sector standard setters and international bodies, particularly those involved in promoting financial stability.

The BCBS does not possess any formal supranational authority. Its decisions do not have legal force. Rather, the BCBS relies on its members' commitment.

BCBS members are committed to:

- work together to achieve the mandate of the BCBS
- promote financial stability
- continuously enhance their quality of banking regulation and supervision
- actively contribute to the development of BCBS standards, guidelines and sound practices
- implement and apply BCBS standards in their domestic jurisdictions within the pre-defined timeframe established by the Committee

- undergo and participate in BCBS reviews to assess the consistency and effectiveness of domestic rules and supervisory practices in relation to BCBS standards, and
- promote the interests of global financial stability and not solely national interests, while participating in BCBS work and decision making.

Source of information: BIS website: https://www.bis.org/bcbs/

Chapter Two

PRA Rulebook and FCA Handbook of Rules and Guidance

Section 1	Regulatory Structure in the UK
Section 2	Senior Managers & Certification Regime (SM&CR)
Section 3	Approved Persons and Regime (APER)
Section 4	COCON (Conduct Rules)
Section 5	High-Level Standards: Introduction
Section 6	Principles for Businesses (PRIN)
Section 7	Senior Management Arrangements, Systems and Controls (SYSC)

Section 8	Threshold Conditions (COND)
Section 9	The Fit and Proper Test for Approved Persons (FIT)
Section 10	General Provisions (GEN)
Section 11	Financial Stability and Market Confidence (FINMAR)
Section 12	Training and Competence (TC)
Section 13	Business Standards: Introduction
Section 14	Conduct of Business Sourcebook (COBS), including Product Intervention and Product Governance (PROD)
Section 15	Client Assets Sourcebook (CASS)
Section 16	Supervision (SUP)
Section 17	Decision Procedure and Penalties Manual (DEPP)

Section 18 The Cost of Non-Compliance

Section 19 Redress

Section 20 Regulatory Guides



Overall Learning Objective

To demonstrate a knowledge and understanding of the FCA's Handbook and PRA's rules and guidance as applicable to investment business conducted in the UK.

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1. Regulatory Structure in the UK

HM Treasury has overall responsibility for the UK's financial system, the institutional structure of financial regulation and the legislation that governs it.

The Financial Services Act 2012 enacted the split of the then regulator, the Financial Services Authority (FSA), replacing it with three regulatory authorities – the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Financial Policy Committee (FPC).

- The **FPC** – part of the Bank of England (BoE), with responsibility for macroprudential regulation, or regulation of the stability and resilience of the financial system as a whole.
- The **PRA** – regulating deposit takers (ie, banks), insurers and systemically important investment firms. This is also part of the BoE.
- The **FCA** – regulating conduct issues across the entire spectrum of financial services. It is responsible for market supervision, as well as the prudential supervision of firms not supervised by the PRA (ie, solo regulated firms). The FCA is accountable to HM Treasury.

1.1 The Prudential Regulation Authority (PRA)

The PRA's role is to contribute to the promotion of the stability of the UK financial system through microprudential regulation of credit institutions (banks/deposit takers), credit unions, insurance companies and significantly important investment firms. It has an overall objective to promote the safety and soundness of regulated firms, it meets this objective primarily by seeking to minimise any adverse effects of firm failure on the UK financial system, and by ensuring that firms carry on their business in a way that avoids adverse effects on the system.

For insurance supervision, the PRA has two complementary objectives – to secure an appropriate degree of protection for policyholders and, as needed, to minimise the adverse impact that the failure of an insurer or the way it carries out its business could have on the stability of the system.

The PRA supervises around 1,500 banks, building societies, credit unions, insurers and major investment banks.

1.2 The Financial Conduct Authority (FCA)

The FCA follows an approach of credible deterrence, pursuing enforcement cases to punish wrongdoing. Its market regulation continues to promote integrity and carry on the fight against market misconduct and insider dealing.

The FCA's strategic objective is to ensure that financial services markets function well.

To ensure that the relevant markets work well, the FCA focuses on delivering good market conduct. The FCA's key priorities in this respect are:

- a renewed focus on wholesale conduct – in particular inherent conflicts of interest
- trust in the integrity of markets, and
- preventing market abuse.

The National Audit Office is the statutory auditor of the FCA, with the power to carry out value-for-money reviews. HM Treasury is also able to carry out economic, efficiency and effectiveness reviews. The FCA is directly accountable to HM Treasury, but ultimately to Parliament.

The FCA is primarily responsible for undertaking investigations and enforcement action in relation to financial crime. The FCA sees 'credible deterrence' as using enforcement as a regulatory tool – selecting cases to enforce against to send a strong and clear message to other firms not to engage in wrongful activity.

Powers provided by the Financial Services Act 2012 mean that the FCA can publicly announce that it has begun disciplinary action against a firm or an individual – however, they have to date not used this power due to the complications and unintended consequences that this announcement could entail. The FCA is able to publish details of a warning notice proposing disciplinary action, to signal the start of formal enforcement proceedings. However, the FCA must consult the recipient of the warning notice before publishing.

Following the coming into effect of FSMA 2023, the PRA, along with the FCA, have a secondary objective to:

> *'facilitate the international competitiveness of the UK economy and its medium- to long-term growth (subject to international standards).'*

1.3 FCA Strategic and Operational Objectives, Statutory Objectives, Structure, Powers and Activities

Sitting underneath the FCA's strategic objective are their operational objectives – which are to:

- protect consumers from bad conduct from regulated firms
- maintain market integrity (protecting the integrity of the UK financial system), and
- promote effective competition in the interest of consumers.

Underlining the operational objectives are the following broad outcomes – which are embedded into the Consumer Duty (refer to section 6 of this chapter):

- Consumers have access to fair products and services, which deliver what they promise.
- Consumers can be confident that firms treat them fairly and fix problems promptly.
- Competition contributes to improved consumer outcomes.
- Firms compete on clear costs and consumers have the information they need.
- Consumers can trust firms to be fit and proper and for financial markets to be clean.
- A respected regulatory system that enables firms to assess and measure their level of compliance.

The FCA carries out in-depth structured supervision work with those firms with the potential to cause the greatest risks to their objectives. This means fewer supervisors allocated to specific firms – but allows the greater flexibility to carry out more reviews on products and issues across a particular sector or market-thematic reviews. This new approach is underpinned by judgement-based supervision.

The FCA's integrity objective includes within it the 'soundness, stability and resilience' of the UK financial system. With regard to resilience, they expect firms to operate high standards in their risk management, having procedures in place to ensure continuity of critical services. Firms are required to comply with standards for resilience and recovery established in this area.

To ensure that the relevant markets work well, the FCA has increased its focus on delivering good market conduct outcomes.

The thinking behind 'outcomes focused' supervision is that, previously, there was too much focus and attention paid to 'box-ticking' and 'principles-based regulation' in supervision. The focus now is around good supervision, based on judgement and outcomes, the art of looking at a situation from several angles and seeking to identify weaknesses.

The FCA will make supervisory judgements about a firm's business model and forward-looking strategy, and intervene when it sees unacceptable risks to the fair treatment of customers. It will look for firms to base their business model, their culture, and how they run their business on a foundation of the Consumer Duty and the Fair Treatment of Customers (FTOC) (where applicable) in delivering desired outcomes for customers – both retail and professional clients.

To make judgement-based supervision work, the FCA needs staff who have strong, relevant skills, and experience. From an FCA perspective, conduct regulation, which is essentially about how people behave, is different from prudential regulation which can be more of an analytical exercise. Therefore, this requires a different skill set.

This approach means that FCA supervisors will conduct in-depth and structured supervisory work on those firms with the greatest potential to cause risk to consumers, market integrity or competition. Some firms may experience a higher intensity of supervision than others.

The Financial Services Act 2012 gave the FCA powers to help it achieve its outcomes. One of the important powers is the ability to ban financial products that pose unacceptable risks to consumers, including publication details of misleading financial promotions, and letting people know when the FCA is proposing to take disciplinary action against a firm.

1.3.1 Risk-Based Approach

The FCA takes a proportionate, judgement-based and outcomes approach. It assesses the risk a firm poses to its objectives, either individually or collectively, and then focuses its resources on managing the risk issue most likelihood to crystallise.

In summary, the FCA:

- identifies and assesses risks (both emerging and current) to consumers, firms and financial markets
- identifies the risk of market failures hindering effective competition
- develops a general understanding of the risks and issues in the financial markets to support its policy-making, authorisation, supervision and enforcement functions
- makes evidence-based policies to help change firm and market behaviour
- prioritises, manages and mitigates risk consistently, and uses a risk-based approach for making decisions
- establishes common standards and principles for measuring and assessing risk across the organisation, and
- puts in place the infrastructure, systems and tools to catalogue, analyse and assess risk.

1.3.2 Secure an Appropriate Degree of Protection for Consumers

The FCA expects firms to have their customers at the heart of how they do business, when they develop, and promote or sell products and services. Therefore, the FCA's aims and objectives are to:

- ensure that customers are treated in a way that is appropriate for their level of financial knowledge and understanding
- be more outward-looking, by engaging more with consumers and understanding more about their concerns and behaviour
- set clear expectations for firms and be clear about what they can expect from the FCA
- intervene early to tackle potential risks to consumers before they occur, and
- maintain a strategy of 'credible deterrence', including intervening earlier, and continuing to hold senior individuals to account.

1.3.3 Protect and Enhance the Integrity of the UK Financial System

The FCA seeks to develop and support a healthy and successful financial system, where financial markets are efficient and transparent, firms can thrive and consumers can place their trust in transparent and open markets. This means that the markets need to be supported by appropriate infrastructure, access and transparency to meet the needs of the consumers, corporates and other wholesale clients that use them.

To achieve this, they seek to ensure that:

- senior management are accountable for their firm's activities, including principal and agency responsibilities in the wholesale markets
- there is a positive culture of proactively identifying and managing conflicts of interest
- there is orderly resolution and return of client assets
- firms' business models, activities, controls and behaviours maintain trust in the integrity of markets and do not create or allow market abuse, systemic risk or financial crime
- market efficiency, cleanliness and resilience are delivered through transparency, surveillance and the supervision of infrastructures, as well as their principal users
- firms, acting as agents on behalf of their clients, put clients' best interests at the heart of their businesses, and
- early intervention in wholesale markets to mitigate the risk of harm being transmitted to retail consumers.

1.3.4 Promote Effective Competition in the Interests of Consumers

The FCA applies a holistic approach to assessing whether competition in markets is working well for consumers. In assessing whether intervention is needed, it considers a range of market failures including:

- unilateral market power
- barriers to entry and expansion
- coordinated conduct by firms
- vertical relationships
- weak customer response, and
- principal-agent problems.

As noted above, the FCA's aim and objective is to be a proactive force in enabling the right outcomes for consumers and market participants.

In addition to fulfilling its stated objectives, the FCA is responsible for:

- the conduct regulation of all firms, covering the range of their dealings with retail customers, through to their activities in wholesale markets; it regulates about 42,000 firms in total, including those prudentially supervised by the PRA
- the prudential supervision of all firms not prudentially supervised by the PRA (approximately 41,000), setting specific rules for around 17,000 firms
- supervision of trading infrastructure the trading venues (investment exchanges/regulated markets, MTFs and OTFs) and over-the-counter (OTC) markets and monitoring firms' compliance with the market abuse regime
- investigating and prosecuting insider dealing through the use of its criminal powers
- acting as the UK Listing Authority, and
- overseeing the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS), jointly with the PRA.

The FCA has increased its focus on the conduct of firms. Firms' senior management set the culture of their organisation, so the FCA is looking to ensure that what is decided and agreed by senior management translates to good outcomes for consumers.

The Policy, Risk and Research Division within the FCA acts as the radar of the organisation. It combines research into what is happening in the market and to consumers with better analysis of the type of risks and where they appear.

In summary, the division:

- identifies and assesses risks to consumers, firms and markets – both emerging and current
- creates a common view of the risks in financial markets to inform the FCA's authorisation, supervision and enforcement decisions, and
- uses the knowledge of these risks to make evidence-based policy that changes behaviour.

By bringing together the information gathering, analysis, research and policy-making into one place, the FCA is better placed to make timely and effective interventions where risks have been identified.

1.4 PRA Strategic and Operational Objectives, Structure, Powers and Activities

In addition to its statutory objectives, noted in section 1.1, the PRA has eight fundamental rules that firms must comply with.

Therefore, firms regulated by the PRA must:

1. conduct its business with integrity
2. conduct its business with due skill, care and diligence
3. act in a prudent manner
4. maintain adequate financial resources at all times
5. have effective risk strategies and risk management systems
6. organise and control its affairs responsibly and effectively
7. deal with its regulators in an open and cooperative way, and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice, and
8. prepare for resolution so, if the need arises, it can be resolved in an orderly manner with a minimum disruption of critical services.

There is a key difference between the PRA's statutory objectives and its fundamental rules. The objectives are applied to the PRA, and they establish what the PRA is to achieve as a regulator. The fundamental rules are applied by the PRA, setting out the expected rules to be adhered to by firms regulated by it. But there are also similarities between the PRA's fundamental rules and the FCA's Principles for Businesses.

The PRA achieves its statutory objectives by:

- seeking to ensure that any firms that fail, do so in a way that avoids significant disruption to the supply of critical financial services
- emphasising resolution planning to permit orderly failure
- cooperating closely with the FPC and the FCA to ensure macro and microprudential regulation is aligned across the markets, and
- working with the FCA and others to ensure the UK authorities have a strong voice in global policy making.

The PRA's approach to supervision relies significantly on the judgement of its staff. The PRA supervises firms and assesses whether they are financially safe and sound, that they meet, and are likely to continue to meet, the threshold conditions. It looks not just at current risks, but also against those that could manifest in the future.

The PRA focuses on those issues and those firms that pose the greatest risk to the stability of the UK financial system. The frequency and intensity of the supervision experienced by firms increase in line with the risks that they pose to the stability of the financial services sector.

The PRA focuses on material issues when engaging with firms.

As the PRA's approach is based significantly on the judgement of its staff, it relies on experienced staff and detailed analysis.

The PRA utilises a risk framework, which captures three key elements:

- The potential impact that a firm could have on financial stability in the UK, both by the way it carries out its business and in the event of failure.
- How the external context in which a firm operates, and the business risks it faces (together, its risk context) might affect the viability of the firm.
- Mitigating factors including: a firm's management and governance and its risk management and controls (operational mitigation); its financial strength, specifically capital and liquidity (financial mitigation), and its resolvability (structural mitigation).

1.4.1 Enforcement Powers

The PRA's preference is to use its powers to secure up front remedial action, given its approach of intervening early to address emerging risks. However, it does have the authority and powers to impose financial penalties and publish censures in cases where sanctions are inappropriate. It also has powers when directions or restrictions imposed by the PRA are ignored by the firm.

The PRA deploys its disciplinary powers as follows:

- Reinforcing the PRA's objectives and priorities.
- Promoting high standards of regulatory behaviour.
- The need to send a clear signal to a firm (and to the regulated community), about the circumstances in which the PRA considers a firm's behaviour to be unacceptable.
- Deterring future misconduct.

1.4.2 BoE Enforcement Decision Making Committee (EDMC)

The Enforcement Decision Making Committee (EDMC) is a committee of the BoE. It helps the BoE to discharge its responsibilities and strengthen its enforcement process by ensuring that there is a functional separation between the investigation teams and the decision makers in contested enforcement cases.

Members of the EDMC will be independent of the BoE's executive team and will not be employees of the BoE. They will be appointed by the Court of the BoE and will serve for a term of three years. They will not be permitted to serve more than two three-year fixed terms.

The EDMC will meet as often as necessary to discharge its functions; a panel of three members will be required to convene to hear and resolve each contested enforcement case and will have one vote on the matter under consideration. If the votes are split, then the panel lead hearing the case will have the casting vote.

Warning Notices

In contested enforcement cases, if the BoE considers that a warning notice is appropriate, then it will make a recommendation to the EDMC, who will make the decision and will also determine the wording of the warning notice.

1.4.3 Structure

The PRA's approach is advanced primarily by its frontline supervisors. Its judgements are grounded in analysis, supervisory experience and a strong understanding of the sectors it supervises, gained through direct exposure with the senior management of firms. The supervisors are supported by risk specialists.

1.4.4 Approach to Supervision – PRA

The PRA's approach relies significantly on judgement. The PRA supervises firms to judge whether they are safe and sound; and whether they meet, and are likely to continue to meet, the threshold conditions. PRA supervisors therefore reach judgements on the risks that a firm poses to the PRA's objective, and how these can be addressed.

The PRA has a statutory objective to promote the safety and soundness of firms. It is required to pursue this primarily by seeking to avoid adverse effects on financial stability, and in particular by seeking to minimise adverse effects resulting from disruption to the continuity of financial services that can be caused by the way firms run their business, or upon their failure.

Therefore, the PRA's key objective is focusing on those issues and the firms that pose the greatest risk to the stability of the UK financial system. The frequency and intensity of supervision applied by the PRA to a particular firm will increase in line with the risk that they pose to its overarching objective.

The PRA's supervisory judgements are, therefore, based on evidence and analysis. It is inherent in a forward-looking system that at times the supervisor's judgement will be at odds with that of the firm. Furthermore, there will be occasions when events will show that the supervisor's judgement, in hindsight, was wrong.

The PRA's regulatory decision-making is rigorous and well-documented, consistent with public law. Its most significant supervisory judgements are taken by the Prudential Regulation Committee (PRC). The PRC board is involved in the most important decisions on general policy and individual cases.

Although, it should be remembered that both the PRA and the FCA do not operate a 'no-fail' regime with regards to the supervision of firms.

1.5 Approach to Supervision – FCA

The FCA defines 'supervision' as the continuing oversight of regulated firms and of individuals controlling these firms, to reduce actual and potential harm to consumers and markets. The FCA focus their efforts on the outcomes and priorities set out in their strategy (published in 2025, it covers a five-year period to 2030) ♦.

The FCA adopts a 'pre-emptive' approach based on making forward-looking judgments about firms' business models, product strategy and how they run their businesses, in order for the FCA to identify, determine and intervene earlier to prevent problems arising.

Therefore, the FCA's approach to the supervision of firms contributes to the delivery of the statutory objective to protect and enhance the integrity of the UK financial system.

Where the FCA has responsibilities for prudential supervision, its focus will be on the reduction of impacts to customers and the integrity of the financial system where firms fail. In addition, when consumer detriment occurs, they will seek redress for impacted consumers.

Underpinning the FCA's work for supervision are supervisory principles; these guide the FCA's work to protect consumers, enhance market integrity and promote competition and form the basis of its supervisory approach.

The FCA approach to advancing their objectives is judgement-led, informed by five key principles, which are:

- **Forward Looking**
    - Pre-empt poor conduct so that the risk does not crystallise, or where it does happen that the impact does not cause significant harm to markets or consumers.
    - Assess firms' business models and strategies both against current and future risks, to identify emerging risks and try to reduce or prevent them.
    - Strong understanding of firms' business models to enable the FCA to recognise discrepancies between firms' conduct and the interests of consumer and effective market functioning.
- **Outcomes-Focused**
    - Where they see systematic harm, they will move quickly to stop the harm occurring using a range of powers.
        - Working to ensure that the firm addresses the drivers of harmful culture and its business model and strategy to prevent a recurrence.
    - Where the FCA judges it necessary, it will refer firms for an enforcement investigation.

- The FCA wants to get redress for affected customers, either by requiring a redress scheme, engaging directly with the firm, or by working with other authorities such as the Financial Ombudsman Service.

- **Proportionate and Evidence-Led**
  - Focus on the key drivers of conduct likely to cause harm, and particularly on firms that they judge pose the greatest risk to their objectives.
  - Focus on the drivers of culture which underpin a firm's conduct.
    - These include the firm's purpose, the attitude, behaviour, competence and compliance of the firm's leadership
  - Hold to account the most senior individuals whose decisions and personal conduct have a significant effect on the firm's conduct.
  - Intelligence and information drive approach to target actions.
    - These include consumer feedback, data and intelligence from firms, trade associations, insight from other regulatory organisations, information from MPs and from whistle blowers, and their firm and consumer contact centre.

- **Transparency**
  - Engagement with consumers and their representatives to understand issues that they face.
  - Engagement with regulated firms and market participants.
  - Clear on the behaviour expected of firms, the good and poor practice that is observed.
  - Be as transparent as possible about their work and priorities.

- **Integrated and coordinated**
  - Supervision teams work closely with other FCA departments, sharing information and providing consistent messages.
  - Work and share intelligence, with other UK (ie, BoE, PRA, Financial Ombudsman Service (FOS), Payments Systems Regulator (PSR), Payments Regulator (PR), National Crime Agency (NCA) and the National Economic Crime Centre and international regulatory bodies.

Source of information: FCA website (https://www.fca.org.uk/publications/corporate-documents/our-approach-to-supervision)

The FCA supervision model risk assessment process applies to all firms, although detailed requirements will vary between firms – some firms will have a highly intensive level of contact and others less so. This depends on the risk that they pose to the FCA's strategic and operational objectives.

1.5.1 FCA Decision-making Framework

- **Identifying Potential Risks of Harm**
  - Based on analysis that gives a clear view of how the financial system works as a whole and within individual sectors and markets.
  - Look at possible scenarios and identify risks of harm to consumers and markets, based on the understanding of current business models.
    - Allows the FCA to anticipate potential problems in firms and markets and adapt business model portfolios as business models change.
  - Use an assessment model to identify the key risks and drivers of harm that underpin a firm's conduct and its business model.
    - This informs how the FCA prioritise its regulatory actions.

- Assessment of firms based on a number of analyses, including:
    - market analyses
    - market studies
    - business model analyses
    - data analytics on regulatory returns and third party data providers
    - real-time intelligence from interactions with firms and consumers, and
    - insights and intelligence from other regulators and law enforcement agencies.
- Looking to deal with emerging issues or past events quickly and efficiently to prevent the harm growing.
    - Where possible the FCA will share the outcome of its work so that complainants can understand its views.

- **Diagnostic Tools**
    - Utilise a range of tools to diagnose harm and its impact.
        - Which regulatory tool used will depend on the potential scale and severity of the harm.
    - Where the FCA has concerns about a single firm, it will look at the root causes of issues.
        - Identify the senior manager responsible for the relevant business area and assess what steps they have taken to prevent, or reduce, the harm.
    - The FCA may require a firm to make an immediate change to its business model to ensure that this change is long term.
        - Sometimes the diagnostic work raises significant suspicions, highlights that a firm no longer meets its Threshold Conditions or is in breach of rules.
        - In these cases, the FCA may refer the firm for further investigation and potential enforcement action.
    - Where the FCA identifies potential risk of harm across several firms, it may undertake wider diagnostic work.
        - This includes undertaking larger projects, often announced in its annual business plan.
    - Where the FCA identifies potential failures in the way competition works, it may undertake further investigatory work.
        - This may include a call for input, a market study, or a Competition Act 1998 investigation.

- **Remedy Tools**
    - The FCA expects a firm to notify it when the firm realises it has made a mistake and take prompt action to put things right.
    - The FCA expects firms to act when things go wrong by:
        - stopping actual harm as quickly and as proportionately as possible
        - putting things right, including redressing customers who have been affected
        - addressing the root causes of potential harm
        - holding individuals to account where there is evidence of misconduct, or
        - stopping actual harm quickly and proportionately.
    - Where the FCA identifies that an individual firm's behaviour is causing or may cause harm, it can vary the permissions granted, impose requirements or change the approval granted to individuals.
    - Where the FCA identifies a risk of harm from firms having inadequate financial resources, the FCA can set and enforce the minimum level of capital and/or liquidity that the firm requires.

- When things go wrong, the FCA expects firms to take prompt action to put things right, conduct a root cause analysis and take steps to prevent it happening again.
- The FCA monitor the adequacy of firms' complaints-handling to ensure it is effective and transparent, and that complaints are dealt with reasonably, promptly and fairly.
    - The FCA ensure that firms abide by the Financial Ombudsman's decisions, will follow up with firms to ensure they pay what they owe and consider the implications for their wider business and other consumers.
- The FCA will hold individuals as well as firm's accountable for their firms' conduct.
    - Where appropriate, use attestations by senior managers to obtain a personal commitment that a specific action will be (or has been) taken.

- **Evaluation**
    - FCA ensures that firms' regulatory activities are delivering against their intended outcomes, strategic priorities and statutory objectives.
    - For the largest firms, the FSA will complete regular firm evaluations.
        - It will assess the firm, and evaluate the effectiveness of the previous work programme, which may lead to an ongoing programme.
    - The FSA will use these assessments to inform future programmes of work and choices of regulatory tools.
    - For business models, it will regularly analyse portfolios and evaluate the impact of regulatory oversight.

Supervision by Portfolio

The FCA supervises most firms as members of a 'portfolio' of firms that share a common business model. The FCA analyses each portfolio and agrees a strategy to take action on firms posing the greatest risk – communicating this with firms on their expectations, priorities and examples of good or poor practice.

Dedicated Supervision Teams

The FCA has a dedicated supervision team that monitors and engages with firms with the most likely potential of harm that could have an impact on consumers and markets. This team has a view of the whole firm across all sectors it operates in; it assesses the potential harm that the firm may cause and agrees a strategy to reduce or prevent it before it crystallises.

1.5.2 FCA Prudential Supervision

Although the PRA has prudential responsibility for bank/deposit takers (credit institutions), insurers and significantly important investment banks, the FCA is the prudential supervisor for a wide range of firms across the financial services sector, such as investment firms, asset managers, independent financial advisers, mortgage and insurance brokers – all those not supervised by the PRA (FCA solo-regulated firms).

The FCA's approach aims to minimise the harm to consumers, wholesale market participants and market stability when firms experience financial stress or fail in a disorderly manner.

Prudential Categories

Firms that are prudentially regulated by the FCA fall into three prudential categories: P1, P2 and P3. These categories reflect the impact that the disorderly failure of a firm could have on markets and consumers.

- **P1** – firms whose failure would cause lasting and widespread financial and reputational damage to their customers, client assets, the marketplace and beyond. These are subjected to periodic capital and, if applicable, liquidity assessment. The FCA's prudential specialists conduct these tests every 24 months.
- **P2** – firms whose disorderly failure would damage consumers and client assets but are more easily dealt with than the failure of a P1 firm. These are subjected to periodic capital and, if applicable, liquidity assessment. The FCA's prudential specialists conduct these tests every 48 months.
- **P3** – firms whose failure, even if disorderly, would be unlikely to cause significant harm to consumers or market integrity. The FCA supervises these firms on a reactive basis.

Like the conduct categories, the prudential categories determine the intensity of their prudential supervision for each firm. Through prudential activities the FCA seeks to ensure that:

- firms maintain adequate financial resources in line with legal requirements
- the FCA has an early warning system for financial issues that could drive behaviours that endanger a firm's compliance with conduct, financial crime, client assets and other core regulatory standards
- any wind-up of a firm could happen with little or no damage to markets and consumers.

Prudential Risk Analysis for P1 and P2 Firms

Financial Resources Requirements (FRR)

The **FCA Handbook** specifies minimum Financial Resources Requirements (FRR) for all firms. Firms must maintain sufficient resources to meet their financial obligations at all times and be able to show how they have determined what is sufficient. This is the starting point for any prudential supervisory review.

The specific scope and nature of FRR varies by firm type and permissions:

- P1 firms have a capital and (if applicable) liquidity assessment every two years.
- P2 firms have a capital and (if applicable) liquidity assessment every three to four years, by examining a firm's own assessments of financial requirements.

Sources of Information on the FCA's and PRA's Supervisory Approach

The FCA has been placing a greater emphasis on providing 'informal guidance' to firms and individuals, via speeches, public statements and Dear CEO letters, in addition to formal consultations.

Therefore, firms and individuals within firms, must stay up to date with the methods of communication that the FCA is using to deliver its intentions and expectations of firms and/or individuals.

Both the PRA and the FCA publish a number of documents which should be reviewed and assessed by firms. These documents include the following:

- **Annual Report (FCA only)**
    - This provides an update on what the FCA have delivered and achieved in the past year (period in question).
- **Annual Business Plan (PRA & FCA)**
    - For the FCA, this explains how they see their future role and priorities, how they measure their performance.
    - For the PRA, the annual plan sets out the work plan for each of the PRA's strategic goals to support delivery of their strategy.
- **Dear CEO Letters (FCA only)**
    - An open letter sent to firms (providing specific services or performing specific activities) identifying concerns and issues that the FCA have identified, sometimes from thematic reviews of firm's activities or issues, that they wish the industry to take note of.
    - In some instances, the firm's CEO would be required to provide an attestation to verify/confirm that they have undertaken an assessment relating to the concerns that the FCA identify in the letter.
- **Thematic Reviews (FCA only)**
    - Used to assess a current or emerging risk regarding an issue or product across a number of firms in a market or sector.
    - Also undertaken following the implementation of new rules, to assess that they are delivering the intended aims and objectives of the new rules.
- **Discussion Papers and Consultation Papers (HM Treasury, PRA & FCA)**
    - A publication that explores policy changes and/or an issue that needs addressing in the form of a consultation with the industry.

    - The response period is open for a specific period of time
- **Policy Statements (PRA & FCA)**
    - This provides feedback on the consultation paper and approach adopted along with links to the final rules (statutory instrument).
- **Supervisory Statements (PRA only)**
    - The supervisory statement provides feedback and approach adopted by the PRA, along with links to the final rules (statutory instrument).
- **Final Notices (FCA only)**
    - A statutory notice issued when the FCA takes enforcement action against an individual and/or a regulated firm.
- **Enforcement Notices (FCA only)**
    - Published by the FCA to advise individuals of a course of action undertaken by the FCA against an individual and/or a legal person (firm).
    - All such documents are published by the FCA and PRA on their websites. These websites are a useful source of information and guidance for firms to assess how they might be affected and/or what might be relevant to them in terms of the regulated activities that they undertake.
- **Published Speeches and Websites (PRA & FCA)**
    - Speeches made by PRA and/or FCA staff at events where they are invited to speak/discuss a specific topic (ie, benchmarks and market abuse) and/or their general approach to issues.
- **Enforcement Notices (PRA & FCA)**
    - Published to advise individuals of a course of action undertaken by them against an individual and/or a legal person (firm).
    - All such documents are published on their websites.
    - The websites are a useful source of information and guidance for firms to assess how they might be affected and/or what might be relevant to them in terms of the regulated activities that they undertake.

FCA Strategy 2025–30

In March 2025, the FCA published its 'new' five-year strategy, which focuses on:

- deepening trust
- rebalancing risk
- supporting growth, and
- improving lives.

To achieve the strategy, the FCA will:

- be a smarter regulator:
    - efficient and effective regulator
    - proportionate and predictable – easier to engage and deal with
    - reform how they regulate
- support growth:
    - focus on the competitiveness of UK financial services
- help consumers:
    - product innovation and widened access

    - consumers get the support and information that they need
    - underpinning this will be the Consumer Duty
- fight crime:
    - work with firms that want to play their part in tackling crime (disrupt crime)
    - consumers have the tools they need to protect themselves.

The FCA highlighted five opportunities and challenges to meeting its five-year strategy, namely:

- technology
- growth
- global uncertainty
- challenging financial resilience, and
- demographic change.

Source of information: FCA website

1.6 FCA 'Regulatory Priorities'

In Q1 2026 the FCA introduced the first of the annul regulatory priorities reports, replacing its 'portfolio letters'.

It introduced nine such reports covering the following sectors, identifying its priorities for the specific sector for the year 2026, what it expects firms to do, what the FCA will do, other areas of focus (interlinked) and key publications (both published and forthcoming) and speeches.

- Insurance
- Consumer investments
- Pensions
- Retail banking
- Mortgages
- Consumer finance
- Wholesale buy-side
- Wholesale markets
- Payments.

Below is a summary of the FCA priorities and expectations of firms for the main relevant sectors:

Consumer Investments

FCA priorities	What the FCA expects firms to do
Building a stronger investment culture	• Communicate clearly and honestly: Give consumers clear, jargon-free information so they can understand the benefits, risks, and costs of investmer before they make any decisions • Ensure products are suitable: Offer consumers products and services appropriate for their needs, ensuring timely access where needed • Build confidence: Enable consumers to make informed choices
Strengthening trust	• Act promptly to address emerging risk • Assess new technologies and products to ensure good consumer outcomes a strengthen financial resilience through stress testing and contingency planni

Securing good consumer outcomes	• Design products and services that meet consumers' needs, including consum in vulnerable circumstances, and monitor outcomes • Demonstrate fair value by clearly assessing costs and benefits • Only opt clients out of retail protections in line with rules • Provide good service including transferring investments promptly and accounting for characteristics of vulnerability such as bereavement
Strengthening financial crime controls	• Maintain robust controls to prevent financial crime • Oversee appointed representatives effectively

Wholesale Markets

FCA priorities	What the FCA expects firms to do
Improve the resilience of firms and markets	• Strengthen operational resilience • Improve third-party and technology risk oversight • Ensure trading controls are robust • Bolster liquidity management and financial resilience
Enhance efficient, competitive and innovative markets	• Engage with regulatory sandboxes and industry initiatives • Implement robust governance for emerging technologies • Manage third-party and data risks
Prevent financial crime and market abuse	• Strengthen financial crime controls • Be vigilant for new sources of financial crime risk • Enhance surveillance and conduct oversight
Ensure firms effectively manage conflicts of interest and conduct oversight	• Identify and manage conflicts of interest • Strengthen conduct oversight and accountability

Wholesale 'buy-side'

FCA priorities	What the FCA expects firms to do
Evolve regulation to foster growth and innovation and serve changing consumer needs	• Implement robust governance for emerging technologies
Deliver good outcomes to consumers	• Embed the Consumer Duty • Apply a consumer lens to products and services • Provide clear communications to investors • Principal firms should maintain strong oversight of Appointed Representative and make sure Duty expectations are me
Reinforce consistent, high standards across private market investing	• Review and update governance and processes for valuations

	• Ensure robust processes are in place for identification, management and mitigation of conflicts of interest • Align product development frameworks for retail products and retirement solutions with the Consumer Duty expectations, including fair treatment of investors
Preserve market integrity and resilience to disruption	• Strengthen operational resilience and embed it into processes such as new product design and change management • Maintain robust incident response and recovery plans • Assess and manage dependencies on material third party providers, ensuring robust due diligence and ongoing monitoring of resilience capabilities. • Strengthen governance frameworks to manage the firm's impact on markets • Act as good market participants: ensure strong systems and controls are in pl to detect and prevent market abuse



2. Senior Managers & Certification Regime (SM&CR)

Following the global financial bank crisis of 2007–08, the UK government created the Parliamentary Commission on Banking Standards (PCBS) to consider and report on professional standards and the culture of the UK banking sector. It took into account regulatory and competition investigations into the LIBOR rate-setting process and lessons learned about corporate governance, transparency, conflicts of interest, and their implications for regulation and for government policy. Initially it was called the Accountability Regime, but changed its name to the Senior Managers and Certification Regime (SM&CR). The essence of the 'new' regime was one of accountability for firms, as well as individuals who manage and direct the activities of the firm.

The recommendations of the PCBS were accepted and adopted by the government, and inserted into the Financial Services (Banking Reform) Act 2013.

The SM&CR came into effect for UK banks (deposit takers – credit institutions), branches of third country banks and insurance companies in 2016. It was phased in for other types of firms – notably Solvency II firms (including the Society of Lloyds, managing agents, incoming branches of non-UK firms and insurance special purpose vehicles), non-directive firms (insurers outside scope of Solvency

II) and small run-off firms, FCA solo-regulated firms and claims management companies.

All PRA regulated firms are now subject to the SM&CR, as well as the majority of FCA-regulated firms – except for appointed representatives and other limited types of firms – who are still subject to the Approved Persons Regime (APER).

There is no territorial limitation. The concept of an individual being captured by the Senior Managers Regime and/or the Certificate Regime is not decided on where the individual is based but rather the role that they perform in respect of an UK regulated entity.

2.1 Senior Managers Regime (SMR)

The definition of a 'senior manager' is someone who is responsible for managing the firm on a day-to-day basis. Individuals are classed as an 'SMF' because they are undertaking a Senior Management Function.

The regime is intended to capture the very senior individuals within firms who make the decisions and determine the direction of the firm in the discharge of its regulated activities.

This approach is slightly amended for banks in respect of foreign branches, where the structure is different to UK banks. For foreign banks the regime will not catch overseas individuals who set the strategy or agree the strategy, rather it will capture those individuals who will implement that strategy in the UK branch. The regime only applies to 'branch activity'. However, an individual based overseas could be captured if they are involved in implementation of the strategy and day-to-day management of their UK branch(es).

The PRA and FCA have a list of key responsibilities that firms will be required to allocate among senior managers.

Where an individual performing a 'SMF' is going to be absent from work for a period greater than 12 weeks, but is expected to return and their position is being left open by the firm, then the firm does not have to apply to remove their authorisation.

It is only where the individual will not be returning to their role that requires authorisation (a 'SMF' role) that the firm must notify the PRA and/or the FCA.

2.1.1 Application to Banks and Deposit Takers

The PRA requires that all banks must have at least one individual performing as Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chairman SMF, as well as a head of key business area and group entity senior manager, and extends the Senior Managers Regime (SMR) to all board members not already caught by the PRA regime.

The FCA requires firms to have individuals in SMF roles of executive directors, significant responsibility senior manager, compliance oversight and money laundering reporting.

Between the PRA and the FCA there are 17 senior management functions (five for the FCA and 12 for the PRA) that can/have to be allocated: these can be jointly allocated (although both would be responsible for the role/responsibility).

For UK banks the FCA requires SMFs to be in the roles of executive directors, compliance oversight, **money laundering reporting officer (MLRO)** and other overall responsibility functions (previously called significant responsibility function).

The 'other overall responsibility' function is intended to cover individuals with overall responsibility for one or more key functions or identified risks, and who perform a function not caught by another SMF. This 'overall function' allows firms to designate senior executives who have ultimate responsibility for functions but would not otherwise be part of the SMF structure.

Non-executive directors (NEDs) are also subject to the Senior Managers Regime – six functions are identified (five by the PRA and one by FCA), as noted below:

1. Chairman.
2. Chair of the Risk Committee.
3. Chair of the Audit Committee.
4. Chair of the Remuneration Committee.

5. Senior Independent Director.
6. Chair of the Nomination Committee (FCA only).

Firms will have to undertake annual assessments to confirm that individuals performing a senior management function are fit and proper.

Underneath the SMFs, the regulators have developed a list of key responsibilities (known as 'prescribed responsibilities') that firms will be required to allocate among senior managers – some are shared between the FCA and the PRA.

SMF for UK Banks

SMF	Description	FCA function	PRA function
1	Chief Executive function		√
2	Chief Finance function		√
3	Executive Director function	√	
4	Chief Risk function		√
5	Head of Internal Audit function		√
6	Head of Key Business Area functions		√
7	Group Entity Senior Manager function		√
8	Credit Union SMF (small credit unions only)		√
9	Chairman function		√

10	Chair of the Risk Committee function		√
11	Chair of the Audit Committee function		√
12	Chair of the Remuneration Committee function		√
13	Chair of the Nominations Committee function	√	
14	Senior Independent Director function		√
16	Compliance Oversight function	√	
17	Money Laundering Reporting function	√	
18	Other Overall Responsibility function	√	

SMFs functions 9 to 14 should be held by approved NEDs, rather than executives.

SMF 15 only applies to insurance companies. It is covered/included for the details on insurance companies. It does not apply to UK banks or branches of foreign banks.

SMF for Branches of Foreign Banks

SMF	Description	FCA function	PRA function
2	Chief Finance function		√

3	Executive Director function	√	
4	Chief Risk function		√
5	Head of Internal Audit function		√
7	Group Entity Senior Manager function		√
16	Compliance Oversight function	√	
17	Money Laundering Reporting function	√	
19	Head of Third Country branch function		√
22	Other local responsibility function	√	

Details on the prescribed responsibilities for deposit-taking entities (banks – UK and foreign branches) can be found at:

- FCA

  SYSC 24 (senior managers and certification regime: Allocation of prescribed responsibilities).
  https://www.handbook.fca.org.uk/handbook/SYSC24

- PRA

  Allocation of responsibilities.
  https://www.prarulebook.co.uk/pra-rules/allocation-of-responsibilities/

2.1.2 Application to Insurers/Insolvency II Firms

The FCA approached identifying key management functions in insurers the same way as banks – the most senior in the firm, who control and direct the firm.

There may be cases where a senior manager applies to perform both a PRA and FCA Senior Management Function at the same time. In this case, the FCA would apply an 'Overlap Rule'. The Overlap Rule applies when a firm is seeking approval from the PRA for a candidate to perform a PRA-designated SMF and also intends this candidate to perform an FCA SMF, once the PRA gives its approval. The Overlap Rule applies to FCA governing functions only.

The FCA decided against introducing requirements for firms to have a money laundering reporting officer (MLRO), rather firms only need to have an MLRO if the **Money Laundering Regulations (MLRs)** apply to them. However, they must still have appropriate systems and controls in place to prevent financial crime.

Solvency II firms must ensure that one or more persons perform each of the following Senior Insurance Management Functions on its behalf:

- Chief Executive Function.
- Chief Finance Function.
- Chairman.

The FCA introduced the 'Conduct Risk Oversight Officer' function because of the size, scale and structurally-unique role of the Lloyd's market. This function is consistent with the PRA's current Underwriting Risk Oversight Function, which is also Lloyd's-only. The Conduct Risk Oversight Officer for Lloyd's is responsible for overseeing the conduct of business standards required by the Lloyd's market for the managing agents who write business at Lloyd's only. The senior manager is also accountable for monitoring and overseeing managing agents' compliance with the Lloyd's conduct of business standards.

The FCA applied the 'Overall Responsibility' requirement to all Solvency II firms (excluding small run-off firms and insurance special purpose vehicles (ISPVs)) and large non-directive firms (NDFs). Therefore, these firms must have a senior

manager with overall responsibility for every activity, business area and management function in the firm.

The FCA broadened the Compliance Oversight Function (SMF16) to cover all insurers for all requirements of the regulatory system for which the FCA is responsible. Therefore, insurers have to comply with all FCA rule requirements, as well as with directly applicable UK or onshored (retained) EU legislation where the FCA has responsibility for ensuring compliance.

Individuals are allowed to cover for an approved person (SMF) without being approved, where the absence is temporary or cannot be reasonably foreseen, and the appointment is for less than 12 consecutive weeks.

The FCA extended this 12-week rule to apply to responsibilities under the 'Overall Responsibility' requirement.

SMFs functions 9 to 14 should be held by approved NEDs, rather than executives. The FCA adopted the same approach for NEDs as those that apply to banks and deposit takers.

The approach for non-executive directors (NEDs) is the same as for banks, as noted above.

PRA Senior Management Functions

- SMF9 – Chair
- SMF10 – Chair of Risk Committee.

FCA Functions

- SMF11 – Chair of the Audit Committee
- SMF12 – Chair of Remuneration Committee
- SMF14 – Senior Independent Director.

A combined List of PRA and FCA Senior Management Functions can be found on the FCA and PRA websites:

- FCA Handbook – Supervision Sourcebook – Chapter 10C
- PRA Handbook – Senior Management Functions.

Details on the prescribed responsibilities for Insurers and Insolvency II firms can be found at:

- FCA
  SYSC 24 (senior managers and certification regime: Allocation of prescribed responsibilities).
  https://www.handbook.fca.org.uk/handbook/SYSC24
- PRA
  Allocation of responsibilities.
  https://www.prarulebook.co.uk/pra-rules/allocation-of-responsibilities/

2.1.3 Application to FCA Solo-Regulated Firms

The SM&CR also applies to FCA firms in a different manner to how it applies to banks and deposit takers, due to the limited nature and impact that these firms could have on UK financial markets.

It is a light touch, intended to be a more appropriate and proportionate approach by the FCA for these firms. The degree of application depends upon the 'type' of firm – as noted below:

Firm type	Description
Limited Scope Firm	Firms that have fewer requirements than core firms. This covers all firms that would have had a limited application under the Approved Persons Regime (APER), including: • limited permission consumer credit firms • all sole traders • authorised professional firms whose only regulated activities are non-mainstream regulated activities • oil market participants • service companies • energy market participants • subsidiaries of local authorities or registered social landlords

	• insurance intermediaries whose principal business is not insurance intermediation and who only have permission to carry on insurance mediation activity in relation to non-investment insurance contracts • authorised internally managed Alternative Investment Funds (AIFs).
Core Firm	Firms that have a 'baseline' of SM&CR requirements applied.
Enhanced Firm	A small proportion of solo-regulated firms that will have to apply extra rules.

Core and Enhanced Firms

These types of firms require the following SMFs:

- SMF1 – Chief Executive.
- SMF3 – Executive Director.
- SMF9 – Chair.
- SMF16 – Compliance Oversight.
- SMF17 – Money Laundering Reporting Officer (MLRO).
- SMF 18 – Other Overall responsibility (Enhanced Firms only).
- SMF27 – Partner.

Application of SMFs to Firms

Firm type	Senior Management Functions
Limited Permission Consumer Credit firms that would have had an CF8 under APER	SMF29 – Limited Scope Function (this is the same as the Apportionment and Oversight Function under the APER)
Sole traders with no employees	SMF16 – Compliance Oversight

Authorised professional firms whose only regulated activities are non-mainstream regulated activities	SMF16 – Compliance Oversight SMF17 – Money Laundering Reporting Officer SMF29 – Limited Scope Function
Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords	SMF16 – Compliance Oversight SMF17 – Money Laundering Reporting Officer SMF29 – Limited Scope Function
Insurance intermediaries whose principal business is not insurance intermediation and who only has permission to carry on insurance mediation activity in relation to non-investment insurance contracts	SMF29 – Limited Scope Function

Details on the prescribed responsibilities for FCA solo-regulated firms can be found at:

- FCA – SYSC 24 (senior managers and certification regime: Allocation of prescribed responsibilities). *https://www.handbook.fca.org.uk/handbook/SYSC24*

2.1.4 Application to Benchmark Administrators

The Senior Managers Regime has also been applied to benchmark administrators that do not undertake any other regulated activities.

The FCA decided that benchmark administrators should automatically be subject to the core SMR, on the basis that they provide critical market infrastructure and the pricing of many financial instruments and contracts and the financial services sector depends on the accuracy and integrity of these benchmarks.

Therefore, the FCA considers that these firms must have a healthy culture and high standards of personal conduct, avoiding and preventing harm to markets and consumers.

The rules and requirements apply to UK-based benchmark administrators.

Benchmark administrators that are classified as 'core' firms will be required to have/appoint individuals to the following SMFs:

- SMF 1 – Chief Executive.
- SMF 3 – Executive Director.
- SMF 9 – Chair.
- SMF 27 – Partner.

Because these firms are subject to UK BMR (onshored/retained EU legislation), enacted via the statutory instrument titled 'The Benchmarks (Amendment) (EU Exit) Regulations 2018', they will not be required to appoint individuals to the function of Compliance Oversight (SMF16) and Money Laundering Reporting Officer (SMF17).

Core benchmark administrators will be required to allocate three prescribed responsibilities:

> (a) Performance by the firm of its obligations under the SMR, including implementation and oversight.
> (b-1) Performance by the firm of its obligations in respect of notifications and training of the **Conduct Rules**.
> (d) Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime.

By default, all benchmark administrators are classified as core firms for the purpose of the SM&CR, but for some firms the 'Limited Scope Benchmarks Administrators' will be more suitable – where they are required to appoint just one individual as a Senior Manager – the SMF 29 function (Limited Scope Function). These firms must apply to the FCA for a waiver to be classified as a Limited Scope Benchmark Administrator.

The FCA did not apply the Certification Regime to benchmark administrators, where they do not undertake any other regulated activities. This is because the UK BMR places requirements on administrators to ensure employees are fit and proper – so this achieves the same result and outcome.

The Conduct Rules apply to employees in benchmark administrators that undertake regulated and unregulated financial services activities.

The FCA applied the Conduct Rules to firms subject to UK BMR for the regulated activity that they undertake.

2.1.5 Application to All Types of Firms

One of the most important elements of the regime is that each SMF is required to have a statement of responsibility and a responsibilities map (a responsibilities matrix) – a single document describing management and governance arrangements, which identify how responsibilities have been allocated to senior managers so that there are no gaps in accountability within the firm. For FCA solo-regulated firms, this applies to firms classified as 'enhanced firms'.

Firms must develop, and have in place, a responsibilities map, which clearly identifies the structure and individuals who are senior managers. These must be allocated to an SMF; sharing of responsibilities is permitted between individuals – although the PRA and the FCA see this being used in very limited circumstances. In these circumstances, both individuals would share the responsibility – which must be noted on the statement of responsibility.

Firms must explain in their responsibility map why a responsibility is allocated jointly.

2.1.6 Statements of Responsibilities

As part of the regulatory application process, firms must provide statements of responsibilities to the FCA/PRA for approval. These must be shown to the regulators as part of the application process – they MUST be approved by the regulators. The maps identify which parts of the firm's business/activities senior managers are personally responsible for – these will then be used by the

regulators when there has been a breach of rules/regulations. These statements must be accepted by the individual – they will be required to sign them, taking ownership of them, including maintaining and ensuring that they are up to date.

2.1.7 Handover Material

Where a person is becoming an SMF or is an existing SMF but is taking on new responsibilities, there is a requirement that necessary information and material reasonably expected for them to perform their responsibilities effectively, is made available in accordance with relevant regulatory requirements.

Firms must have a policy about how they comply with this requirement. These handover documents must be practical and helpful, including an assessment of what issues should be prioritised, containing judgement and opinion, not just facts and figures.

2.1.8 Duty of Responsibility

In the original PCBS recommendations and the subsequent FCA and PRA consultations, upon the occurrence of a regulatory breach, the senior manager would be deemed to have breached their personal duties and be guilty of misconduct. The onus would have been on the senior manager to satisfy the regulators that they had taken 'reasonable steps' to prevent the breach from occurring. The FCA would have used the statement of responsibilities and responsibilities map to identify the relevant individual with accountability and responsibility.

However, HM Treasury changed their approach, and in the Bank of England and **Financial Services Act 2016**, the burden of proof was shifted back to the regulators, with the PRA and FCA now being required to demonstrate that the senior manager (SMF) did not take such steps as a person in their position could reasonably be expected to have taken to avoid the firm's contravention occurring.

Therefore, the regulators have a burden of proof hurdle before they can bring disciplinary proceedings against the senior manager (SMF).

This is called 'the duty of responsibility'.

2.1.9 Overall and Local Responsibility

One of the main purposes and aims behind the SM&CR was that one or more individuals from a firm have responsibility for each of the activities, business areas and management functions of their firm.

Both the FCA and the PRA expect that individuals to whom overall responsibility for a function has been allocated are the most senior individuals within the firm for managing and/or supervising that function.

They will be either a member of the governing body (management body or equivalent) or will report directly to the governing body (management body or equivalent).

The individual(s) must be sufficiently senior and credible and have sufficient resources and authority. The FCA is aware that smaller firms may allocate responsibility to a small group of individuals – but for all firms, the FCA expects that when allocated to individuals then those individuals should be able to perform their responsibilities effectively.

2.1.10 'Long-Term Absence' – Impacts to Senior Managers (SMFs)

In 2021 the FCA and the PRA published a clarification on their expectation for firms to notify them when an individual who is in a SMF role, takes temporary leave for more than 12 weeks.

In cases where an individual who is in a SMF position is temporarily absent from their role, and their role has been kept open/they will be returning to their role, the firm will not need to notify the FCA (and, where applicable, the PRA) that the individual's approval should be removed.

Firms need to ensure that for this role they obtain approval for another individual to perform that required function during the interim period.

This does not change the notification requirements for firms to notify the FCA when the individual will not be returning to their role.

2.1.11 Consumer Duty – Implications for 'Senior Managers'

(Refer to section 6 of this chapter for further details on the 'Consumer Duty' requirements.)

Following the application of the Consumer Duty, senior managers are tasked with the following where the Consumer Duty applies (ie, the firm is considered in scope of the Consumer Duty due them having a relationship with retail clients and/or the products or services that they provide can have an impact on the outcomes of retail clients):

- The Consumer Duty is reflected in firms' strategies, governance, leadership and people policies.
- Senior managers ensure that their firm has appropriate oversight of customer outcomes through their systems and controls.
    - senior managers will be held accountable for delivering 'good consumer outcomes' within their area of responsibility within the firm.
- Firms must appoint a Consumer Duty champion at board level (or equivalent governing body), where they, the CEO and the Chairman of the Board ensure that Consumer Duty is regulatory discussed and raised.

2.2 Certification Regime

Individuals subject to the Certification Regime are not approved by the regulators; rather firms make an assessment that they are deemed 'fit and proper' to perform their role and provide them with an annual 'certificate' that they can perform their role.

There are different approaches taken by the PRA and the FCA due to their statutory objectives. The PRA approach limits the scope to 'material risk takers'

(MRTs) as defined in the Capital Requirements Regulation (CRR) (ie, individuals who are subject to the Remuneration Code – Code staff) while the FCA approach includes individuals performing their function from within the UK or dealing with a client in the UK who:

- would previously have been performing a significant influence function (SIF) role under the APER, but who now are outside the SMR – as they are not an SMF (eg, CASS oversight, benchmark submitter, or administrators, proprietary traders and previous CF29 significant manager function holders)
- are performing a significant harm function, including engaged in wholesale activities on the basis of dealing as principle or agent (traders, including Algorithm traders) and bring about deals in investments (sales staff)
- are in customer-facing roles which are subject to qualification requirements
- supervise or manage a Certified Person, where they are not an SMF
- the individual is employed by a UK bank, and/or the UK branch of a third country bank
- for third country banks, the individual is carrying out 'branch activity' as defined by the FCA.

Therefore, the PRA and the FCA require the responsibility for assessing the 'fitness and propriety' of staff who perform and/or carry out 'significant harm' functions to firms.

Significant-harm functions include:

- CASS oversight
- benchmark submission and administration
- proprietary trader
- significant management
- functions requiring qualifications
- managers of certification employees
- material risk takers.

The term 'material risk taker' is defined in the PRA Remuneration Rulebook as an individual whose activities, carried out on behalf of the firm, could have a material impact on the firm's risk profile.

Firms must provide a 'certificate' to individuals annually which states that they (the firm) are satisfied that the individual is 'fit and proper' to perform the function, it will also set out their role and responsibilities.

Where individuals are performing multiple certification functions – fitness and propriety must be assessed for each certification function, however a single certificate can cover the multiple functions being performed.

Where no certificate is issued to an individual, because they are deemed not to meet the 'fitness and propriety' text, then the firm must give written notice explaining what steps (if any) they propose to take, as well as notifying the FCA of the circumstances.

The Certification Regime could impact overseas employees of UK firms. Firstly, to individuals deemed to be 'material risk takers' (or 'Code' staff) for the firm due to their role, no matter where they are located, and secondly, where an individual overseas is dealing with, or has contact with, UK clients. Where an individual is based overseas and does not deal with UK clients and is performing another of the Certification functions (other than material risk takers) then they will not be a certified person.

The term 'code staff' refers to employees whose activities have a material impact on the firm's risk profile.

2.3 Conduct Rules

The FCA approach to the Conduct Rules means that all UK employees (with the exception of staff carrying out purely ancillary functions, such as cleaners and catering staff) will be within the regulatory scope.

The PRA, on the other hand, applied the Conduct Rules to senior managers and individuals who fall within the PRA Certification regime (material risk-takers).

By applying the Conduct Rules to all levels within a firm, the FCA is trying to embed a grass roots understanding of what acceptable and unacceptable behaviour is. Conduct Rules appear to be the FCA's key tool in reinforcing the importance of appropriate values and behaviours at all levels within firms.

Therefore, firms are obliged to make all staff aware of their obligations and provide training on how the rules apply. Firms must notify the regulators when there has been a breach of the Conduct Rules.

The FCA applied the six individual Conduct Rules to standard NEDs and the additional 'Senior Manager' Conduct Rule.

First Tier – Individual Conduct Rules – PRA and FCA

- Rule 1 You must act with integrity.
- Rule 2 You must act with due skill, care and diligence.
- Rule 3 You must be open and cooperative with the FCA, the PRA and other regulators.

Individual Conduct Rules – FCA only

- Rule 4 You must pay due regard to the interests of customers and treat them fairly.
- Rule 5 You must observe proper standards of market conduct.
- Rule 6 You must act to deliver good outcomes for retail customers.

Individual Conduct Rule 6 only applies to firms/individuals subject to the Consumer Duty, otherwise the Individual Conduct Rule 4 will continue to apply.

Second Tier – Senior Manager Conduct Rules – PRA and FCA

- SC1 – You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- SC2 – You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system.
- SC3 – You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

- SC4 – You must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.

Following the implementation of the Consumer Duty rules, individuals working for a firm subject to the Consumer Duty requirements have a new conduct rule (Rule 6) for FCA-only firms, which would mean that 'Rule 4' (fair treatment of customers) would no longer apply.

Therefore, this also means that firms (and individuals with firms) not subject to the Consumer Duty will continue to be subject to the FCA's Individual Conduct Rule 4 (Rule 4).

2.4 Regulatory References

A firm subject to the SM&CR must obtain a regulatory reference before it appoints an individual to a senior management function (SMF) or to perform a role that would be subject to the Certification Regime.

Where a firm receives a request to provide a regulatory reference, due to an ex-employee moving to a new firm, they are obliged to provide such reference and confirm if they consider the individual to be 'fit and proper'. They are only required to disclose instances of conduct that occurred or existed for six years from the date of the reference request being received.

The FCA developed a template for firms to use when requesting a regulatory reference, which can be found in SYSC 22, Annex 1 (Template for regulatory references given by SM&CR firms and disclosure requirements).

2.5 The Directory

The FCA Financial Services Register includes the 'Directory', providing a single central location for information on individuals subject to either the APER or the SM&CR. The register is updated by the FCA and/or the PRA for senior managers, whereas firms would be responsible for updating the register for individuals subject to the Certification Regime.

Two of the main objectives of the register is to reduce potential harm to consumers and strengthen market integrity.

The register makes:

- information public on additional individuals carrying out a wider range of roles (including those not approved such as financial advisers, traders, portfolio managers and additional directors)
- information public on the individuals and the senior managers the FCA continues to approve in a way that is more accessible and user friendly, and
- enables users to find information on these individuals in a single public location.

The information is available in an aggregated form that can be extracted free of charge. Customers, firms and other stakeholders are able to use the Directory to easily find and check the identity of relevant individuals.

The register allows customers to benefit from greater information to make informed decisions on who to do business with, using the following features:

- Workplace location – list of individuals active in specific areas.
- Business qualified to carry on – list of individuals who hold appropriate qualifications, for example, to provide mortgage advice.
- Regulatory sanctions and prohibitions – the facility to check whether individuals are prohibited by the FCA.

Source of information: https://register.fca.org.uk/s/

2.6 Review of the SM&CR

In 2020, the PRA published a report on its first review of the implementation and application of the SM&CR to PRA firms (ie, deposit taking banks and certain insurance companies) in the period 2019 to 2020.

The PRA identified three 'key' themes and follow up actions and recommendations for each of them:

- **Theme 1 – Holding individuals to account through the SM&CR**
    - **Conduct and regulatory references** – ensure regulatory references are used in an appropriate manner.
    - **Remuneration** – articulate the link between the SM&CR and remuneration adjustments.
    - **Senior manager expectations** – underline the responsibility of prescribed responsibilities allocated to SMFS and certified individuals.
- **Theme 2 – Myth busting and clarifying expectations**
    - **Diversity** – reaffirm the appetite for diverse skills and experience among senior management.
    - **Collective accountability** – further analysis on board responsibilities and individual's accountability to see if they are mutually reinforcing.
    - **Interim appointments** – clarify (along with the FCA) expectations where a senior manager takes temporary leave for longer than 12 weeks.
- **Theme 3 – Application of the SM&CR to different business models**
    - **Allocation of responsibilities** – use of 'Head of Key Business Area'; the way in which designation of certain individuals works in conjunction with the SM&CR; further guidance on allocating prescribed responsibilities and the potential for smaller firms to submit SM&CR documentation less frequently.

Refer to chapter 5 for details on the HM Treasury, PRA and FCA consultations published in July 2025 on reforms to the SM&CR regime.



3. Approved Persons and Regime (APER)

The Approved Persons Regime (APER) only applies to a limited number of regulated firms, which mainly includes appointed representatives.

The Approved Person Regime no longer applies to PRA regulated firms – all PRA regulated firms are now subject to the SM&CR.

FSMA refers to 'authorised persons' and 'approved persons'. For authorisation purposes, the term 'person' refers to legal persons rather than individual human beings. A limited company, for example, is a legal person.

- Authorised persons, generally, authorisation, as discussed in chapter 1, section 1.3, is required under s19 of FSMA for firms or businesses that are carrying out regulated activities by way of business in the UK. In order to obtain authorisation, firms must satisfy the threshold conditions (see section 8).
- Approved persons, under s59, individual people who work for such authorised persons (ie, authorised firms) as employees or appointed representatives must be approved if carrying out what are referred to as controlled functions.

An individual is only permitted to perform a controlled function after they have been granted approved person status by the FCA.

The Financial Services Act 2012 ('the Act') amended the powers to regulate approved persons and set out how the powers may be exercised by the PRA and FCA. The main relevant aspect of change was the extension of the Statements of Principle in APER to a wider set of activities, and their application to people approved by either regulator, meaning that both regulators will have the ability to discipline certain categories of approved person.

The FCA may specify customer dealing functions for any type of firm, and only the FCA may specify SIFs (significant influence functions) for solo-regulated firms.

The Act also includes the following detailed provisions on approved persons:

- The FCA can specify functions that will involve the person performing them dealing with customers of a regulated firm, or the property of those customers.
- The statements of principle (contained in APER) can relate to the conduct expected of persons not just in relation to the controlled functions they perform, but also in relation to other functions they perform, where those functions relate to the firm for which they hold their approval for carrying on regulated activities.

Individuals carrying out SIFs tend, by the nature of their roles, to occupy relatively senior positions within firms. In many cases, particularly those of the most senior roles, such as the chief executive, this means they will inevitably have responsibilities for both conduct and prudential issues. Therefore, the Act takes account of this.

3.1 The FCA's Approach to Approved Persons and Specifying Controlled Functions

Controlled Functions

The controlled functions are:

- **Governing function** – individuals responsible for directing the affairs of the business. If the business is a company, then they will be the directors of that company. If the business is a partnership, then they will be the partners.
  The 'governing function' is a significant influence function (SIF), on the basis that persons fulfilling these roles exercise a significant influence over the conduct of a firm's affairs.
- **Customer function** – individuals who would be giving/providing advice on dealing, arranging deals and managing investments. The individuals will have contact with customers in fulfilling their role, examples of customer functions are an investment adviser, the customer trading function or the investment management function. Customer functions are not SIFs.

The following table sets out the FCA Controlled Functions.

Type	CF	Description of Controlled Function
FCA-governing functions*	1	Director function
	2	Non-executive director function
	3	Chief executive function
	4	Partner function
	5	Director of unincorporated association function
Customer-dealing function	30	Customer function
* FCA-significant influence functions		

Governing Function

The FCA Handbook states that someone who is approved for a governing function, including the chief executive function, does not need separate approval for that part of the customer function (CF30) which relates to bidding in emissions auctions.

Details on the Statements of Principle and Code of Practice are in the APER Statement of Principle and Code of Practice for Approved Person sourcebook, located in the 'High Level Standards' section of the FCA Handbook.

Source of information: FCA website



4. COCON (Conduct Rules)

The PCBS recommended that the regulators develop a new set of banking standard rules that drew on the 'existing' statements of principles in APER (Statements of Principle and Code of Practice for Approved Persons) but which would apply to a wider group of individuals. The FCA approach means that the Conduct Rules apply to all UK employees of relevant firms, except staff carrying out purely ancillary functions who perform a role that is not specific to the financial services business of the firm, while the PRA applies the Conduct Rules to individuals either performing a Senior Management Function or who fall within the PRA Certification Regime.

By extending the Conduct Rules to all levels within a firm, the FCA is trying to embed a grass roots understanding of what acceptable and unacceptable behaviour is.

Conduct Rules appear to be the FCA's key tool in reinforcing the importance of appropriate values and behaviours at the most junior levels within firms.

Refer to section 2.3 of this chapter for further details.

In 2023, the PRA levied a fine on an individual for a breach of the Senior Manager Conduct Rule 3 ('You must take reasonable steps to ensure that the business of

the firm for which you are responsible complies with relevant requirements and standards of the regulatory system').

In 2022, TSB Bank Plc was fined jointly by the PRA (£18,900,000) and the FCA (£29,750,000), with the individual being fined £81,620 in April 2023 by the PRA. The PRA fined the ex-CIO (Chief Information Officer) at TSB Bank plc, which was migrating its IT systems from a legacy system to a new platform. The failure led to customers not being able to access their accounts, payments from their accounts were not made (including payment for mortgages and loans), and it became headline news for the wrong reasons.

The individual was responsible for providing leadership and strategic direction to the IT function, ensuring that the IT function was suitably experienced and qualified to carry out its responsibilities, as well as identifying, assessing, managing and reporting risks associated with the running of the IT function in line with the banks risk appetite. The CIO was also responsible for the performance of its obligations under the PRA's Outsourcing Rules, and this responsibility was split with another senior manager. Under that split, the individual was responsible for the bank's key outsourcing relationships and accountable for the operational relationship with third parties in relation to IT.

The PRA noted that it expected the CIO to act reasonably in carrying out their role and responsibilities, particularly in relation to the identification and mitigation of risks from an IT perspective. Under the Senior Manager Conduct Rules, the PRA also required the individual to take reasonable steps to ensure that the business of the bank for which they were responsible complied with relevant regulatory requirements and standards.

The PRA expects persons performing a SMF role to take reasonable steps to ensure that the business has operating procedures and systems which include well-defined steps for such compliance and for ensuring that the business is run prudently. This required the individual to take reasonable steps in relation to the identification and mitigation of risks relating to the readiness of the bank's contractors and subcontractors.

The PRA identified that the CIO had breached Senior Manager Conduct Rule 2 as they had failed to take reasonable steps to ensure that the bank complied with the PRA's Outsourcing Rules in adequately managing and appropriately

supervising its outsourcing arrangement. In particular, the CIO failed to obtain sufficient assurance from the outsource provider in relation to the readiness of the new platform.



5. High-Level Standards: Introduction

The high-level standards section of the FCA Handbook refers to the overarching standards applying to all authorised firms and approved persons. It contains the following source books:

- **PRIN** – Principles for Businesses – the fundamental obligations of all firms.
- **SYSC** – Senior Management Arrangements, Systems and Controls – the responsibilities of directors and senior management.
- **COCON** – Code of Conduct.
- **COND** – Threshold Conditions – minimum standards for authorisation.
- **APER** – Statements of Principle and Code of Practice for Approved Persons – the fundamental obligations of approved persons.
- **FIT** – the Fit and Proper Test for employees and Senior Personnel.
- **FINMAR** – Financial Stability and Market Confidence.
- **TC** – Training and Competence – requirements for staff.
- **GEN** – General Provisions.
- **FEES** – Fee provisions for funding the regulatory bodies.

The following seven sections cover the most important areas of these high–level standards, other than 'COCON' (see section 4) and 'APER' (see section 3).



6. Principles for Businesses (PRIN)

The FCA Handbook includes 12 key Principles for Businesses, which authorised firms must observe. The principles apply with respect to the carrying out of regulated activities, activities that include dealing in investments as principal, ancillary activities in relation to designated investment business, home finance activity, insurance mediation activity, accepting deposits, and the communication and approval of financial promotions.

If a firm breaches any of the principles that apply to it, it will be liable to disciplinary sanctions. However, the FCA and the PRA must be able to prove that the firm has been at fault.

The FCA also pursues an initiative called Fair Treatment of Customers (FTOC), to encourage firms to adopt a more ethical frame of mind within the industry, leading to more ethical behaviour at every stage of a firm's relationship with its customers. Firms and customers (ie, professional clients) that are not subject to the Consumer Duty requirements, as noted below, are subject to the FTOC initiative.

The principles are a general statement of the fundamental obligations of firms under the regulatory system.

To reiterate, the 12 Principles for Businesses are as follows:

1. **Integrity** – a firm must conduct its business with integrity.
2. **Skill, care and diligence** – a firm must conduct its business with due skill, care and diligence.
3. **Management and control** – a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. **Financial prudence** – a firm must maintain adequate financial resources.
5. **Market conduct** – a firm must observe proper standards of market conduct.
6. **Customer's interest** – a firm must pay due regard to the interests of its customers and treat them fairly.
7. **Communications with clients** – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
8. **Conflicts of interest** – a firm must manage conflicts of interest fairly, both between itself and its customers, and between a customer and another client.
9. **Customers: relationships of trust** – a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.
10. **Clients' assets** – a firm must arrange adequate protection for clients' assets when it is responsible for them.
11. **Relations with regulators** – a firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA and/or the PRA appropriately anything relating to the firm of which the FCA/PRA would reasonably expect notice.
12. **Consumer Duty** – a firm must act to deliver good outcomes for retail customers.

6.1 Principle 12 – 'Consumer Duty'

With the implementation of the Consumer Duty, in scope firms must comply with Principle 12, which means that Principles 6 and 7 will cease to apply. Therefore, firms not in scope of the Consumer Duty will continue to comply with Principles 6 and 7.

The Consumer Duty requirements state that a firm must act to deliver good outcomes for retail consumers, with firms needing to consider the characteristics and objectives of their customer as well as being able to understand and evidence whether those outcomes are being met/have been met.

As noted in section 1.3 of this chapter, the FCA's outcomes-focused regulatory approach seeks to achieve the desired result for the consumer and markets. However, this requires active participation and support by firms' directors and employees at all levels to achieve effective corporate governance. Within firms, this is more prominent now that the SM&CR applies to most regulated firms.

In 2021, the FCA published two consultation papers setting out their aims for the Consumer Duty, an initiative aimed at ensuring that firms provide and offer good outcomes to retail customers. This is not the first time that the FCA (or its predecessor, the FSA) has developed an initiative aimed at retail customers/consumers – we have had the Treating Customers Fairly (TCF) and, currently, the Fair Treatment of Customers (FTOC). What is different this time is that the Consumer Duty requirements include a 'Principle' and 'high-level' (cross-cutting) rules.

One of the main differences between the Consumer Duty and the 'FTOC' is the focus by the FCA regarding the prevention of firms causing foreseeable harm to consumers.

Aims of the Consumer Duty

The FCA's aim, and objective, is to ensure retail customers receive good outcomes when they purchase products or services. In addition to the introduction of the Consumer Duty Principle, there are cross-cutting rules and 'good' outcomes rules and guidance that provide greater clarity to both retail customers (in terms of their expectations) and to firms in the scope of the requirements.

Implementation Date

The rules came into effect in 2023 for new and existing products or services that are capable of being sold, open or available for renewal. Where products or services are closed (ie, they are not available to be purchased or accept new investment), the rules, subject to a delayed implementation, took effect in 2024.

Scope

The Consumer Duty applies to products and services offered to retail customers (or consumers).

The Consumer Duty does not apply just to existing customers; it also applies to prospective customers. The finalised guidance, published alongside the rules, provides additional clarity that unless there are regulatory obligations or legal contracts that exist, a firm is only responsible for its own activities and actions – they would not be responsible for and have to oversee the actions of other firms in a 'distribution' chain.

Products or services that have not been developed (and targeted) for retail customers are not in the scope of the Consumer Duty, where they:

- are only marketed and approved for distribution to non-retail customers (ie, professional clients), and
- are not provided to another firm under an arrangement (ie, distribution agreement) between them as part of a distribution chain for a retail product or service.

Attempts by firms to incorrectly classify a product or service as non-retail with the aim of avoiding the Consumer Duty, allowing them to distribute to retail customers, would be in breach of the Consumer Duty requirements.

The Consumer Duty introduced obligations on firms acting under the 'agent as client' rules, these firms need to ascertain if retail customers are at the end of the chain and whether they can determine or materiality influence the outcomes for these retail customers. While it is easy to ascertain and understand where firms are providing a product or service to a retail customer who is a direct client of the firm, it is less clear how the Consumer Duty applies to the wholesale market and firms who operate without having any direct retail clients. The first question to ask is: are they a direct client of the firm, and if they are not, can the firm have the potential to impact retail customers by being involved in a distribution chain and whether their actions (when manufacturing products) can determine or materially influence the outcomes for retail customers?

For example, it will apply when a wholesale firm could influence or determine material aspects of:

- the design or operation of retail products or services, including their price and value
- the distribution of retail products or services
- preparing and approving communications that are to be marketed to retail customers, and
- engaging in customer support for retail customers.

Where the Consumer Duty does apply, it would be applied on a proportionate basis where the firm has material influence over outcomes for retail customers. This will mean that a firm that is remote from retail customers, with no direct client relationship, will have limited obligations.

The following wholesale activities are excluded from the Consumer Duty, where a firm:

- Manufactures products or services only for wholesale purposes – subject to, meeting the conditions in the 'retail market business' definition including activities relating to non-retail financial instruments.
- Marketing materials for a financial instrument (including the prospectus) feature prominent and clear disclosures to the effect that the financial instrument is:
    - only being offered to investors eligible for categorisation as professional clients or eligible counterparties under the FCA's rules, and
    - not intended for retail customers.
- The issuer of a financial instrument or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure that the offer and any associated promotional communications are directed only to investors eligible for categorisation as professional clients or eligible counterparties.
- A minimum denomination, or otherwise a minimum investment of £50,000 applies to the financial instrument:
    - this exclusion does not apply to the sale of investment funds where an amount greater than £50,000 is invested.

- Market activities for certain financial instruments meeting the criteria in the 'retail market business' definition.
- Activities relating to insurance contracts of large risks for commercial customers or where the risk is located outside the UK.
- Activities connected to the distribution of group insurance policies or the extension of these policies to new members.
- The regulated activity of administering a benchmark, any ancillary activity to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the Benchmarks Regulation.

The Consumer Duty will only apply to firms conducting regulated activity in the UK.

6.1.1 The Consumer Duty Principle

Principle 12 states that '*a firm must act to deliver good outcomes for retail customers'*, and where this Principle applies, firms will no longer be subject to Principle 6 (Customers interests) and Principle 7 (Communication with clients).

Therefore, firms not subject to the Consumer Duty will continue to ensure they comply with Principles 6 and 7 and be subject to the FTOC initiative.

Where a firm's activities and business model mean that they engage with clients that are both in and out of the scope of the Consumer Duty, then they must comply with the relevant requirements based on the services and products which they are providing to the different types of customers for each activity (product/service) undertaken.

This will present operational challenges for firms that provide products and services to retail customers and non-retail customers (ie, professional clients).

It would be up to firms if they wanted to apply the Consumer Duty standards to their business activities that are not in the scope to ensure that have a single operating model. This would be something for firms to decide based on operating different standards, procedures, and policies for the products and services that they provide to all customers.

These rules, and the accompanying guidance, sit within the Principles for Businesses Sourcebook (PRIN) to give the Consumer Duty emphasis to provide firms with formal requirements to comply with.

The FCA expects firms to display the following key behaviours when providing products and/or services that are in the scope of the Consumer Duty:

- **Act in good faith towards retail customers**
    - Standard of conduct characterised by honest, fair and open dealings.
    - Acting consistently with the reasonable expectations of retail customers.
    - Firms should consider this rule at the product or service design stage.
- **Avoid foreseeable harm**
    - Firms must ensure that retail customers understand and accept the inherent risk in products.
    - Firms do not have a responsibility to protect customers from all foreseeable harm:
        - customers must understand and accept inherent risks associated with products – firms must be clear and transparent.
    - Firms must take proactive steps to avoid causing 'foreseeable harm' where it is within their control.
    - Firms do not exploit customers' vulnerabilities, behavioural biases or lack of knowledge (financial literacy):
        - this does not mean that customers must be protected from all bad outcomes.
- **Enable and support retail customers to pursue their financial objectives**

- Support customers in order that they have the relevant information and understanding to be responsible for making their own decisions:
    - they need to be (should be) empowered to make choices for themselves and remain ultimately responsible for their decisions, actions and the consequences of these.
- Firms have a responsibility to establish an environment in which customers have trust and faith in the firm and their products and services that they are purchasing.
- Firms can assume and rely on the information provided to them by the retail customer as part of that due diligence where advisory or discretionary services are provided:
    - for execution-only or non-advised services, the firm can assume that the financial objectives of retail customers are to purchase, use and enjoy the product being purchased.

For each of the cross-cutting rules, firms need to assess and take into account the financial understanding (knowledge and awareness) of the target market audience, ensuring they are providing clear and transparent support where necessary.

The 'Good' Outcomes the FCA Expects to See

- **Products and services outcome**
    - Products and services for customers are fit for purpose and designed to meet the needs and objectives of the target market audience (group).
    - The Consumer Duty interacts with the requirements in the **Product Intervention and Product Governance Sourcebook (PROD)** with regards to manufacturers and distributors of products. (PROD is covered in greater detail in section 14.11 of this chapter).

- Product providers (manufactures) are:
    - responsible for ensuring that a product and/or service is designed to meet a specific need or objective of an identified target market audience, and
    - required to carry out regular reviews of how a product is performing.
- Product distributors would be:
    - responsible for distributing and/or marketing a product in a way that focuses on and reflects its identified target market audience, and
    - responsible for taking all reasonable steps to prevent a product being offered to customers outside the intended target market audience.

Where multiple firms are involved in the distribution chain, each firm is required to take responsibility for the outcome in a manner that reflects its ability to influence choices about product design, operation and distribution and the potential to materially affect retail customers receiving (achieving) good outcomes.

- **Price and value outcome**
    - The price of products represents 'fair' value for customers in the target market/group, ie, who the product was developed to be marketed/sold to.
    - While the FCA is not a price regulator, it expects firms to offer products and services that represent fair value.
    - The FCA has been very clear that fair value does not mean that all retail consumers will achieve the same outcomes; those that shop around will have greater confidence to do so knowing that products and services will meet their needs and will represent better value than an existing provider.
    - Firms do not have to price products the same for new and existing retail customers, but they will need to be able to

demonstrate that any discounts for new retail customers must be communicated clearly to both groups of customers to ensure that both could and/or are receiving fair value.

- Value is not just the price paid by the customer for a product or service sold by a firm:
    - Firms must ensure that there is a relationship between the price paid and the benefit that the customer receives from it.

- **Customer services outcome**
    - Firms are expected to provide an appropriate level of service that meets customers' needs throughout their relationship.
    - Firms must ensure that communications are fair, clear and not misleading, so that customers can make informed decisions about products and services.
    - Firms must present information in a manner that will be understood by customers.
        - Firms need to understand the 'financial awareness' of the target market audience.

- **Consumer understanding outcome**
    - Firms must communicate with customers in a consistent manner, so that they are able to make informed decisions about purchasing financial products or services.
    - The FCA expects firms to provide the required information at the right time and presented in a way that is clear and easily understood, enabling customers to be able to understand and assess:
        - the features of products and services
        - the likely costs, associated risks and the benefits from specific products or services, and

        - whether products and services will meet their financial needs and objectives.
    - Firms need to consider who the target market audience is and use this to design their marketing material and information:
        - firms should put themselves in the shoes of the retail customers and sense check that the information that they are providing is aimed at the right level in terms of details/information and understanding.

Firms Ongoing Obligations

Monitoring and Governance

A firm's board or equivalent management/governing body will be held accountable by the FCA for implementation of the Consumer Duty requirements. They will also be responsible for approving and agreeing where a firm's requirements are not in the scope of the Consumer Duty – ensuring documentation is sufficient to determine the rationale why they are out of the scope.

A firm's board (or equivalent) must be provided with an annual report that assesses whether the firm is delivering 'good outcomes' for its retail customers – consistent with the requirements of the Consumer Duty.

Culture

The aims and objectives of the Consumer Duty can only be achieved if, within firms, there are changes made to their culture, behaviour and processes – which start at the top.

The outcomes of the Consumer Duty should be reflected in firm's strategy, governance and leadership. It is the responsibility of a firm's board (or equivalent management or governing body) and senior management to embed a culture where good outcomes for retail customers are achieved.

Accountability

As noted in section 2 (SM&CR) of this chapter, the FCA introduced a Conduct Rule for firms in the scope of the Duty. Conduct Rule 6 introduces the 'You must act to deliver good outcomes for retail customers' for such firms.

The FCA will hold senior managers accountable for implementing and embedding the Consumer Duty within the firm via the SM&CR – therefore, firms must make sure that senior managers are clear about what they are accountable and responsible for and how they ensure the firms comply with the requirements of the Consumer Duty on an ongoing basis.

The FCA expected a senior individual to be the firm's Consumer Duty 'champion' (which could be a non-executive director or a senior manager depending on the type and size of the firm). These requirements were removed from February 2025, with the FCA no longer requiring firms to have a Consumer Duty champion. They did note, however, that firms can retain this role if they wish to do so.

What does this mean to Retail Consumers?
Where firms meet their obligations, then retail consumers should (will) be confident, and should (will) be able to trust, in the following:

- That the firm is acting in good faith, in line with their interests.
- They can choose from a range of products and services that are fit for purpose – designed to meet their needs (of the target market audience).
- Information provided is clear and understandable, enabling them (the customer) to assess which products and services are most likely to meet their needs and objectives.
- Products and services deliver the benefits that they (the customer) reasonably expect them to.
- The customer service standards applied by firms consistently meet their (the customers') needs and expectations.
- They will be offered/will obtain fair value from financial products and services.

However, the Consumer Duty does not remove retail customers' responsibility for making decisions or prevent them from making decisions that are not in their own interests. Therefore, from a retail customer's point of view, it does not:

- require firms to provide all retail customers with the same terms or outcomes from products or services

- impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence consumer outcomes
- protect retail customers from all potential harms
- specify exactly how firms should act, and
- apply retrospectively to past business (ie, the rules and requirements applied from 31 July 2023).

The Consumer Duty does not require firms to provide any particular product or service on particular terms or to particular retail customers – that remains a commercial decision for firms.

Also, the Consumer Duty does not prevent a firm from withdrawing a product or service. However, where a firm is planning to alter or withdraw a product or service, then it must consider whether this could lead to foreseeable harm for their retail customers or specific groups of retail customers – taking steps to mitigate the impact of this potential harm to those who could be affected.

6.1.2 The FCA's Approach to the Consumer Duty

By embedding the Duty within their authorisation, supervision and enforcement operations, the FCA believes that the Duty will set a higher standard of care for retail customers, with firms needing to focus on delivering good outcomes for their retail customers.

The FCA expected firms to have robust implementation plans. A firm's board (or equivalent) is responsible for oversight of the implementation and the ongoing compliance with the requirements.

6.1.3 FCA Observations on Consumer Duty Implementation

In February 2024, the FCA published additional information/guidance for firms regarding implementation in terms of good practice and where they see areas for improvement. This built on the work undertaken by the FCA when the Consumer Duty came into effect and follows the FCA's review of firms 'implementation plans' and 'fair value frameworks'.

FCA expected outcomes:

> *'consumers to have confidence in retail financial services markets, with healthy competition based on high standards and firms focused on delivering good customer outcomes'.*

Good Practice

- Firms alter their company purpose to signal to staff that their actions and behaviour should focus on customer outcomes.
- Firms accelerate business changes to deliver better customer outcomes.
    - for example, some firms have paid more attention to service level metrics for call abandonment rates, root-cause analysis of complaints and customer satisfaction surveys, taking action to improve standards.
- Firms ensure responsibility for good customer outcomes is understood and owned across the business – not just by risk and compliance teams but by those involved from product design through to post-sale support.
- Firms increase focus on the customer at Board level, with firms' senior leadership teams giving serious consideration to what the Consumer Duty means for them at a practical and cultural level.
- Firms update staff bonus structures to ensure that incentivisation is in line with the aims of the Consumer Duty.
- Firms develop new data and metrics to better understand their customers.
    - introduce appropriate governance so that action is taken where problems are identified.

Areas for Improvement

- Firms need to ensure that the focus on good customer outcomes is understood at all levels, in their strategies, leadership, and people policies.
    - where the Consumer Duty is primarily driven by programme teams or risk and compliance colleagues and isn't discussed at Board level.

- Firms wait to see if the FCA will intervene to address an issue – rather than tackling it themselves.
    - this is likely to cause firms more complexity in the long run, especially if consumer redress becomes due.
    - the Consumer Duty requires firms to proactively identify and address issues and risks of harm.
- Firms need better data and monitoring strategies, they should not be complacent and assume that they can just repackage existing data.
    - the FCA expects firms to think seriously about what information they need to really understand their customers' outcomes and issues they may be facing.

Consumers in Vulnerable Circumstances

FCA expected outcomes:

> *'vulnerable consumers to have outcomes as good as other consumers.'*

Good Practice

- Firms consider the needs of customers with characteristics of vulnerability as part of product and service design.
    - for example, some firms have found different ways of supporting those who are elderly, such as by using 'selfies' for identity verification to confirm they are not being scammed.
        - fully review their approach, systems and processes, centralising operations relating to vulnerability. This has resulted in improved and more consistent: handling of vulnerable customers by specialist staff
        - capturing of data and identification of trends
        - quality assurance and compliance monitoring to make processes more efficient, effective, and focused on customer outcomes

        - outcomes for individual customers due to better-quality interactions with firms.
- Firms review their communications and make changes to support vulnerable customers.
    - for example, offering literature in alternative formats (such as braille, audio or with enlarged text) and making typographical changes so literature is more engaging (such as by using different colours or fonts)
    - firms have considered whether information is appropriate to customer groups with lower financial literacy or where English is not their first language.
- Firms use customer data, such as problematic trading patterns, to identify potential vulnerabilities. This information is passed to staff trained to address sensitive issues, such as gambling addiction, and appropriate communications are sent to those customers.
- Firms are improving the way they capture and record information about customer vulnerabilities or expand support to better meet customer needs.
    - for example, introducing a data flag to identify and monitor outcomes for customers who have requested documents in an alternative format
    - for example, a mortgage firm now allows brokers to pass on details about customers who may need help managing their home loans.
- Firms turn off productivity targets for customer service staff if someone is identified as vulnerable.
    - this encourages staff to take time to provide a bespoke service catered to that customer's needs.

Areas for Improvement

- Firms fail to address identified weaknesses in processes to track vulnerable customers across multiple product sets and gaps in data and servicing capabilities. Firms should be able to identify where particular groups of customers – especially those that are vulnerable – receive poorer outcomes than other customers and take action to address this.
- Firms operating in the investment market, do not prioritise identification of and support for vulnerable customers. In some cases, this does not even appear to have been considered.
    - for example, our recent wealth data survey showed 49% of portfolio managers and 69% of stockbrokers identified no vulnerable customers among their customer base
    - FCA recent 'Dear CEO letter' to wealth and stockbroking firms pointed out that 50% of us will be classed as vulnerable at some point
    - this means it is likely that every firm will at some point deal with customers in vulnerable circumstances. We are concerned that firms are not thinking widely enough on vulnerability.
- Firms automatically assess all consumers over a certain age as vulnerable. While age is relevant to vulnerability, a generalised approach risks firms not tailoring support to reflect individual needs.
- Firms ask consumers to identify themselves as vulnerable and then unnecessarily requesting evidence of this.
    - evidence of firms telling those who identify as vulnerable that it might affect their ability to receive the service. This is a barrier to identifying vulnerability and ensuring consumers get the support they need.
- Firms asking consumers to repeatedly disclose their additional needs or personal circumstances when passed between teams.
    - firms must avoid causing foreseeable harm
    - this includes the impact of being asked to disclose their personal circumstances on a consumer's mental wellbeing and ability to

engage with their provider.

Products and Services

FCA expected outcomes

> *'consumers to be sold products and services that are designed to meet their needs, characteristics and objectives'.*

The FCA noted that they had seen harm where products or services were poorly designed or were distributed widely to customers for who they were not designed (ie, not the target market audience).

Good Practice

- Firms carefully and precisely define the target market for products and services that could cause harm if sold to the wrong consumers. Firms have then ensured those products and services are sold correctly.
    - for example, redesigning sales journeys to be clearer on the types of customers and needs products are appropriate for. Others have introduced new products to meet different customer needs.
- Firms redefine data and monitoring capabilities to track customers who may have bought a product or service despite falling outside of the target market.
    - this allows firms to contact them or take other measures to avoid consumer harm.
- Firms adapt products and services to deliver additional benefits for their customers.
    - for example, by introducing controls to limit exposure to financial loss and avoid the risk of foreseeable harm to customers.
- Firms identify products and services that were only available to customers through limited sales channels and make the product available more widely where they meet the needs of a broader range of their customer base.

- Firms make positive changes to their product development processes, with greater focus on how new products will meet the needs of a specified target market and deliver good outcomes for them.
    - for example, one firm introduced '11 golden rules' for designing new products linked to Consumer Duty requirements
    - some firms have increased emphasis on consumer research and testing to help ensure products work well.
- Firms reconsider their role in 'distribution' chains and take steps to support good outcomes for the customer even if they do not have direct relationships with consumers
    - an investment firm identified that it had a small number of institutional clients with retail customers in the chain and offered alternative investment options more suited to them.
- Firms simplify their product offering so there are not products with similar or overlapping features, where this benefits customers
    - this makes it quicker and easier for consumers to identify and access the products they need.

Areas for Improvement

- Firms do not share information effectively across supply chains. The FCA expects firms in the same distribution chain to share relevant information with each other. This will help firms to quickly address issues to prevent consumer harm and deliver good outcomes.
    - for example, manufacturer firms need to inform distributors of the characteristics of a product or service, its target market and the value it is intended to provide to customers
    - firms support manufacturers reviewing a product or service, distributors need to provide relevant information to them
    - firms in a distribution chain should consider what information they need from each other, with the joint goal of delivering good outcomes for the customer.

- Firms do not pay close enough attention to ensuring that their distribution strategies are driving good customer outcomes. In general, firms are responsible only for their own activities and do not need to oversee the actions of other firms in the distribution chain.
    - however, in some situations, firms do need to consider actions by other parties in the distribution chain.
    - for example, a manufacturer firm must consider how it expects a product to be sold and regularly monitor the product and its distribution over time so that it can deliver good customer outcomes.
        - for instance, if a lender finds third-party brokers are not distributing its loans in line with its intended distribution strategy and target market, it must consider appropriate action.
    - while the lender is not responsible for the activities of third-party brokers, it may, for example, need to provide additional information to brokers to ensure the loans reach the right borrowers. Again, this type of situation is unlikely to arise where firms are working well together.
- Firms fail to grasp that they might have a role in a distribution chain, what that role is, and what it means for their responsibilities.
    - for example, where a firm has a material influence over retail customer outcomes but is in a distribution chain and does not have a direct relationship with the end retail customers, it will still be subject to the Consumer Duty.

Price and Value

FCA expected outcomes:

> *'consumers to get products and services which offer fair value.'*

Good Practice

- Firms examine whether the total cost to consumers of their products and services – including fees, charges and other costs – provides fair value relative to their benefits.
- Firms have made changes to improve their value proposition by reducing costs for consumers by:
    - updating pricing models for products and services
        - for example, reducing the rate of interest paid on certain credit products and/or for certain types of customers
    - reducing or removing charges for certain products or ongoing services where these were deemed too high relative to the benefits provided
    - putting controls in place for certain groups or customers, for whom charges over a certain amount do not offer fair value, to improve value and remove these charges
    - moving some investment clients away from more expensive bespoke models to simpler model portfolios, where they are better suited to the size of the customer's investment.
- Firms enhance the benefits of products and services to improve value, For example, by:
    - increasing the amount of interest paid for certain savings and investment products
    - improving the benefits offered by products and services
    - the FCA noted that they had seen some insurance firms enhance product cover to include new benefits, such as physiotherapy and virtual medical care, widen the definition of certain terms in policy wordings to cover more eventualities, or increase product cover limits at no additional cost.
- Firms cap fees for long-term clients and waive fees entirely where firms could not justify the product's cost.
- Firms consider whether the customer receives fair value across the distribution chain.

    - for example, firms no longer recommending an intermediary where the amount they charge is above a certain level or ending agreements with distributors where they are concerned about value to the customer
    - other firms have restricted the ability of distributors to mark-up pricing or have capped commission payments to them.
- Firms take steps to monitor or close products where their value proposition risks causing poor customer outcomes.

Areas for Improvement

- Firms fail to show that products offer fair value to retail customers.
    - for example, some firms have relied solely on an assessment of similar product offerings in a market. This alone does not prove that the customer is getting a good deal
    - the FCA noted that they had seen statements being made about value, without any qualitative reasoning outlining why a firm considers that its product offers fair value.
- Firms unable to justify what benefits they provide for the remuneration they receive.
    - the FCA expect firms to be able to explain their remuneration practices and how they are proportionate to the work they do.
- Firms add fees along the distribution chain that might mean the overall cost to the end consumer does not represent fair value.
    - this is likely to be particularly relevant where there are long or complex distribution chains with multiple fees added by multiple parties.
- Firms charge customers for a service they are not benefiting from.
    - some firms are providing – and charging for – ongoing services to customers who do not need it

    - in the worst examples, some customers are paying for a service, such as an annual review, and not receiving it.
- Firms structure investment products and services in a way that benefits firms rather than focusing on value for the customer.
    - for example, some firms are failing to consider the amounts customers invest and the value they receive for the risks they are taking
    - the FCA noted that they had seen value assessments that are disproportionately firm focused without being viewed through the lens of the customer.
- Firms fail to share sufficient information to enable other firms in the distribution chain to properly assess value to the end retail customer or understand what the firm is doing where it considers a product does not provide fair value.

Consumer Understanding

FCA expected outcomes:

> *'consumers to understand the information they are given and make timely and informed decisions'.*

Good Practice

- Firms work with experts to improve their communications across different channels and increase customers' understanding of their products and services. For example by:
    - changing the layout and presentation of content to improve clarity and boost customer understanding
    - simplifying the language used, with one firm rolling out a 'jargon buster' library across its business to help simplify documents
    - improving the accessibility of websites, making it easier for customers to navigate to contact details for further support
    - a firm added a new email address to its 'contact us' webpage and now offers outbound calls in some cases, including to support

vulnerable customers.

- Firms develop customer understanding frameworks to support good outcomes.
    - for example, one firm considered how the way it marketed its loans could exploit customers' behavioural biases. They then took steps to provide more balanced information and moderate its incentivisation to customers with higher risk profiles.
- Firms design customer journeys, focusing on how consumers behave in practice and risks of harm, to better support understanding. For example:
    - identifying where customers could be subject to fees and charges and adding 'in the moment' prompts and push notifications during the customer journey to advise of these costs
    - an insurance firm adapted its approach to highlight its policies' exclusions on its website before customers start their application, so that it is clear up front what the policy does not cover
    - a bank added a webpage with a clear list of what's included with its current account product, as well as an equally prominent list of what isn't.
- Firms update customer interaction points and materials, such as call centre scripts, and deliver training so that staff are better equipped to support customer understanding.
- Firms are more proactive with their communications to support better customer outcomes.
    - for example, the FCA have seen firms use data to identify customers not earning enough interest/cashback to cover product fees.
- Firms develop ways to test customer understanding such as surveys, experiments, and interviews.
    - for example, one funeral plan provider tested 14 documents across its customer journey with customer focus groups to make

sure they understand their options to change or cancel their funeral plan. Others have created ways to monitor the impact communications have on behaviour.

Areas for Improvement

- Firms undermine customers' trust by pushing products or services that are too high-risk or complex for them. For example:
    - the FCA noted they had seen investment portfolio managers take advantage of long-established relationships with clients to play down the risks of portfolios which are not aligned to their client's risk profile but benefit the firm.
- Firms being unclear with customers about what charges apply, and when. One way to improve customer understanding is to provide worked examples of product and service costs.
- Firms that approve financial promotions, including those approving promotions for qualifying cryptoassets, make little reference to the Consumer Duty in our interactions with them. Firms need to ensure that they are considering the Duty and its requirements when approving financial promotions.

Consumer Support

FCA expected outcomes:

> *'consumers to be provided with support that meets their needs'.*

Good Practices

- Firms make changes to ensure the same level of support offered to new customers is available to existing customers.
- Firms review customer journeys and remove negative obstacles and 'sludge' practices that make it more difficult for customers to act in their own interests.
    - the FCA noted that they had seen a consumer credit firm removed certain incentives and changed the way consumers take

out credit online, to support better and more active decision making.
    - firms made changes to enable customers to exit products through a wider range of channels.
- Firms introduce positive interventions to customer journeys.
    - for example, a consumer credit firm now directs online customers to speak with an agent to receive tailored support where there are indications they may struggle to keep up with repayments, avoiding customers overstretching and setting up unsustainable repayment amounts
    - other firms have introduced new, flexible repayment plans to support customers struggling to keep up with their credit repayments.
- Firms create additional engagement touchpoints with customers to prompt them to make better decisions.
    - one firm updated its terms and conditions to include a commitment to let customers know if there are savings accounts with a better interest rate.
- Firms that outsource their support offering take steps to ensure this meets the Consumer Duty standard.
    - for example, a firm switched its third-party consumer support provider due to service challenges.
- Firms put in place processes to monitor the support they provide and identify areas for improvement.
    - for example, one firm launched an online panel which enables customers to provide feedback. Customers who join get regular invitations to online surveys where their views shape product and service development
    - one firm identified that individuals who act as Power of Attorney couldn't service all products in the same way customers could;

this firm made changes to ensure these individuals now have the same options as the account holder.

Area for Improvement

- Firms do not train staff well enough in terms of having complex conversations with customers
    - the FCA expects firms to train their staff to an appropriate level so they can support good outcomes for their customers, for example by understanding their circumstances and finding appropriate and tailored solutions where needed.
- Firms use business practices akin to 'gamification' on online trading applications platforms.
    - these practices can cause consumer harm by encouraging risky short-term trading, including brokerage deals that may not deliver fair value for customers. Firms must design and deliver customer journeys that support good outcomes.
- Firms do not take the time to understand customer circumstances where they are in financial difficulty.
    - this may mean that customers do not receive a forbearance solution appropriate for their circumstances or advice about other relevant sources of help, including support for customers with characteristics of vulnerability
    - this can lead to non-financial costs, such as stress and unnecessary delays.
- Firms do not have sufficiently robust systems to protect and help consumers from loss of investments, savings or personal data due to fraud or cyber-attacks.
    - the FCA expects firms to have robust systems and controls to avoid causing foreseeable harm to customers, and to provide prompt and appropriate support for victims of fraud.

Source: FCA website https://www.fca.org.uk/publications/good-and-poor-practice/consumer-duty- implementation-good-practice-and-areas-improvement

In December 2024, the FCA published two updates. The first was on 'Consumer Duty Board reports, identifying: good and poor practices', and the second report was titled 'Complaints and root cause analysis: good and poor practice'.

Also, in December 2024 the FCA published an update titled 'Our Consumer Duty focus areas' for the remainder of 2024 and 2025.

In March 2025, the FCA published findings from their review of firms' treatment of customers in vulnerable circumstances. They also published details on good practices and areas for improvement regarding firms' adherence to the Consumer Duty outcomes.

The following were identified by the FCA as being their priorities for 2025:

- **Embedding the Consumer Duty and raising standards**
    - Assessing across sectors how firms are implementing and complying with the Consumer Duty
        - Review of board/governing body reports and complaints and root cause analysis
        - Review of treatment of customers in vulnerable circumstances
        - Review of consumer support outcome and supporting informed decision making
- **Enhancing understanding of the price and value outcome**
    - Platform cash – treatment of interest of cash balances
    - Market study into pure protection insurance
    - Unit-linked pensions and long-term savings
    - Market study into premium finance
- **Sector specific priorities**

    - Retail banking
    - Consumer finance
    - Payments and digital assets
    - Consumer investments
        - advice guidance boundary review
        - taking poor identification of clients with characteristics of vulnerability by wealth managers
        - PRIIPS/Consumer Composite Investments (CCIs) Regulation
    - General and life insurance
        - Claims handling arrangements
    - Sustainable finance
- **Realising the benefits of the Consumer Duty.**

Source of information: FCA website https://www.fca.org.uk/publications/corporate-documents/our-consumer-duty-focus-areas

In April 2025, the FCA reviewed how firms support customers in vulnerable circumstances, focusing on how banks and building societies handled customer bereavement and power of attorney (PoA). The FCA were looking for the outcomes people received, based on the review of cases, firms' governance, management information (MI), staff training and outcome testing.

Overall, the FCA noted that firms in their sample had taken steps to refine their approach to the treatment of customers in vulnerable circumstances since the introduction of the Consumer Duty.

They noted that they saw evidence of good practice in the support provided to customers, and that the Consumer Duty and Vulnerability Guidance has had a positive impact.

However, this was not universally the case. They also found areas in which all firms need to improve.

Candidates should beware of and familiarise themselves with the FCA's Consumer Duty webpage, as the FCA updates this page constantly with details on their priorities, reports and informal guidance on good and poor practices that they are seeing in firms (https://www.fca.org.uk/firms/consumer-duty).



7. Senior Management Arrangements, Systems and Controls (SYSC)

The FCA place specific requirements on firms' directors and senior managers. These requirements are contained in the FCA's high level section of the Handbook, and is called the 'Senior Management Arrangements, Systems and Controls' (SYSC) sourcebook.

The main purposes of these requirements are to:

1. encourage firms' directors and senior managers to take responsibility for the firm's arrangements on matters likely to be of interest to the FCA and the PRA (because they are relevant to the FCA's and the PRA's ability to discharge their regulatory obligations)
2. amplify Principle for Businesses 3 (PRIN 3), under which a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk-management systems
3. encourage firms to vest responsibility for an effective and responsible organisation in specific directors and senior managers, so that everyone knows who is responsible for specific activities. Functions are not, therefore, in danger of falling between stools (each director or manager not regarding another as being accountable for a given activity or function, for example, so that no one person assumes responsibility for its oversight)
4. create a common platform of organisational systems and controls for firms subject to either the Capital Requirements Directive (CRD) and/or MiFID regimes. These are also known as '**common platform firms**'
5. set out high-level organisational systems and control requirements for insurers, as well as for other firms covered by the SYSC requirements.

Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1.5AB R). This covers all firms, and the revised rules relating to training and competence also apply to firms with employees that carry on activities for retail clients, customers or consumers.

These requirements have been extended to firms that are not subject to either the CRD or MiFID; these firms are called non-scope or non-common platform firms. However, the requirements are in the form of guidance rather than rules. This means that, in most cases, non-common platform firms should read the rules and requirements outlined below replacing the word 'must' with 'should', looking to comply with best practice.

7.1 Application and Purpose (SYSC 1)

The application of the SYSC Handbook rules depends upon the type of firm and business activity carried out by the firm, and whether they undertake regulated activity that is under the PRA and/or the FCA.

- **For insurers and UK Insurance special purpose vehicles** – Chapters 2, 3, 11 to 18, 19F.2 and 21 to 28 (including 28A) apply.
- **For managing agents** – Chapters 2, 3, 11, 12, 18, 19F.2 and 21 to 28 (including 28A) apply.
- **For building societies** – Chapters 2, 3, 12, 18, 19F.2 and 21 to 28 (including 28A) apply.
- **For SM&CR firms** – Chapters 4 to 12, 18, 19D, 19F, 19G and 21 to 28 (including 28A) apply.
- **For other firms** – Chapters 4 to 12, 18, 19D, 19F, 19G and 21 to 28 (including 28A) apply.

Relevant Chapters of SYSC

SYSC 2	Senior management arrangements
SYSC 3	Systems and controls (for limited firms only)
SYSC 4	General organisational requirements
SYSC 5	Employees, agents and other relevant persons
SYSC 6	Compliance, internal audit and financial crime
SYSC 7	Risk control
SYSC 8	Outsourcing
SYSC 9	Record-keeping
SYSC 10	Conflicts of interest
SYSC 10A	Recording telephone conversations and electronic communications
SYSC 12	Group risk systems and controls requirements
SYSC 15A	Operational resilience
SYSC 18	Whistleblowing

SYSC 19	Remuneration codes and performance management
SYSC 21	Risk control: additional guidance
SYSC 22	Regulatory references
SYSC 23	Senior Managers and Certification Regime: Introduction and classification
SYSC 24	Senior Managers and Certification Regime: Allocation of prescribed responsibilities
SYSC 25	Senior Managers and Certification Regime: Management responsibilities maps and handover procedures and material
SYSC 26	Senior Managers and Certification Regime: Overall and local responsibility
SYSC 27	Senior Managers and Certification Regime: Certification regime

7.2 Senior Management Arrangements (SYSC 2)

As part of the above requirements set out in SYSC, firms are required to take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among their directors and senior managers, in a clear and concise manner so that:

1. it is clear who has those responsibilities
2. the business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.

Firms must make a record of the arrangements they have made to satisfy the FCA and the PRA requirement to apportion responsibilities among directors and senior managers. They must also take reasonable care to keep this record up to date and retain the record for six years from the date on which it is superseded by a more up-to-date record.

7.3 Systems and Controls (SYSC 3)

SYSC 3 only applies to the following types of firms:

- insurers
- UK insurance special purpose vehicles
- managing agents (underwriting contracts of insurance at Lloyds, reinsuring contracts and paying claims)

- building societies.

The FCA requires all relevant firms to take reasonable care to establish and maintain such systems and controls as are appropriate for their business. Clearly, the nature and extent of these appropriate systems and controls will depend on a variety of factors, such as the nature, scale and complexity of the business, geographical diversity, the volume and size of the transactions undertaken, and the degree of risk associated with each area of business operations.

A firm's reporting lines should be clear and appropriate, having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the firm.

Firms cannot contract out their regulatory obligations, so, for example, under Principle 3 a firm must take reasonable care to supervise the discharge of outsourced functions by its contractor. A firm must take suitable steps to obtain sufficient information from its contractor to enable it to assess the impact of outsourcing its systems and controls.

A firm which carries on designated investment business with, or for retail clients or professional clients must allocate to a director or senior manager the function of:

a. having responsibility for oversight of the firm's compliance
b. reporting to the governing body in respect of that responsibility.

Compliance means 'compliance' with the rules in the following sourcebooks:

a. SYSC (System and Controls Sourcebook).
b. **COBS (Conduct of Business Sourcebook)**.
c. COLL (Collective Investment Schemes Sourcebook).
d. CASS (Client Assets Sourcebook).

7.3.1 Systems and Controls in Relation to Compliance, Financial Crime and Money Laundering

Firms must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system, and for countering the risk that the firm might be used to further financial crime.

This includes, ensuring that these systems and controls:

1. enable the firm to identify, assess, monitor and manage money laundering risk, and
2. are comprehensive and proportionate to the nature, scale and complexity of its activities.

Firms are expected to carry out regular (ongoing) assessments of the adequacy of these systems and controls.

A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer (MLRO)), overall responsibility for the establishment and maintenance of effective anti-money laundering (AML) systems and controls.

7.3.2 Risk Assessment

Based on the nature, scale and complexity of their business, firms may need to have a separate risk assessment function responsible for assessing the risks they face and advising the governing body and senior managers on such risks.

The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. The term 'risk assessment function' refers to the generally understood concept of risk assessment within a firm, that is, the function of setting and controlling risk exposure.

7.3.3 Management Information

A firm should arrange itself such that it is able to provide its governing body (or equivalent) with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three important factors are the relevance, reliability and timeliness of that information.

7.3.4 Audit Committee

Depending on the nature, scale and complexity of its business, it may be appropriate for firms to form an audit committee. An audit committee would typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with the requirements and standards under the regulatory system, and oversee the functioning of the internal audit function.

7.3.5 Internal Audit

Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function.

The internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate senior manager, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the firm, and have appropriate access to a firm's records.

7.4 General Organisational Requirements (SYSC 4)

This chapter applies to 'common platform' firms (ie, firms subject to either the CRD or MiFID).

Firms must have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, with effective processes to identify,

manage, monitor and report the risks the firm are or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures, and effective control and safeguard arrangements for information processing systems.

The arrangements, processes and mechanisms must be comprehensive and proportionate to the nature, scale and complexity of their activities.

A firm or management company subject to UK MiFID must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question. They must also establish, implement and maintain accounting policies and procedures that enable it, at the request of the regulators, to deliver in a timely manner financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

In addition, they must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established, and take appropriate measures to address any deficiencies.

The senior personnel of a common platform firm or a management company must be of good repute and sufficiently experienced to ensure the sound and prudent management of the firm.

A common platform firm or a management company, including the UK branch of a third country bank (credit institution) must ensure that its management is undertaken by at least two persons.

Firms must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among their directors and senior managers in such a way that:

- it is clear who has which of those responsibilities
- the business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm.

A firm must appropriately allocate to one or more individuals the functions of dealing with the apportionment of responsibilities, including overseeing the establishment and maintenance of systems and controls.

7.5 Employees, Agents and Other Relevant Persons (SYSC 5)

Firms are expected to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. This would include, as part of the recruitment process the assessment of an individual's honesty and competence.

An individual's honesty needs not normally be revisited unless something happens to make the firm question their integrity. Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the firm. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one), or subsequently.

The senior personnel of a common platform firm must define arrangements concerning the segregation of duties within the firm, and the prevention of conflicts of interest.

7.6 Compliance, Internal Audit and Financial Crime (SYSC 6)

7.6.1 Compliance

Firms must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance (by the firm, including its managers, employees and appointed representatives, or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

A common platform firm and a management company must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as any associated risks. Furthermore, it must put in place adequate measures and procedures designed to minimise such risks and enable the regulator to exercise its powers effectively under the regulatory system.

Firms must maintain a permanent and effective compliance function which operates independently, and which has the following responsibilities to:

1. Monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place, and the actions taken to address any deficiencies in the firm's compliance with its obligations.
2. Advise and assist the relevant persons responsible for carrying out regulated activities to comply with the firm's obligations under the regulatory system.

The compliance function must have the necessary authority, resources, expertise and access to all relevant information. A compliance officer must be appointed and must be responsible for the compliance function, and for any reporting as required; and the relevant persons involved in the compliance functions must not be involved in the performance of services or activities they monitor.

The method of determining the remuneration of compliance staff must not compromise their objectivity.

Refer to chapter 6 for more details on the expectations of a firm's compliance function.

7.6.2 Internal Audit

Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. Where it is appropriate and proportionate, the firm must

establish and maintain an internal audit function which is separate and independent from the other functions and activities of the firm, and which has the following responsibilities to:

1. establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the firm's systems, internal control mechanisms and arrangements
2. issue recommendations based on the result of work carried out in accordance with (1)
3. verify compliance with those recommendations
4. report in relation to internal audit matters.

The internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate senior manager, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the firm, and have appropriate access to a firm's records.

7.6.3 Financial Crime

Firms must ensure that policies and procedures established enable them to identify, assess, monitor and manage money laundering risk; and are comprehensive and proportionate to the nature, scale and complexity of their activities. In identifying its money laundering risk and in establishing the nature of these systems and controls, a firm should consider a range of factors, including:

- its customer, product and activity profiles
- its distribution channels
- the complexity and volume of its transactions
- its processes and systems
- its operating environment.

A firm must ensure that the systems and controls include appropriate:

1. training for its employees in relation to money laundering
2. provision of information to its governing body and senior management, including a report at least annually by that firm's MLRO on the operation and effectiveness of those systems and controls
3. documentation of its risk management policies and risk profile in relation to money laundering, including documentation of its application of those policies
4. measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:
   a. the development of new products
   b. the taking-on of new customers
   c. changes in its business profile
5. measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

The Money Laundering Reporting Officer (MLRO)
A firm must:

1. appoint an individual as MLRO, with responsibility for oversight of its compliance with the FCA's rules on systems and controls against money laundering
2. ensure that its MLRO has a level of authority and independence within the firm and access to resources and information sufficient to enable them to carry out that responsibility.

7.7 Risk Control (SYSC 7)

Common platform firm must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm.

Firms must adopt effective arrangements, processes and mechanisms to manage the risk relating to the firm's activities, processes and systems, in light of that level of risk tolerance.

Senior individuals within firm's must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

Therefore, firms are expected to monitor the following:

1. the adequacy and effectiveness of the firm's risk management policies and procedures
2. the level of compliance by the firm and its relevant persons with the arrangements, processes and mechanisms adopted
3. the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons, to comply with such arrangements or processes and mechanisms, or follow such policies and procedures.

Common platform firms must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

1. implementation of the policies and procedures
2. provision of reports and advice to senior personnel.

In addition, senior individuals within firms have overall responsibility for risk management. They must be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in the rules implementing UK CRD and UK CRR, as well as in the valuation of assets, the use of external ratings and internal models related to those risks. The firm must also

establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

7.7.1 Residual Risk

Firms must address and control, by means of written policies and procedures, the risk that recognised credit risk mitigation techniques prove less effective than expected.

7.7.2 Market Risk

Firms must implement policies and processes for the measurement and management of all material sources and effects of market risks.

7.7.3 Interest Rate Risk

Firms must implement systems to evaluate and manage the risk arising from potential changes in interest rates.

7.7.4 Operational Risk

Firms must implement policies and processes to evaluate and manage the exposure to operational risk, including to low-frequency, high severity events. Without prejudice to the definition of operational risk, firms must articulate what constitutes operational risk for the purposes of those policies and procedures.

7.8 Outsourcing (SYSC 8)

Firms relying on third parties to perform operational functions which are critical for their adherence to their regulatory obligations, must ensure that they constantly review and monitor the performance of the third party.

Although a regulated firm may have outsourced 'critical' operational functions of its business, it will still be held accountable to the FCA and/or the PRA for its performance (including failures). Therefore, it is in the firm's best interests to actively monitor (such as through testing) the performance of the third party against the signed service level agreement.

Firms must take reasonable steps to avoid undue additional operational risk; and must not undertake the outsourcing of important operational functions in such a way as to impair materially:

a. the quality of its internal control
b. the ability of the regulator to monitor the firm's compliance with its obligations under the regulatory system.

An operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a common platform firm with the conditions

and obligations of its authorisation or its other obligations under the regulatory system, or its financial performance, or the soundness or the continuity of its relevant services and activities.

Without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter within SYSC:

1. the provision to the firm of advisory services, and other services which do not form part of the relevant services and activities of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel
2. the purchase of standardised services, including market information services and the provision of price feeds
3. the recording and retention of relevant telephone conversations or electronic communications.

When a firm outsources critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the regulatory system and must comply, in particular, with the following conditions:

1. The outsourcing must not result in the delegation by senior personnel of their responsibility.
2. The relationship and obligations of the firm towards their clients under the regulatory system must not be altered.
3. The conditions with which the firm must comply in order to be authorised, and to remain so, must not be undermined.
4. None of the other conditions subject to which the firm's authorisation was granted must be removed or modified.

Therefore, firms must exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions, or of any relevant services and activities.

Firms must take all necessary steps to ensure that the following conditions are satisfied:

1. The service provider has the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally.
2. The service provider carries out the outsourced services effectively, with the firm establishing methods for assessing the standard of performance of the service provider.
3. The service provider properly supervises the carrying out of the outsourced functions, and adequately manages the risks associated with the outsourcing.
4. Appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements.
5. The firm retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing, and supervise and have oversight of those functions and manage these risks.
6. The service provider discloses to the firm any development that may have a material impact on its ability to carry out the outsourced functions effectively, and in compliance with applicable laws and regulatory requirements.

7. The firm is able to terminate the arrangement for the outsourcing if necessary, without detriment to the continuity and quality of its provision of services to clients.
8. The service provider cooperates with the regulator and any other relevant competent authority in connection with the outsourced activities.
9. The firm, its auditors, the regulator and any other relevant competent authority, have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and be able to exercise those rights of access.
10. The service provider protects confidential information relating to the firm and its clients.
11. The firm and the service provider establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary, having regard to the function, service or activity that has been outsourced.

7.9 Record-Keeping (SYSC 9)

A firm must arrange for records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the regulator or any other relevant competent authority, to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

Records must be kept in relation to UK MiFID business for a period of at least five years. These records must be maintained in a medium that allows the storage of information in a way accessible for future reference by the FCA, or any other relevant regulatory authority under UK MiFID, in a way that allows the following conditions to be met:

1. the record is able to be reconstituted into each key stage of the processing of each transaction
2. it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained
3. it must not be possible for the records otherwise to be manipulated or altered.

However, in certain circumstances, firms could be required to maintain records for seven years (an additional two years), when requested to do so by the FCA and/or the PRA.

7.10 Conflicts of Interest (SYSC 10)

The FCA requires that all firms take all appropriate steps to identify, prevent, and where it is not possible to prevent a conflict, to manage actual and potential conflicts of interest that arise within all their business areas. Compliance with the FCA rules on conflicts of interest is one of the ways in which firms seek to ensure that customers are treated fairly and that conflicts of interest are identified and prevented, or managed effectively.

Firms must comply with Principle 8 (Conflicts of Interest), under which it must manage conflicts of interest fairly, both between themselves and their clients, and between clients.

The rules on conflicts of interest are contained in the FCA's SYSC Sourcebook. They apply to common platform firms in respect of regulated business and ancillary services which constitute MiFID business, as well as non-MiFID firms and businesses.

The requirements of the SYSC conflicts of interest provisions will only apply when a service is provided by a firm. The requirements apply to all types of clients (ie, **eligible counterparties**, professional clients and retail clients).

The rules require firms to take all appropriate steps to identify, prevent and manage conflicts of interest between:

- the firm, including its managers, employees, appointed representatives and/or tied agents, parties connected by way of control and a client of the firm, and
- one client of the firm and another.

Firms under these obligations should, among other things:

- maintain (and apply) effective organisational and administrative arrangements, designed to prevent conflicts of interest from adversely affecting the interests of their clients
- have appropriate information controls and barriers to stop information from externally facing investment research activities flowing to the rest of the firm's business (for example, this might include **information barriers**)
- ensure that the general or specific nature of any specific conflict which cannot be prevented or managed is disclosed (as appropriate to the circumstances); note that disclosure should be used only as a last resort
- prepare, maintain and implement an effective conflicts policy
- provide retail and professional clients (including potential clients) with a description of that policy, and
- keep records of those of their activities when a conflict has arisen.

For non-common platform firms, SYSC 7.10 must be taken as being guidance rather than a rule, other than when the firm produces or arranges the production of investment research in accordance with COBS 12.2, or produces or disseminates non-independent research and non-independent research in accordance with COBS 12.2.

7.10.1 Types of Conflict

For the purpose of identifying the types of conflict of interest that arise, or may arise, in the course of the firm providing a service and whose existence may entail a material risk of damage to the interest of a client, the firm must take into account, as a minimum, whether the firm, or a person directly or indirectly linked by control to the firm:

- is likely to make a financial gain, or avoid a financial loss, at the expense of the client
- has an interest in the outcome of a service provided to the client, or of a transaction carried out on behalf of the client, which is different from the client's interest in that outcome

- has a financial, or other incentive to favour the interest of another client or group of clients over the interest of the client
- carries on the same business as the client, and
- receives, or will receive, from a person other than the client, an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

A conflict of interest may arise if the firm, or person, carries on a regulated activity, or ancillary activity, or provides ancillary services, or engages in other activities.

7.10.2 Recording of Conflicts

Common platform firms must keep and regularly update a record of the kinds of services or activity carried out by, or on behalf of, the firm in which a conflict of interest entailing a material risk of damage to the interest of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

7.10.3 Conflicts of Interest Policies

Firms are required to have in place (and apply) an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the firm and the nature, scale and complexity of its business. The rules do not prescribe how the policy should be structured, so large and complex firms may have more detailed policies than smaller firms.

SYSC requires that the policy should be designed, to ensure that all of a firm's relevant persons who are engaged in activities which involve a conflict of interest with material risk of damage to client interests carry on those activities with a level of independence. The policy should record the circumstances which constitute or may give rise to a conflict of interest and whether they have been identified as having the potential to impact on the firm's business. The policy should detail how these conflicts are to be managed, and specify the procedures that are to be followed, and the measures adopted in order to manage them.

If a firm is a member of a group, the policy should take into account any potential conflicts arising from the structure, or business activities of other members of that group.

Example

Measures that a firm might wish to consider in drawing up its conflicts of interest policy in relation to the management of an offering of securities include, at an early stage, agreeing with its corporate finance client relevant aspects of the offering process, such as the process the firm proposes to follow in order to determine:

- what recommendations it will make about allocations for the offering
- how the target investor group will be identified
- how recommendations on allocation and pricing will be prepared
- whether the firm might place securities with its investment clients or with its own proprietary

book, or with an associate, and how conflicts arising might be managed
• agreeing the allocation and pricing objectives with the corporate finance client; inviting the corporate finance client to participate actively in the allocation process
• making the initial recommendation
• for allocation to retail clients of the firm as a single block and not on a named basis, having internal arrangements under which senior personnel responsible for providing services to retail clients approve the allocation, and
• the initial allocation recommendations for allocation to retail clients of the firm, and disclosing to the issuer details of the allocations actually made.

7.10.4 Managing Conflicts

A firm must maintain and operate effective organisational administrative arrangements to ensure that it is taking all appropriate steps to identify, prevent or manage conflicts of interest, arising or giving rise to a material risk of damage to the interests of its clients.

Firms will require the following processes and procedures in order to manage conflicts of interest to ensure the fair treatment of clients (SYSC 10.2):

- information barriers, such as reporting lines, or physical barriers, such as separate locations for parts of a firm
- remuneration structures
- segregation of duties, and
- policy of independence.

The procedures and measures provided for must:

- be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified above, carry on those activities at a level of independence appropriate to the size and activities of the common platform firm, and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients
- include the following as are necessary and appropriate for the common platform firm to ensure the requisite degree of independence:
    - effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest, if the exchange of that information may harm the interests of one or more clients
    - the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm
    - the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, when a conflict of interest may arise in relation to those activities

- measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities, and
- measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities, when such involvement may impair the proper management of conflicts of interest.

If the adoption or practice of one or more of those measures and procedures does not ensure the requisite level of independence, a common platform firm must adopt such alternative or additional measures and procedures as are necessary and appropriate.

Conflict of Interest Mitigation in Practice

Most firms use policies and registers designed to limit key areas of risk as part of their mitigation strategy.

Examples of these include gift and entertainment registers and the conflicts of interest register.

7.10.5 Information Barriers

Information barriers are the arrangements made by a firm where information held by an employee in one part of the business withholds this (or, if this is not possible, at least not used by) the people with, or for, whom they act in another part of the business.

SYSC requires that if a firm establishes and maintains information barriers, it must:

- withhold or not use the information held
- for that purpose, permit its employees in one part of the business to withhold the information from those employed in another part of the business, but only to the extent that at least one of those parts of the business is carrying on regulated activities, or another activity carried on in connection with a regulated activity
- take reasonable steps to ensure that these arrangements remain effective and are adequately monitored.

Example of an Information Barrier in Operation

When a common platform firm establishes and maintains information barriers, it allows the persons on one side of the wall, for example, corporate finance, to withhold information from persons on the other side of the wall, for example, the equity research and/or market-making arm, but only to the extent that one of the parts involves carrying out regulated activities, ancillary activities, or MiFID ancillary services.

Common platform firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and, where applicable, their group's activities, under a comprehensive conflicts of interest policy. The disclosure of conflicts of interest should not exempt firms from the obligation to maintain and operate effective organisational and administrative arrangements under SYSC 10.1.3.

When the arrangements that a firm puts in place to manage potential conflicts of interest are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interest of a client will be prevented, the firm must clearly disclose the general nature and/or source of the conflict of interest to the client before undertaking business for, and on behalf of the client.

7.10.6 Disclosing Conflicts

When the arrangements that a firm puts in place to prevent or manage potential conflicts of interest are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interests of a client will be prevented, the firm must disclose the general nature and/or source of conflicts of interest and the steps taken to mitigate those risks before undertaking business for/on behalf of the client.

While disclosure of specific conflicts of interest is required under SYSC 10.1.8, an over-reliance on disclosure without adequate consideration as to how these conflicts may appropriately be managed is not permitted.

Therefore, the disclosure of a conflict of interest should be undertaken as a last resort, if the firm's internal controls (managing conflicts) will not manage the risk of material damage to the client's best interests.

Disclosure must be made in a **durable medium** and include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

Firms should aim to identify, prevent or manage the conflicts of interest arising in relation to their various business lines and, when applicable, their group's activities, under a comprehensive conflicts of interest policy.

7.11 Remuneration (SYSC 19B-G)

The fundamental objective of the remuneration policy is to sustain market confidence and promote financial stability, by removing the incentives for inappropriate risk-taking by firms, and thereby to protect consumers. The need to ensure that remuneration policies and practices are consistent with and promote effective risk management is fundamental.

The remuneration code has been incorporated into the PRA Rulebook and the FCA Handbook because the regulators want to have clear rules and guidance in place so that firms can incorporate the code into their future planning.

The fundamental objectives of the remuneration policy are to sustain market confidence and promote financial stability, by reducing the incentives for inappropriate risk-taking by firms, and thereby to protect consumers. The need to ensure that remuneration policies and practices are consistent with and promote effective risk management therefore remains fundamental. However, from the regulator's experience to date in day-to-day supervision, the policies and practices of a number of firms continue to exhibit weaknesses which are inconsistent with effective risk management.

The code applies to:

- all banks and building societies
- all UK designated investment firms
- UK branches of firms which would otherwise be caught, but whose home state is outside the UK.

If a UK firm falls within the Code's remit, all its branches and subsidiaries, whether within or outside the UK, and whatever their activities, are caught.

The regulators separate firms into three streams:

- High impact groups (broadly, those subject to close and continuous supervision) who are required to prepare a remuneration policy statement ahead of the end of the financial year, have a specific remuneration meeting with the PRA and/or the FCA and may not be able to pay bonuses without agreement.
- Medium high or medium low groups or firms who have to prepare a report which will be inspected as part of the risk assessment review.
- Low impact firms that will only need to prepare a report if they are part of a thematic review. The remuneration of all employees within a firm is caught by the code, and remuneration committees must make sure that the general framework complies with the overall principle on risk.

7.11.1 Dual Firms Remuneration Code (SYSC 19D)

The dual-regulated firms Remuneration Code (SYSC 19D) applies to firms within the scope of UK CRD/CRR, which include banks, building societies and PRA-designated investment firms, including UK branches of third country firms. Firms must also comply with the PRA Remuneration Rules.

For dual-regulated firms, the FCA is responsible for all of the Remuneration Code requirements from a conduct perspective and the PRA from a prudential perspective.

The aim of the dual-regulated firms Remuneration Code is to ensure that firms have risk-focused remuneration policies, which are consistent with and promote effective risk management, and do not expose them to excessive risk. It expands upon the general organisational requirements in SYSC 4.

Historically, the FCA and the PRA had two, parallel sourcebooks containing rules on remuneration. Firms subject to the dual-regulated firms Remuneration Code were required to comply with both sets of rules. The FCA has now simplified its rules for firms subject to the dual-regulated firms Remuneration Code by cross-referring to the PRA Remuneration Rules. All cross-references to the PRA Remuneration Rules are to those rules 'as amended from time to time'. This means that where the PRA's rules change, so do the FCA's.

Firms must establish, implement and maintain remuneration policies, procedures and practices that are consistent with and promote sound and effective risk management.

7.12 AIFM Remuneration Code (SYSC 19B)

Alternative Investment Fund Managers (AIFMs) are required to establish, implement and maintain remuneration policies for code staff that are consistent with and promote sound and effective risk management, and do not encourage risk-taking that is inconsistent with the risk profile of the AIFM, or the alternative investment funds (AIFs) that they manage.

AIFM Remuneration Code staff comprise those staff whose activities have a material impact on the risk profiles of the AIFMs or the AIFs that the AIFM manages. This includes senior management, risk-takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk-takers. Firms should establish and apply the AIFM Remuneration Code in a manner which is appropriate to their size, internal organisation and the nature, scope and complexity of their activities.

- **AIFM Remuneration Principle 1** – Risk Management.
- **AIFM Remuneration Principle 2** – Supporting Business Strategy, Objectives, Values and Interests, and Avoiding Conflicts of Interest.
- **AIFM Remuneration Principle 3** – Governance.
- **AIFM Remuneration Principle 4** – Control Functions.
- **AIFM Remuneration Principle 5(a)** – Remuneration Structures – Assessment of Performance.
- **AIFM Remuneration Principle 5(b)** – Remuneration Structures – Guaranteed Variable Remuneration.
- **AIFM Remuneration Principle 5(c)** – Remuneration Structures – Fixed and Variable Components of Total Remuneration.
- **AIFM Remuneration Principle 5(d)** – Remuneration Structures – Payments Related to Early Termination.
- **AIFM Remuneration Principle 5(e)** – Remuneration Structures – Retained Units, Shares or Other Instruments.
- **AIFM Remuneration Principle 5(f)** – Remuneration Structures Deferral.
- **AIFM Remuneration Principle 5(g)** – Remuneration Structures – Performance Adjustment.
- **AIFM Remuneration Principle 6** – Measurement of Performance.
- **AIFM Remuneration Principle 7** – Pension Policy.
- **AIFM Remuneration Principle 8** – Personal investment strategies.
- **AIFM Remuneration Principle 9** – Avoidance of the Remuneration Code.

AIFMs must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the AIFM Remuneration Code.

7.13 UCITS Remuneration Code (SYSC 19E)

The UCITS provisions include a principle of proportionality based on a similar overarching requirement that fund managers are required to comply with the Remuneration Principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'.

- **UCTIS Remuneration Principle 1** – risk management.
- **UCITS Remuneration Principle 2** – supporting business strategy objectives, values and interests and avoiding conflicts of interests.
- UCITS Remuneration Principle 3 – governance.
- UCITS Remuneration Principle 4 – control functions.
- UCITS Remuneration Principle 5(a) – remuneration structures – assessment of performance.
- UCITS Remuneration Principle 5(b) – remuneration structures – guaranteed variable remuneration.
- UCITS Remuneration Principle 5(c) – remuneration structures – fixed and variable components of total remuneration.
- UCITS Remuneration Principle 5(d) – remuneration structures – payments related to early termination.
- UCITS Remuneration Principle 5(e) – remuneration structures – retained units, shares or other instruments.
- UCITS Remuneration Principle 5(f) – remuneration structures – deferral.
- UCITS Remuneration Principle 5(g) – remuneration structures –- performance adjustment.
- UCITS Remuneration Principle 6 – measurement of performance.
- UCITS Remuneration Principle 7 – pension policy.
- UCITS Remuneration Principle 8 – personal investment strategies.
- UCITS remuneration Principle 9 – avoidance of the remuneration code.

7.14 MiFID Remuneration Incentives (SYSC 19F)

This Remuneration Code is derived from MiFID II and applies to sales staff.

Firms must ensure that they do not remunerate or assess performance of their staff in a way that conflicts with their duty to act in the best interests of its clients. They must not make any arrangement by way of remuneration, such as sales targets, that could provide an incentive to their staff to recommend a particular financial instrument to a retail client when the firm could offer a different financial instrument that would better meet that client's needs.

7.15 MiFID Investment Firms' Remuneration Code (SYSC 19G)

The implementation of the UK MiFID Investment Firms Prudential rules include a remuneration code for MiFID Investment firms. The rules came into effect in 2022.

The regime means all MiFID investment firms are now subject to a single remuneration code. Firms classified as 'SNI' (small and non-interconnected investment firms) must comply with 'basic remuneration requirements', while 'non-SNI' firms with a balance sheet of less than £300 million would not have to apply deferral rules on variable remuneration.

The basic remuneration rules apply to all staff in firms; the additional rules that apply to non-SNI firms are only applicable to material risk takers.

7.15.1 Basic Remuneration Requirements

All firms are required to have a remuneration policy that covers all aspects of the MIFIDPRU Remuneration code. The policy should set out the following:

- How the firm aligns risk and reward – the firm's risk appetite and strategy including environmental, social and governance (ESG) risk factors.
- How the policy is proportionate to the size and complexity of the firm.
- How the policy is gender neutral and in line with the Equality Act 2010.
- The criteria on which variable remuneration is based, making sure there is 'appropriate balance' between the variable and fixed remuneration.

Firms must submit a remuneration report to the FCA; the firm's governing body must approve and periodically review the remuneration policy.

7.15.2 Standard Remuneration Requirements

'Non-SNI' firms are subject to the 'standard remuneration requirements' in addition to the basic requirements. They must apply the standard remuneration requirements to their 'material risk takers' (MRTs) and would not be compelled to apply them to any members of staff, but the firm may nonetheless choose to do so.

7.15.3 Extended Remuneration Requirements

- Establish a remuneration committee as well as a general governance requirement, risk and nomination committees.

7.16 Group Risk Systems and Controls Requirements (SYSC 12)

Firms are required to have adequate and appropriate risk management systems and internal control mechanisms for the purpose of assessing and managing their own group risk, as well as sound administrative and accounting procedures.

Mechanisms that are adequate for the purpose of producing data and information would be relevant for the purpose of monitoring compliance with prudential requirements to which the firm is subject, or would apply to the group.

7.17 Risk Control: Additional Guidance (SYSC 21)

When it is appropriate, due to the nature, scale and complexity of their activities, firms should appoint a chief risk officer and establish a governing body (or equivalent) risk committee.

The chief risk officer would be accountable to the firm's governing body (or equivalent) for oversight of the firm-wide risk and be fully independent of business units. They should have sufficient authority and resources for the execution of their responsibilities, which will mean that there should be no restrictions on access to the business or data, or other information. They should provide oversight and challenge of the firm's systems and controls in respect of risk management and validation of external reporting of risk.

7.18 Senior Managers and Certification Regime – Regulatory References (SYSC 22)

There are no territorial limitations on the requirements for firms to obtain a reference, which means that firms subject to the SM&CR must attempt to obtain a relevant reference where an individual has worked outside the UK.

Firms must:

- obtain references before regulatory approval or certification
- take reasonable steps to collect regulatory references for regulated roles for the past six years
- include breaches of Conduct Rules and, where applicable under the Statements of Principle and Code of Practice for Approved Persons (APER), details of disciplinary action taken
- update references where matters arise that would affect any reference given in the past six years
- make disclosure in the form of the mandatory template provided, even where there is no relevant information to disclose, and
- not enter into any arrangement or agreement that limits a firm's ability to disclose relevant information.

While it is quite straightforward for firms to provide a regulatory reference for most employees, this will not be the case where there has been 'alleged misconduct'. In this situation and where the employee resigns from the firm before the conclusion of the firm's investigation, it is unclear as to what information the firm should include/provide in its regulatory reference to the individual's new employer.

Whether or not information about the investigation ought to be included in a reference is unclear – the FCA guidance is confusing as it suggests that firms are not obliged to provide this level of detail, and doing so may actually suggest guilt on the part of the individual (by implying 'that there is cause for concern about the ex-employee' when 'the firm may not have established that the ex-employee was actually responsible for any misconduct'). However, the FCA also notes that firms may wish to disclose this information in a reference, as they are required to provide 'as complete a picture as possible of an employee's conduct record'.

Therefore, firms will need to be very careful about what they disclose and how they disclose it, given that the FCA requires references to:

- be fair and accurate
- contain all relevant information
- not be misleading
- be supported by documented fact
- provide a complete picture of the individual's conduct record, and
- balance the competing interests of the ex-employee, prospective employer, former employer and regulators properly.

7.19 Senior Managers and Certification Regime: Introduction and Classification (SYSC 23)

The purpose of SYSC 23 is to explain what the SM&CR is and where to find the main FCA Handbook provisions, define which firms the regime applies to, define the different kinds of SM&CR firm; and define which firms are required to carry out criminal record checks before appointing certain board directors.

SYSC 22 to 27 (as noted below) are explained in detail in section 2 of this chapter:

- SYSC 22 – Regulatory References
- SYSC 23 – Introduction and classification
- SYSC 24 – Allocation of prescribed responsibilities
- SYSC 25 – Management responsibilities maps and handover procedures and material
- SYSC 26 – Overall and local responsibility
- SYSC 27 – Certification regime.

SYSC 18 (whistleblowing) is covered in detail in section 8 of chapter 3.

7.20 Operational Resilience (SYSC 15a)

The requirements in SYSC15a apply to UK banks, insurers, building societies, enhanced SM&CR firms and payment/e-money institutions.

It does not apply to UK branches of overseas firms (third country firms), although they can voluntarily apply the requirements.

According to the FCA and PRA, operational resilience is *'the ability of firms, financial market infrastructures and the financial sector as a whole to prevent, adapt and respond to, recover and learn from operational disruption'*. While firms already have obligations to protect their operational resilience, with the FCA's Principle 3 and the PRA's Fundamental Rule 6 requiring a firm to organise and control its affairs responsibly and effectively, recently the regulators have become more concerned with the operational resilience of the sector.

The FCA, PRA and the Bank of England are clear that ensuring the UK financial sector is operationally resilient is important for consumers, firms and financial markets. They regard operational resilience as vital to supporting a firm's financial resilience.

SYSC 15a sets out operational resilience rules, requiring firms to identify important business services, map supporting resources (people, processes, tech), set impact tolerances (max disruption time), and conduct rigorous scenario testing to ensure critical services remain within those tolerances during severe but plausible disruptions, focusing on preventing harm to consumers and the financial system. It emphasises robust governance, end-to-end mapping (including third parties), and effective communication strategies for incidents, ensuring firms can prove their resilience.

The key requirements are noted below:

- **Identify Important Business Services**
    - Firms must determine which services, if disrupted, could cause significant harm to consumers or the stability of the UK financial system.
- **Map Resources**
    - Create detailed, end-to-end maps of all people, processes, information, technology, and facilities supporting each important business service.
- **Set Impact Tolerances**
    - Define the maximum tolerable duration for disruption for each important business service, considering peak demand.
- **Scenario Testing**
    - Regularly test the firm's ability to stay within impact tolerances during severe, plausible disruptions (eg, cyberattacks, major outages).
- **Governance & Oversight**
    - Governing bodies must actively oversee resilience, ensuring plans are realistic, tested, and evidence is available on demand.
- **Communications**
    - Establish strategies for timely internal and external communication during incidents, considering client needs and vulnerabilities.
- **Third-Party Reliance**
    - Firms remain responsible for third-party dependencies and must have robust oversight and contractual arrangements.



8. Threshold Conditions (COND)

Threshold conditions represent the minimum conditions which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part 4A permission. The PRA and/or the FCA will take into account the context of the size, nature, scale and complexity of the business which the firm carries on, or will carry out, if the relevant application is granted.

The COND Sourcebook gives guidance on the threshold conditions set out in or under Schedule 6 of FSMA. Under Section 41(2) of FSMA, in giving or varying a Part 4A permission, or imposing, or varying any requirement, the PRA and/or the FCA must ensure that the firm concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which it has, or will have, permission.

When firms first apply for authorisation, or want to vary their permissions, they will be assessed against the FCA threshold conditions, meaning that the FCA will be able to set standards that applicants should meet, and the FCA can challenge a firm about its business model and strategy. The FCA will only assess FCA-only regulated firms for conduct and prudential issues. It will assess dual-regulated firms for conduct only, and the PRA will assess prudential issues for dual-regulated firms. This is discussed in greater detail in section 8.1.1 of this chapter.

The Financial Services Act 2012 provided the PRA and the FCA with powers to make 'threshold condition codes', which elaborate on the conditions and how these will apply to different classes of firm. The threshold condition and codes seek to reflect the responsibilities and objectives of the PRA and FCA. An example of this is the PRA focusing on the capital and liquidity held by the firms it supervises.

8.1 General and FCA Conditions

- **Location of offices** – the head office and the place where the firm carries out business must be in the UK.
- **Effective supervision** – firms must be capable of being effectively supervised by the FCA and/or the PRA, having regard to the nature, complexity and the way in which the firm operates, and the regulated activities that it carries on, or seeks to carry out.
- **Appropriate resources** – resources must be adequate and appropriate in relation to the business activities carried out, or to be carried out.
- **Suitability** – firms must satisfy the FCA and/or the PRA that it is a fit and proper person, having regard to all the circumstances, including:

    a. its connection with any person

    b. the nature of any regulated activity that it carries out or seeks to carry out

    c. the need to ensure that its affairs are conducted soundly and prudently.

- **Business model** – firms must be able to demonstrate the ability to put forward an appropriate, viable and sustainable business model, given the nature and scale of business that they intend to carry out. In addition, the FCA expects firms to be able to demonstrate adequate contingency planning in their business model application. A firm will need to demonstrate that their business model meets the needs of clients and customers, not placing them at undue risk, or placing at risk the integrity of the wider financial services system, for example, from financial crime. The

FCA will also expect firms to provide clear information, with evidence of how they will meet this threshold condition. The FCA has stated that it will recommend refusal at an early stage if it is not satisfied that a firm meets, or will continue to meet, this minimum expected standard.

8.1.1 FCA Additional Conditions

When firms apply for authorisation, or want to vary their permissions, they will be assessed against the threshold conditions.

The FCA will only assess FCA-only regulated firms for conduct and prudential issues. For dual-regulated firms they will only assess conduct related issues, the PRA is responsible for assessing prudential issues.

The FCA will apply the following principles:

- Align the assessments of new applications to the risk they pose to the FCA's statutory objectives.
- Be open with all potential applicants as they go through the authorisations process, making sure that communication occurs early on so that firms understand what is required of them, and look closely at the proposed business model and the viability of the firm over a medium-term horizon.
- Processes will be structured to support the operational objectives.
- Refuse applications at an earlier stage if it does not think the proposed offering of products or services are in the interests of consumers or, more broadly, if it poses a significant risk to the FCA's objectives.
- Share any risks and underlying themes that are identified with supervision colleagues, so they can monitor and assess them on an ongoing basis once the firm (or individual) is authorised.

8.2 PRA Conditions

The Threshold Conditions (TC) are the minimum requirements that firms must meet at all times in order to be permitted to carry on the regulated activities in

which they engage. Firms will need to meet both the PRA-specific and FCA-specific TCs. The PRA-specific TCs will apply to banks, building societies, credit unions and designated investment firms that are regulated by the PRA for prudential purposes.

Firms will be required to conduct their regulated activity in a prudent manner and hold appropriate financial and non-financial resources.

The table below provides a quick overview of the TCs that are applicable to firms regulated by the FCA and to dual-regulated firms.

Condition	FCA firm (solo-regulated)	Dual-regulated firm	
		'FCA'	'PRA'
Legal status	No	No	Yes
Location of offices	Yes	No	Yes
Prudent conduct	No	No	Yes
Effective supervision	Yes	Yes	Yes
Appropriate resources	Yes	No	No
Appropriate non-financial resources	No	Yes	No
Suitability	Yes	Yes	Yes
Business model	Yes	Yes	No



9. The Fit and Proper Test for Approved Persons (FIT)

This section relates to firms, and individuals, subject to the SM&CR and APER regimes.

Section 59 of FSMA requires persons fulfilling either a controlled function (APER) or a senior management function (SM&CR) to be approved by the FCA as fit and proper.

An individual may only be permitted to perform either a senior management function, or a control function, after they have been granted 'approved person status' by either the FCA and/or the PRA (SM&CR only). They will only grant an application if they are satisfied that the candidate is a fit and proper person to perform the controlled function/senior management function stated in the application form. Responsibility lies with the firm making the application, to satisfy themselves that the individual is fit and proper for the role.

During the application process, the FCA may discuss the assessment of the candidate's fitness and propriety with the firm and may retain notes of such discussions. In making its assessment, the FCA will consider the role/function that is to be fulfilled, the activities of the firm, and the permission which has been granted to the firm. If any information comes to light that suggests that the

individual might not be fit and proper, the FCA and/or the PRA will consider how relevant and important this information is.

In assessing the fitness and propriety of a person, the FCA and/or the PRA will look at a number of factors against a set of criteria, of which the most important will be the person's:

- honesty, integrity and reputation
- competence and capability, and
- financial soundness.

The following criteria are among those which will be considered when assessing an individual's fitness and propriety. Note that they do not, however, constitute a definitive list of the matters which might be relevant.

9.1 Honesty, Integrity and Reputation

The FCA and/or the PRA will have regard to whether a person has been:

- convicted of a criminal offence with particular consideration given to offences of fraud, dishonesty and financial crime
- the subject of an adverse finding or settlement in a civil case, again with particular consideration given to cases involving financial businesses and fraud
- the subject of previous investigation or disciplinary proceedings by the FCA and/or the PRA, or another regulatory authority
- the subject of a justified complaint in relation to regulated activities
- refused a licence to trade, or had a licence, or registration revoked
- involved in an insolvent business
- disqualified as a director
- dismissed from a position of trust, and/or
- able to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.

The FCA, and/or the PRA, will treat each application on its merits, considering the seriousness and circumstances of any matters arising, as well as (in some cases) the length of time which has elapsed since the matter arose.

9.2 Competence and Capability

In assessing an applicant's competence and capability, the FCA will have particular regard to whether the person:

- satisfies the relevant requirements laid down in the FCA's Training and Competence Sourcebook
- has demonstrated the experience and training needed for them to fulfil the controlled function applied for.

The FCA will consider previous convictions, dismissals, or suspensions from employment for drugs, alcohol abuse or other abusive acts, only if they relate to the continuing ability of the person to perform the controlled function for which they are to be employed.

9.3 Financial Soundness

In assessing an applicant's financial soundness, the FCA will have particular regard to whether the person has:

- been subject to any judgement to repay a debt, or pay another award that remains outstanding, or was not satisfied within a reasonable period
- filed for bankruptcy, been adjudged bankrupt, had their assets sequestrated, or made arrangements with their creditors.

The FCA will not normally require a statement of a person's assets and liabilities. The fact that a person may be of limited financial means does not of itself impact their suitability to perform a controlled function/senior management function.

Find out more about The Fit and Proper Test for Approved Persons or FIT...



10. General Provisions (GEN)

The General Provisions Sourcebook covers approval by the FCA, emergencies, status disclosure, the FCA logo, and insurance against fines. Firms must clearly disclose that they are authorised and approved by the FCA in all correspondence that they undertake with clients in respect of designated investment business.

Firms are prohibited from using the FCA logo.



11. Financial Stability and Market Confidence (FINMAR)

The FINMAR Sourcebook includes provision of powers derived from the Financial Services Act 2010, which amended FSMA. It provides the following powers to the FCA to require financial stability information.

- Financial stability information power, ie, to require a person to provide information, or documents relevant to the stability of one or more aspects of the UK financial system (Section 165A).
- Overseas financial stability information power, ie, exercisable at the request of an overseas regulator to require a person to provide information or documents relevant to the stability of one, or more aspects of the financial system in the country, or territory of that regulator (Section 169A).

11.1 Short Selling Regulation (UK SSR)

Overview

The EU Short Selling Regulation (SSR) 236/2012 applies directly to EU member states – to EU shares, sovereign debt, and sovereign credit default swaps (CDSs), that are listed for trading on EU trading venues (including MTFs – multilateral trading facilities). The location of the person entering into a short sale in the

instruments does not matter, so firms in third countries undertaking short selling are covered by the regulation.

Following Brexit UK firms must comply with UK SSR.

Key Elements of the UK SSR

- Transparency requirements for short positions in shares and sovereign debt.
- Restrictions on uncovered short sales in shares, sovereign debt, and sovereign CDSs.
- Central counterparty (CCP) procedures to deal with settlement failure (triggering a 'buy-in' of shares if delivery is delayed by four business days).
- Emergency measures that may be taken in exceptional circumstances by competent authorities and ESMA.

The requirements introduced by the SSR represented a major change from the previous UK disclosure regime that applied just to UK financial sector companies.

Disclosure Requirements

The regulation requires the following disclosures:

- Short positions in equities to be disclosed to the regulator (competent authority) where they reach or fall below thresholds of 0.2% of the issued share capital of the company, or each 0.1% above that. Short positions in equities reaching, or falling below 0.5% of the issued share capital, or each 0.1% above 0.5%, to be disclosed to the market (ie, publicly).
- The amended threshold level came into effect on 5 February 2024.
- Short positions in sovereign (government) debt above thresholds to be disclosed to the regulator. Where the total amount of the outstanding issued sovereign debt is €500 billion or less, the thresholds are 0.1% and then each 0.05% above 0.1%. Where the total amount of the outstanding issued sovereign debt is above €500 billion, or where there is a liquid futures market for the sovereign debt, the thresholds are 0.5% and then each 0.25% above 0.5%.
- Following on from the announcement of the Edinburgh Reforms in December 2022 and the subsequent 'call for evidence' publication by HM Treasury in November 2023, HM Treasury confirmed they will remove the

application to short positions for CDS and sovereign debt under the UK SSR.

Restrictions on Uncovered Short Sales

Uncovered (naked) short selling is the practice of selling a security without having that security or borrowing the security beforehand.

A person may enter into a short sale of a share or of sovereign debt only if the person has:

- pre-borrowed the security, or has made similar arrangements
- entered into an agreement to borrow the security, or has a claim with similar effect
- a third party that adequately ensures that the security will be available for settlement, or
- the market making exemption (which provides the firm with the requirement for disclosing and pre- borrowing or covering the short sale).

Uncovered short positions in sovereign CDSs are not permitted.

Possible Measures Covering Exceptional Circumstances

The FCA can, when necessary, and within certain restrictions, impose transparency requirements and restrictions on short selling in exceptional circumstances where there is a serious threat to the UK's financial stability or market confidence.

They also have the power to temporarily restrict short selling of financial instruments when there is a significant price fall of the underlying company during the day.

Regulatory Update

The HM Treasury statutory instrument, '*The Short Selling Regulations 2025*', was made and published in January 2025. They published a consultation paper, with draft rules and a draft statement of policy on the use of its emergency intervention powers, in October 2025.

The FCA proposals are based on feedback from the HM Treasury's Short Selling Regulation: Call for Evidence, concluded that it was not necessary to fundamentally change the current regime, although it should be modified to

alleviate disproportionate burdens on firms that may inhibit or discourage short selling and its associated benefits.

Therefore, the FCA proposals are intended to create a more efficient, effective, and coherent short selling regime. This seeks to maintain the orderly and effective functioning of UK markets, while removing disproportionate costs. This supports the FCA's market integrity objective, bolsters the competitiveness of UK financial markets, and contributes to the UK's wider economic growth while providing appropriate safeguards.

The FCA will create a new Short Selling Sourcebook, within the FCA Handbook, that contains rules and guidance for short selling activity. This will largely replicate requirements under the existing regime, alongside related European (EU) guidance, with specific modifications to rebalance the risks and reduce disproportionate regulatory burdens.

The outcomes that the FCA is seeking are:

- Maintain the orderly and effective functioning of the UK market.
- Reduce unnecessary and disproportionate costs and burdens which may inhibit or discourage short selling activity.
- Provide the market with a clear understanding of our approach to using the emergency powers.
- Maintain sufficient visibility and controls over short selling activity.

The FCA's proposed changes will affect the following areas:

- **Position reporting**
    - Extend the deadline by which persons are required to notify a change in their net short positions (NSP).
    - Provide additional guidance on the calculation of NSPs to detail how persons can determine a company's issued share capital and when they need to calculate the NSP.
    - Clarify the approach to reporting within groups.
- **Covering**

- A minor change to ensure that records demonstrating appropriate covering agreements and arrangements are held, by persons short selling, for a minimum of five years.

- **The reportable shares list**

  - Expand the criteria used to determine which shares should be subject to reporting and covering requirements, reducing the number of shares on the 'reportable shared list'.
  - Change the date on which the FCA update the list every two years, from 1 January to 1 April.

    - This will align with the publication of the EU's list under the EU Short Selling Regulation (EU SSR), and
    - provide a window for it to review and determine the shares on the RSL following the end of the calculation period on 31 December.

- **Market maker exemptions**

  - Simplify the notification process and reduce the period of time, prior to using the exemption, that market makers are required to submit notifications.

    - To enable market makers to utilise exemptions more quickly and easily to support their activities.

- **Public disclosure**

  - The FCA will provide new guidance detailing how it calculate, publish, update, and correct the list of aggregate net short positions that it disclose.

- **Waivers**

  - The FCX will provide provisions enabling persons to apply for a waiver from the position reporting requirements in exceptional circumstances, such as a systems outage that would prevent them from meeting their position reporting requirements.

In October 2025 the FCA published a consultation paper on changes to the UK SSR. The consultation closed for comments on 16 December 2025, it will implement the changes in a phased approach as noted below:

Phase 1

- April 2026
    - Policy statement, with final rules
    - Statement of policy
    - Draft reportable shares list
- June 2026
    - Main commencement day
    - Updated reportable shares list
    - Aggregated net short positions disclosure
    - Reporting rules
    - New rules/firm of market maker exemption

Phase 2

- December 2026
    - Bulk upload feature to submit multiple net short position notifications
    - New system for market maker notifications
- 1 June 2027
    - End of transitional period for market maker exemptions

The below is a summary of the proposed changes:

- **Position reporting**
    - Reporting deadlines for NSP (net short position) changes will be extended to 23:59 T+1, and guidance will clarify how to calculate positions and issued share capital.
        - *no changes were made in the FCA's Policy Statement published in April 2026*

- FCA plans to clarify that the list of financial instruments, as noted in Annex 1 of the rules, is exhaustive for both long and short positions and remove ambiguity.
    - *no changes were made in the FCA's Policy Statement published in April 2026*

- **Covering**
    - Records demonstrating appropriate covering agreements (ie, agreements which show that the short seller has borrowed, or can borrow, shares to settle the short sale) must now be kept for a minimum of five years.
        - *no changes were made in the FCA's Policy Statement published in April 2026*

- **The reportable shares list**
    - A new reportable shares list (RSL) will replace the current exempt list, to clarify which shares are subject to reporting and covering obligations.
        - *broadly implemented as consulted on, with minor changes noted in the FCA's Policy Statement published in April 2026*
    - The RSL will use broader criteria and be updated every two years, from 1 January to 1 April, with monthly adjustments.
        - *no changes were made in the FCA's Policy Statement published in April 2026*

- **Market maker exemptions**
    - The market maker exemptions process will be simplified, by reducing notification requirements and shortening lead time, allowing firms to access the exemption more quickly.
        - *no changes were made in the FCA's Policy Statement published in April 2026*

- Market makers will need to submit new notifications in order to continue to make use of the exemption.
    - *In its Policy statement published in April 2026, the FCA noted that make some changes to their operational arrangements – they removed the requirement for market makers to submit notifications to add financial instruments to their existing exemption.*
    - *Rather market makers will be required to submit a single 'activity based' notification which will provide an exemption for all the financial instruments in which they are market making.*
    - *Market makers will also be required to submit an annual attestation to demonstrate their compliance with the conditions of use of the exemption.*
- **Withdrawal of exemptions**
    - FCA will expand the circumstances where a firm must withdraw an exemption.
        - broadly implemented as consulted on, with minor changes noted in the FCA's Policy Statement published in April 2026
    - firms must notify the FCA not only when eligibility changes or they no longer wish to use an exemption, but also when they themselves determine they no longer meet the exemption conditions.
        - this point was removed on the basis of the revised market maker requirements (noted above)
- **Public disclosure**
    - UK SSR replaces the current model which requires public disclosure of individual NSPs reaching or exceeding 0.5% of a company's issued share capital as well as disclosure of any changes to NSPs above that threshold.
        - no changes were made in the FCA's Policy Statement published in April 2026

    - The new model requires the combination of all individual NSPs above 0.2% as a single anonymised NSP (ANSP).
    - FCA will provide guidance on how the ANSP will be calculated and the timing, content and format of the disclosure.
        - no changes were made in the FCA's Policy Statement published in April 2026

- **Waiver provisions**
    - FCA will allow firms to request a waiver from position reporting requirements in exceptional cases, such as when a systems outage prevents timely compliance.
        - no changes were made in the FCA's Policy Statement published in April 2026

- **Emergency powers**
    - FCA will maintain its current approach to emergency powers but clarify when and how they may be used.
        - *no changes were made in the FCA's Policy Statement published in April 2026*

In April 2026 the FCA published its Policy Statement, together with final rules.

With regards to the timelines contained in their consultation paper, the new time frame is as set out below.

Phase 1will come into effect on 13 July 2026

- implementation of the short selling rules and Statement of Policy
- the reportable shares list
    - replaces the 'exempted shares list'.
- **Aggregate Net short Position (ANSP)**
    - the FCA will no longer disclose net short positions, rather they will disclose anonymised ANSPs by company.

- **Position reporting**
    - the reporting deadline will move from 3.30pm to 11.59pm on the working day following when a reporting obligation is triggered.
- The removal of UK sovereign debt and UK sovereign CDS comes into effect
    - although the FCA's emergency powers still cover these asset classes.

Phase two will come into effect on 30 November 2026

- position reporting 'bulk submission'.

On 29 January 2027 the market maker 'exemption' will expire unless the firm has re-notified the FCA.

Market makers will be required to undertake an annual attestation on 1 June 2027, and then annually afterwards.

In terms of what the FCA took forward, the proposals noted above have been marked-up to identify where the FCA decided to adopt different requirements.



12. Training and Competence (TC)

Principle 3 (Management and Control) requires firms to take reasonable care to organise and control their affairs responsibly and effectively. To comply with this requirement, firms must ensure that any employee involved in a regulated activity achieves and maintains the competence needed for that particular role.

The principles are built on further in the section of the FCA Handbook that deals with senior management arrangements, systems and controls (SYSC). This incorporates a high-level competence requirement which applies to all UK-authorised firms (including wholesale firms).

This high-level approach is further supplemented, for firms carrying on activities with or for retail customers only and in some limited cases for customers and consumers, by the Training and Competence (TC) Sourcebook. The TC Sourcebook is more focused on the outcomes achieved by firms through their internal training and competence arrangements.

The TC Sourcebook states that firms must not allow their employees to carry on/undertake a specified activity (other than an overseeing activity) for which there is a qualification requirement without their first having passed the relevant regulatory module of an appropriate qualification. Specifically, firms must not allow their employees to do any of the following without first passing each module of an appropriate qualification:

- certain advising and dealing activities
- acting as a broker fund adviser
- advising on syndicate participation at Lloyd's, and/or
- acting as a pension transfer specialist.

12.1 Exemptions from the Requirements

If a firm is satisfied that an employee meets certain conditions, then the requirement to have passed each module of an appropriate qualification only applies if they are carrying on one of the following activities:

- advising retail clients on investments which are packaged products
- acting as a broker fund adviser
- advising on syndicate participation at Lloyd's, and
- acting as a pension transfer specialist.

The conditions are that the firm must be satisfied that the employee:

- has at least three years' up-to-date relevant experience in the activity, which they gained while employed outside the UK
- has not previously been required to comply fully with the relevant examination requirements, and
- has passed the relevant module of an appropriate examination.

12.2 Selecting an Appropriate Examination

Firms are required to select an appropriate qualification from the list of qualifications maintained by the FCA (TC App 4 – 'appropriate qualification tables'). If they do so, this will tend to demonstrate compliance with the qualification requirements.

Source of Information: (https://www.handbook.fca.org.uk/handbook/TC/App/4/?view=chapter)

12.3 Training Needs

The T&C Sourcebook states that firms must assess their employees' training needs at the outset, and again at regular intervals (including if their role changes). They should also review the quality and effectiveness of their training.

12.4 Maintaining Competence

Firms are also required to review their employees' competence regularly – and to take appropriate action, when needed, to ensure that they remain competent for their role. In doing so, they should take account of:

- the individual's technical knowledge and its application
- their skills and expertise
- changes in the market, products, and regulation.

12.5 Activities to which the T&C Rules Apply

Designated investment business carried out for a retail client:

- advising
- dealing
- managing, and
- overseeing on a day-to-day basis.

Regulated mortgage activity and reversion activity carried on for a customer:

- advising
- designing scripted questions for non-advised sales, and
- overseeing non-advised sales on a day-to-day basis.

Non-investment insurance business carried on for a consumer:

- advising.

12.6 Statements of Professional Standing (SPS)

As part of the adviser charging rules, retail investment advisers must be in possession of a valid SPS from an FCA-accredited body (such as the CISI).

SPSs confirm that an adviser has:

- completed a Qualification and Credit Framework (QCF) Level 4 qualification, that appears on the list of approved qualifications in the FCA Handbook
- completed an annual programme of 35 hours of continuing professional development (CPD) that meets the requirements laid out by the FCA
- acted in accordance with the FCA's APER or SM&CR requirements, and
- agreed to adhere to a code of ethics.

The FCA have noted that advisers must complete a minimum of 35 hours of relevant CPD each year, with at least 21 hours of this being structured learning.

The FCA published qualifications tables (TC App 4) contains the appropriate qualifications that should be attained by employees in order to carry out certain activities for retail clients. These activities are set out in Appendix 1.1.1R of the Training and Competence (TC) Sourcebook.

The qualification requirements apply to individuals carrying out one or more of the following regulated activities:

- advising on (but not dealing in) securities (which are not stakeholder pension schemes or broker funds)
- advising on (but not dealing in) derivatives
- advising on packaged products (which are not broker funds)
- advising on friendly society tax-exempt policies
- advising on, and dealing in securities (which are not stakeholder pension schemes or broker funds), and/or
- advising on and dealing with or for clients in derivatives.

Advisers will need to hold an SPS as evidence that they are meeting the standards. The SPS is valid for 12 months.

The SPS contains:

- the adviser's name
- the name and contact details of the accredited body and a named signatory
- the end date of verification (maximum of 12 months from date of verification)
- confirmation that the adviser's qualification(s) have been verified.
- confirmation that the adviser has signed an annual declaration that states that they:
    - have kept their knowledge up to date, and
    - adhere to standards of ethical behaviour
- the adviser's individual reference number as it appears on the FCA Register, and
- a recommendation that the reader should check that the adviser is on the FCA Register, and how to do so.



13. Business Standards: Introduction

The business standards section of the FCA Handbook contains the detailed requirements relating to firms' day-to-day business. It contains the following Sourcebooks:

- **COBS** – **Conduct of Business Sourcebook** – the conduct of business requirements applying to firms.
- **ICOBS, MCOB, BCOBS, CMCOB, FPCOB and PDCOB** – the requirements applying to insurance firms, firms with mortgage business customers, banking firms, funeral plan providers, claims management companies and pension dashboard activity.
- **MAR** – **Market Conduct**.
- **CASS** – **Client Assets** – the requirements relating to holding client assets and client money.
- **PROD** – Product Intervention and Product Governance.
- **ESG** – **Environmental, Social and Governance**.

The following sections cover the most important of these business standards (COBS and CASS), and the **Disclosure and Transparency Rules (DTR)**, which is part of the '*Listing, Prospectus and Disclosure*' section of the Handbook.



14. Conduct of Business Sourcebook (COBS), including Product Intervention and Product Governance (PROD)

14.1 Application (COBS 1)

Following Brexit, a body of law was created in the UK which is based on EU law, that applied to the UK prior to the ascension of the European Union (Withdrawal) Act 2018.

'UK MiFID' means 'UK MiFIR' (Markets in Financial Instrument Regulation) together with the Markets in Financial Instruments Directive 2014/65/EU, ('MiFID II') as implemented in the UK by the FCA into its handbook.

Therefore, any reference to 'MiFID' means UK MiFID and UK MiFIR.

The FCA Handbook only applies to UK regulated firms and third country firms undertaking regulated investment business in the UK – ie, carrying out designated investment business in the UK while being regulated.

The Conduct of Business Sourcebook (COBS) is contained within the 'Business Standards' section of the FCA Handbook.

The aim of 'COBS' is to move the regulatory approach towards a better focus on outcomes rather than compliance with detailed and prescriptive rules. It also implements the provisions of the Markets in Financial Instruments Directive (MiFID) and the revised Markets in Financial Instruments Directive II (MiFID II).

The general application rule states that firms are subject to the COBS Sourcebook if they carry on any of a range of activities (designated investment business) from an establishment maintained by them, or their appointed representative, in the UK.

The activities that are covered are:

- designated investment business
- long-term insurance business in relation to life policies, and

- activities relating to the above.

14.1.1 Eligible Counterparties

Certain of the COBS rules are disapplied for specific types of activity.

For example, a range of COBS rules are disapplied, in certain cases, for firms carrying on **eligible counterparty (ECP)** business. These include: (details on the counterparties and activities are covered in section 14.3 of this chapter)

- parts of COBS 2 – the conduct of business obligations (such as inducements, agent as client and reliance on others)
- much of COBS 4 – communicating with clients (fair, clear and not misleading) – including financial promotions, direct offer promotions and information disclosure requirements before providing services
- COBS 8 – information on costs and charges, compensation information and client agreements
- COBS 10 – appropriateness requirements (non-advised services)
- parts of COBS 11 – **best execution**, client order handling
- parts of COBS 12 – the labelling of non-independent research, and
- COBS 16 – reporting information to clients.

As explained above, COBS applies to a firm carrying on the following activities from an establishment maintained by it in the UK, or from an establishment maintained by its appointed representative in the UK. This is called the general application and it is modified depending on the firm's location and activities. For example:

- The rules in COBS that derive from MiFID apply to UK MiFID firms carrying on MiFID business from a UK establishment.
    - Following Brexit, this includes EEA firms operating from a branch in the UK.
- The rules in COBS that derive from MiFID apply to a non-UK MiFID investment firm (ie, a third country firm operating a branch).

14.2 Conduct of Business Obligations (COBS 2)

14.2.1 Acting Honestly, Fairly and Professionally – 'The Client's Best Interest Rule'

A firm must act honestly, fairly and professionally in accordance with the best interests of its client, at all times when undertaking designated investment business for a retail client, and in relation to MiFID, or equivalent third country business for any other client (ie, professional clients and ECPs).

For a management company, this rule applies in relation to any UCITS scheme or UCITS scheme, the firm manages.

14.2.2 Fair Treatment of Customers (FTOC)

The requirements for firms subject to the Consumer Duty were discussed in section 6 of this chapter (Principles for Businesses).

The FTOC initiative applies to the provision of services or products to consumers and professional clients who are not subject to the Consumer Duty.

A general theme of overriding fair play runs through the Principles for Businesses. This is coupled with a recognition that there is often an information imbalance between the firm and its customers (since the firm is usually more expert in its products and services than its customers).

Fair treatment has always been one of the regulator's Principles for Businesses. It is embedded in Principle 6 (Customers Interests), and the FTOC initiative is really no more than a clearer way of focusing firms' attention on what really matters.

The regulator has identified six consumer outcomes to explain to firms what 'fair treatment of customers' should look like:

1. Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
2. Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
3. Consumers are provided with clear information and are kept appropriately informed before, during, and after the point-of-sale.
4. When consumers receive advice, the advice is suitable and takes into account their circumstances.
5. Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.
6. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim, or make a complaint.

Firms must have appropriate management information arrangements in place to enable them to monitor their own performance, and be able to demonstrate and show that they are (have been) treating their customers fairly at all stages of their relationship.

These efforts are underpinned in MiFID, where a general obligation that:

> *'…all firms act honestly, fairly and professionally, and in accordance with the best interests of the clients'.*

The MiFID requirements are implemented through its inclusion in the COBS sourcebook. It may not appear to differ markedly from the overall impact of the FCA's Principles, and indeed, if firms comply

with all the Principles, they should not, in general, have much difficulty in complying with COBS. However, there are some differences in specific areas.

14.2.3 Requirement for Fair Agreements

The requirement for a 'client agreement' applies to designated investment business carried on for retail and professional clients in relation to MiFID, or equivalent third country business. It also applies to ancillary services, to MiFID business or equivalent third country business.

It does not apply to insurance firms issuing life policies in a principal capacity.

Firms must, in good time, before a retail client is bound by any agreement relating to designated investment business, or ancillary services, or before the provision of those services, whichever is earlier, provide that client with:

- the terms of any such agreement, and
- the information about the firm and its services relating to that agreement, or those services required by COBS 6 (information about a firm and its services), including authorised communications, conflicts of interest and the firm's authorised status.

Firms must provide the agreement and information in a durable medium, or via a website, where the website conditions are satisfied.

A firm may provide the agreement and the information immediately after the client is bound by any such agreement only in the following circumstances:

- The firm was unable to comply with the requirement to provide the agreement in good time prior to the carrying out of investment business for the client, due to the agreement concluding using a means of distance communication which prevented the firm from doing so.
- If the rule on voice telephone communications (COBS 5.1.12 – voice telephone communications) does not otherwise apply, the firm complies with that rule in relation to a service that the firm is providing to that client.

A firm must establish a record that includes the agreement between itself and a client which sets out the rights and obligations of the parties, and the other terms on which it will provide services to the client.

The records must be maintained for at least the longer of:

- five years
- the duration of the relationship with the client, or
- in the case of a record relating to a pension transfer, pension opt-outs or additional voluntary contributions to a private pension, or pension contract from an occupational pension scheme, indefinitely.

Firms must consider other COBS rules (such as fair, clear and not misleading, disclosure of information and distance communications) when considering their approach to client agreements.

14.2.4 Unfair Contract Terms Legislation

The FCA's 'Unfair Contract Terms and Consumer Notices Regulatory Guide' provides a guide on how the FCA will use its powers under the Consumer Rights Act (CRA) 2015.

In conjunction with the Competition and Markets Authority (CMA), the FCA will consider the fairness of financial services contracts and consumer notices that are specific in a memorandum of understanding between the FCA and the CMA.

This means that the FCA will consider the fairness contract terms and consumer notices issued by authorised firms or appointed representatives.

Under the CRA a contract term or notice is considered unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.

The FCA may consider the fairness of a term or notice within the meaning of the CRA if it receives a complaint from a consumer. The FCA will consider and review the contracts and where necessary it could challenge the firm's use of that term or notice.

There are different ways that the FCA can deal with unfair terms or notices, especially where a firm has breached a principle, rule or a breach of the financial promotion rules. This means that the FCA can take action under FSMA and not the CRA.

The FCA does not have the powers to grant redress to consumers who have suffered a loss because of an unfair term or notice. However, where the use of an unfair term amounts to a breach of an FCA rule, the FCA can apply to court for restitution or require restitution.

14.2.5 Inducements

MiFID requires investment firms to take all appropriate steps to identify, prevent or manage conflicts of interest that arise in the course of providing any investment and ancillary services.

An investment firm must not pay/provide to or accept/receive from any party other than its client, or a party acting on behalf of its client, any fee, commission or non-monetary benefit in connection with the provision of any investment or ancillary service.

This prohibition does not apply to any fee, commission or non-monetary benefit that:

- is designed to enhance the quality of the relevant service to the client and does not impair compliance with a firm's duty to act honestly, fairly and professionally in the best interests of the client, or
- enables, or is necessary for, the provision of an investment service by the firm, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature,

cannot give rise to conflicts with the firm's duty to act honestly, fairly and professionally in the best interests of the client.

This prohibition also does not apply to any non-monetary benefit that can be categorised as a 'minor non-monetary benefit'.

Therefore, the inducements rules should be seen as a 'payment rule', as it prohibits any payment, unless expressly permitted. The rules on inducements apply to firms carrying on designated investment business which is MiFID business, as well as non-MiFID business. The rules only apply to professional clients and retail clients, therefore investment firms undertaking eligible counterparty business will not be subject to the detailed inducement provisions.

These requirements also cover where a firm provides independent advice, restricted advice or portfolio management services to a retail client, although minor non-monetary benefits are permitted to be received.

Firms providing independent advice or portfolio management services to retail clients located outside the UK or to professional clients are prohibited from receiving any fees, commissions or monetary benefits (other than designated minor non-monetary benefits), and where they do receive these from third parties they must be returned and the client must be advised.

A minor non-monetary benefit is one which:

- is clearly disclosed prior to the provision of the relevant service to the client
- is capable of enhancing the quality of service provided to the client
- is of a scale and nature that it could not be judged to impair the firm's compliance with its duty to act honestly, fairly and professionally in the best interests of the client
- is reasonable, proportionate and of a scale that is unlikely to influence the firm's behaviour in any way that is detrimental to the interests of the relevant client, and
- consists of:
    - information or documentation relating to a financial instrument or an investment service, that is generic in nature or personalised to reflect the circumstances of an individual client
    - written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company
    - participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service
    - hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other relevant training event.

Firms must keep full records of such payments/benefits made to other firms, for all MiFID business.

For non-MiFID firms or business, the MiFID inducements provisions were fully implemented. Therefore, relation to third-party payments, firms only have to comply with the 'does not impair compliance' test; the other two tests (disclosure and enhancement) do not apply. Retail non-MiFID

business regarding the sale of packaged products is subject to the disclosure requirements of the inducement provisions.

The extension of the provisions does not, however, mean that firms are expected to disclose details of reasonable non-monetary benefits for non-MiFID business.

Source of information: FCA Handbook (COBS 2.3 and 2.3A)

Inducements and Research

MiFID II brought in new rules around how firms consume and pay for research. This meant that the FCA had to delete its previous rules ('use of dealing commission').

Under MiFID II any UK-regulated firm which provides independent advice, restricted advice or portfolio management services to retail clients is prohibited from receiving research for free, rather they must pay for the research.

There are two options open for the payment of research, the firm can either pay it directly from its own resources, or via payment from a research payment account (RPA) controlled by the firm funded by a specific charge to their underlying clients.

However, these provisions do not apply to non-UK-regulated bodies that produce research and non-UK-regulated firms that consume research. Firms' communications shall be deemed to be 'research' if it comprises research material or services:

- relates to one or several financial instruments or other assets
- relates to the issuers or potential issuers of financial instruments, or
- is closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that sector, and
- which explicitly or implicitly recommends or suggests an investment strategy and provides a substantiated opinion as to the present or future value or price of such instruments or assets, or otherwise contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to a firm's decisions on behalf of their clients.

More importantly, research providers must implement appropriate controls to ensure that they do not provide unsolicited research free of charge, especially to an entity that has to pay for the receipt of research.

On implementing the MiFID II text into its handbook, the FCA developed an approach that went beyond the requirements in the Directive (a term commonly referred to as 'gold-plating'). It provided an exemption for alternative investment funds (AIFs) and collective investment schemes (CISs) whose core investment policy does not generally involve investing in MiFID financial instruments. This means that private equity business and funds investing in/acquiring companies or property (real estate) would not be captured by the prohibition on research.

The prohibitions on the receipt of research unless it is paid for does not apply to certain entities (such as corporate companies, central banks, and banks) and non-UK and EEA regulated bodies that produce research and non-UK and EEA regulated firms that consume research.

In 2021 the FCA consulted on making amendments to MiFID provision of research provisions – this was part of the UK's 'MiFID quick-fix'. Following the publication of a policy statement in November 2021, the following came into effect in 2022:

- Equity research on small and mid-cap listed or unlisted companies (SMEs) who have a market capitalisation below £200 million are exempt from the inducement rules:
    - this means that research on firms below this threshold could be provided by brokers to asset managers on a bundled basis (where asset managers make a single commission payment to brokers covering execution and research) or for free and would not constitute an inducement under our rules.
- Third-party research on fixed income currencies and commodities (FICC) instruments is exempt from the inducement rules allowing it to be provided on a bundled basis and would not constitute an inducement:
    - the final rules relate to research on FICC financial instruments as a product
    - the FCA noted the rational for not including 'macro-economic' research is because it can often explicitly or implicitly suggest an investment strategy, as well as including other elements of types of research (ie, equities) that are not easily disentangled.
- 'Independent' research providers are exempt from the inducement rules where they do not provide execution services and are not part of a group that includes a firm offering execution services.
- 'Openly' available written research is not within the scope of the inducement rules:
    - provided that it is freely available on the internet without any barriers to obtain/download the material.

How Should an Investment Firm Deal with Unrequested Research that is provided Free of Charge?
Firms must have in place policies and systems to assess the nature of any service, benefit or material paid or provided by any third party to determine whether they can provide or accept it.

Firms Should not Accept Research for 'Free'
Where a firm does not want to accept research material (ie, they cannot receive it without having to pay for it), they must take reasonable steps to stop receiving it or avoid benefitting from its content, for example by automatically blocking or filtering certain senders/materials where practicable, and/or requesting the provider of the research material to stop providing research.

Macroeconomic 'Research'
Macroeconomic research is a relatively broad term.

A recital in MiFID II provides an expansive interpretation of the term, noting that it is:

> *'value-added analysis that can inform investment decisions across a variety of financial instruments and asset classes'.*

In particular, the following two conditions need to be met:

1. The material concerns one or several financial instruments or other assets, or current or potential issuers of financial instruments, or closely related to a specific sector or market such that it informs views on financial instruments, assets or issuers within that sector or market.
2. The material or service explicitly or implicitly recommends or suggests an investment strategy and provides an opinion as to the present or future value or price of such instruments or assets, or contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

The general view in the industry is that most macroeconomic analysis is likely to, explicitly or implicitly, suggest an investment strategy (eg, by providing views on inflation expectations, economic growth, the interest rate curve or currencies for certain countries or regions).

If macroeconomic analysis is classified as research, it has the advantage that such research material is then capable of being received (and paid for) by investment firms, including (independent) investment advisers and portfolio managers.

If macroeconomic analysis is not considered as research (ie, because it is vague/general by nature – it does not make reference to a specific financial instrument), it does not automatically classify as a minor non-monetary benefit. Rather, portfolio managers and independent advisors would need to make a commercial decision whether to pay for it from their own resources or stop receiving such benefits or services.

One exception would be where a provider makes its macroeconomic-related research openly available to all investment firms and the general public on a website. Material made available in this way could be justified as a minor non-monetary benefit – representing information relating to a financial instrument or investment service that is 'generic in nature' (as defined in under Article 12(3)(a) of the MiFID II Delegated Directive).

The industry view is that 'openly available' research in this context would mean that there are no conditions or barriers to accessing it, for example having to log-in or sign-up, or the submission of user information, in order to access the material.

In other words, an individual would be able to read or download the research on a website without having an online account, to log in to an account or sign up to a subscription service.

In its Policy Statement published in December 2021, the FCA noted that the ESMA Q&A (Question 8 in Part 7 of the Q&A on MiFID II and MiFIR Investor Protection and Intermediaries) provides a definition of when research material is considered openly available.

However, it states that there may be limited circumstances where openly available is subject to conditions on access that are necessary to comply with relevant regulatory requirements – in these circumstances a firm would be required to demonstrate what steps it took to meet the rules and how such measures are proportionate.

Research Payment Account (RPA)

The RPA must be funded by a specific research charge to clients, agreed with clients, developed by the firm as its research budget for the purpose of establishing the amount needed for third-party research in respect of investment services provided to its clients.

Firms must set and regularly assess the research budget, as a way of establishing an RPA and agreeing the research charge with their clients.

Firms are responsible for the RPA and must regularly assess the quality of the research purchased, based on robust criteria – including the contribution to better investment decisions for their clients, who pay the research charge.

Firms must provide clients with the following information in respect of an RPA:

- Information about the budgeted amount for research and the amount of the estimated research charge for each client.
- Annual information on the total costs that each client has incurred for third-party research.

Firms must ensure that the research budget and the RPA are not used to fund in-house research.

The RPA must only be used to pay for research, and not goods and/or services that do not fall into the definition of research. The following is a non-exhaustive list of goods and services that the FCA does not regard as research:

- post-trade analytics
- price feeds or historical price data that have not been analysed or manipulated in order to present the firm with meaningful conclusions
- seminar fees
- corporate access services
- order and execution management services, and
- administration of an RPA.

There has been much debate over the use of RPA and fund managers charging clients for research. A large number of fund managers took the decision to pay for research themselves, taking steps to reduce the amount of research that they receive (and pay for) and focus on relevant and appropriate research which will add value to their investment decision making. This also means that research received can be used to benefit all clients of the firm. The operational administration, and burden, of an RPA process within firms was cited as a barrier to taking this approach.

FCA Review of Research Unbundling Reforms

In 2019, the FCA published its findings following a review of the research unbundling requirements that came into effect with MiFID II. It undertook a survey of 40 buy-side firms and visited ten firms from both the buy-side and sell-side. It also met with independent research providers.

The FCA's review identified a number of changes in the asset management and research market since the implementation of MiFID II which indicated the new rules had some impact. However, it was noted that research valuation and pricing were still evolving.

Overall, they found:

- Most asset managers choose to absorb research costs themselves.
- Most asset managers were still able to access the research they need.
- There was no evidence of a material reduction in research coverage, including for listed small- and medium-enterprises (SMEs).
- Asset managers' research valuation models have different levels of sophistication, particularly in evaluating the quality of research.
- There is a wide range of sell-side research pricing levels, which can be attributed to an ongoing process of price discovery in the industry.
- Some firms were uncertain in how the new rules apply, such as when attending trade association events, marketing research services or making contributions to consensus forecasts.

It is not unknown for research providers to charge a standard fee to access their written research. There were a variety of models identified, with some using tiered service pricing levels, others offering 'pay as you go', while others price per type of interaction or product consumed.

The review identified that some sell-side research providers were reluctant to offer a price to buy-side firms, preferring the buyers of the research (asset managers) to value and set the price for the research that they purchase.

Payment Optionality

Following on from the Independent Research Review, commissioned by the government following the announcement of the 'Edinburgh Reforms' (refer to chapter 5), in April 2024, the FCA published a Consultation Paper proposing changes to the existing rules governing how payments for investment research are made.

Following publication by the FCA of its Policy Statement and final rules, from August 2024 in scope UK buyside firms (including fund managers and asset managers) have been provided with greater flexibility on how they can purchase investment research. They are permitted to bundle payments for third-party research and execution services, provided that they meet relevant requirements around the execution and research costs.

However, this new option is only relevant to where commission can be split between 'execution' and 'research' costs, meaning just shares and not non-equity financial instruments (such as fixed income, currencies and commodities).

14.2.6 Agent as Client and Reliance on Others

Agent as Client

If a firm is aware that a person (C1), with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the client of the firm in respect of that business.

Reliance on Others

If a firm carrying on UK MiFID business receives an instruction to provide investment, or ancillary services for a client through another firm, and that other firm is a UK MiFID firm, and subject to equivalent regulations, then the firm can rely on:

- information relayed about the client to it by the third-party firm, and
- recommendations that have been provided by the third-party firm.

If a firm relies on information provided by a third party, this information should be given in writing. In additional guidance, the FCA states that it will generally be reasonable for a firm to rely on information provided to it in writing by an unconnected authorised person, or a professional firm, unless it is aware, or ought reasonably to be aware, of anything that would give it reasonable grounds to question the accuracy of that information.

Any information that a rule in COBS or CASS requires to be sent to a client may be sent to another person on the instruction of the client, so long as the recipient is not connected to the firm.

14.3 Client Categorisation (COBS 3)

A firm is required to categorise its clients if it is carrying on designated investment business. MiFID lays down rules as to how client categorisation has to be carried out for UK MiFID business. For non-UK MiFID business, the FCA uses the same client categorisation terminology, but the rules on how the categories must be applied are slightly modified in some cases.

When a firm provides a mix of UK MiFID and non-UK MiFID services, it must categorise clients in accordance with the UK MiFID requirements, unless the MiFID business is conducted separately from the non-UK MiFID business. So, for example, if a firm were to advise a client on the relative merits of investing in a collective investment scheme (CIS), advice which would fall within the scope of UK MiFID, and also on a life policy (which would not), it should use the UK MiFID client categorisation.

14.3.1 The Definition of a Client

COBS defines a client as someone to whom a firm provides, intends to provide, or has provided a service in the course of carrying on a regulated activity and, in the case of MiFID, or equivalent third-country business, anything which is an ancillary service. The term includes potential clients. In addition, in relation to the financial promotions' rules, it includes a person to whom a financial promotion is communicated, or is likely to be communicated.

Clients of a firm's appointed representative, or tied agent are regarded as clients of the firm.

14.3.2 The Client Categories

Under COBS, clients may be categorised as:

- retail client

- professional client, or
- eligible counterparty.

The importance of the categorisation is that it determines what regulatory protections the client will be given, because certain of the rules are applied only to particular categories of client. Retail clients get the most regulatory protection and eligible counterparties get the least.

A retail client is any client who is not a professional client or an eligible counterparty. Note: the term 'customer' means retail clients and professional clients.

Professional clients may be either elective professional clients, or per se professional clients. An elective professional client is one who has chosen, and meets certain criteria, to be treated as such.

Per se professional clients are, generally, those which fall into any of the following categories, unless they are an eligible counterparty, or are categorised differently under other specific provisions:

- An entity required to be authorised or regulated to operate in the financial markets. This includes:
    - a credit institution
    - an investment firm
    - any other authorised, or regulated financial institution
- an insurance company
- a CIS or the management company of such a scheme
- a pension fund, or the management company of a pension fund
- a commodity, or commodity derivatives dealer
- any other institutional investor
- large undertakings – companies whose balance sheet, turnover, or own funds meet certain levels, specifically:
    - for MiFID and equivalent third-country business, undertakings that meet any two of the following size requirements on a company basis:
        - a balance sheet total of €20 million
        - a net turnover of €40 million
        - own funds of €2 million.
- for other (non-MiFID) business, large undertakings are:
    - a company whose called-up share capital, or net assets are, or have at any time in the past two years, been at least £5 million, or currency equivalent (or any company whose holding companies, or subsidiaries meet this test)
    - a company which meets (or which the holding companies, or subsidiaries meet) any two of the following criteria: a balance sheet total of €12.5 million; a net turnover of €25 million; an average of 250 employees during the year

- a partnership, or unincorporated association whose net assets are, or have at any time in the past two years, been at least £5 million, or currency equivalent. In the case of limited partnerships, this should be calculated without deducting any loans owing to the partners
- a trustee of a trust (other than certain types of pension scheme, dealt with in the next bullet point) which has, or has at any time in the past two years, had assets of at least £10 million
- a trustee of an occupational pension scheme, or a small self-administered scheme, or the trustee or operator of a personal pension, or stakeholder pension scheme, if the scheme has, or has at any time in the past two years had: at least 50 members, and assets under management of at least £10 million.

The list of per se professional clients also includes:

- governments, certain public bodies, central banks, international or supranational institution, and
- institutional investors whose main business is investment in financial instruments.

COBS contains a list of the types of clients that can be classified as ECPs. Each of the following is an ECP.

(The list below is, to a certain extent, identical to the per se professional client listed above. However, the ECP category does not include large undertakings.)

- a credit institution
- an investment firm
- an insurance company
- a CIS authorised under the UCITS Directive, or its management company
- a pension fund, or its management company
- another financial institution authorised or regulated under the law of the UK (includes regulated institutions in securities, banking and insurance)
- a national government, or its corresponding office, including a public body that deals with the public debt
- a supranational organisation, or
- a central bank.

A client can only be categorised as an ECP for the following three types of business:

- executing orders
- dealing on own account, and
- receiving and transmitting orders.

This means that if an ECP wants to engage in other types of business, such as investment management or investment advice, it will be classified as a per se professional client.

Many of the COBS rules do not apply when the client is an ECP. The result of this is that the ECP will not benefit from the protections afforded by these rules. Having said that, the majority of ECPs are

large firms that are very familiar with the financial markets or are themselves large players in the financial markets and do not need such protections anyway. Some ECPs, however, would rather have more protections, and voluntarily ask to be opted down a client category and become professional clients.

MiFID II introduced extra protections for local authorities and/or municipalities, which are now by default classified as retail clients. They can request to be reclassified as an 'elective professional' client where they meet/comply with the following circumstances:

The qualitative test as per COBS 3.5.3(1):

> *'the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making their own investment decisions and understanding the risks involved (the 'qualitative test').'*

The quantitative test as per COBS 3.5.3B(2):

- The size of the authority's financial instrument portfolio defined as including cash deposits and financial instruments exceeds €500,000.
- Either:
    - it has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters (quantitative test)
    - the person authorised to carry out transactions on behalf of the authority works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged (quantitative test), or
    - the authority is an 'administering authority' of the Local Government Pension Scheme and is acting in that capacity.
- It would not be able to be 'opted' up to an elective eligible counterparty.

14.3.3 Agents

When a firm knows that someone to whom it is providing services (A) is acting as the agent of another person (B), then it should regard A as its client.

This is not the case when the firm has agreed in writing with A that it should treat B as its client instead, or if the involvement of A in the arrangement is mainly for the purpose of reducing the firm's duties to B. In this case, B should be treated as the client in any case.

14.3.4 Notifications of Client Classification

New clients must be notified of how the firm has classified them. They must also, before the provision of services, advise the clients of their rights to request recategorisation and of any limits in

their protections that arise from this.

14.3.5 Policies, Procedures and Records

Firms must implement appropriate written internal policies and procedures to categorise its clients. The firm must make, and retain, a record of the form of each notice provided and each agreement entered into with clients.

14.3.6 Recategorising Clients

Recategorisation may be carried out for a client:

- on a general basis, or
- on more specific terms, for example in relation to a single transaction only.

A firm can classify a client under a different client classification for different financial instruments that it may trade, or undertake, transactions. However, this will mean complex internal arrangements for firms. This is why most firms will classify a client just once for all financial instruments that it may undertake transactions.

Lower Levels of Protection
A retail client may be treated as an elective professional client, both for MiFID and non-MiFID business, only if:

- the firm has assessed its expertise, experience and knowledge and believes it can make its own investment decisions and understands the risks involved (this is called the qualitative test), and
- any two of the following are true (this is called the quantitative test):
    - the client carried out, on average, ten significantly sized transactions on the relevant market in each of the past four quarters
    - the size of the client's financial portfolio exceeds €500,000 (defined as including cash deposits and financial instruments), and/or
    - the client works, or has worked, as a professional in the financial services sector for at least a year on a basis which requires knowledge of the transactions envisaged.

The firm must follow certain procedures, including giving a clear written warning to the client of the lost protections, to which the client must agree in writing. In particular, the client must state in writing to the firm that it wishes to be treated as a professional client, either generally or in respect of a particular service or transaction or type of transaction, or product.

For MiFID business, a client may be treated as an elective professional client if it meets both the qualitative test and the quantitative test.

If a firm becomes aware that a client no longer fulfils the initial conditions that justified categorisation as an elective professional client, the firm must take the appropriate action. If the

appropriate action involves recategorising the client as a retail client, the firm must notify that client of its new categorisation.

A professional client may be treated as an elective ECP if it is:

- a company (undertaking)
- a per se professional client (other than one which is only a professional client because it is an institutional investor), and
- requests to be classified as an ECP.

Higher Levels of Protection
Firms must allow professional clients and ECPs to request recategorisation so as to benefit from the higher protections afforded to retail clients, or professional clients (as applicable).

In addition, firms can:

- treat per se professional clients as retail clients, and
- treat ECPs as professional or retail clients on their own initiative as well as at the client's request.

14.3.7 Consequences of Re-classification

The following are the consequences, in terms of 'protections', that retail client reclassified as a professional client would lose:

1. **Communicating with clients, including financial promotions:**
    - frequency and simplicity
    - but all communications must still be fair, clear and not misleading.
2. **Information about the firm, its services and remuneration:**
   The type of information that the firm provides to retail clients about itself, its services and its products and how it is remunerated differs to what the firm provides to professional clients. In particular:
    - The firm is obliged to provide information on these areas to all clients but the granularity, medium and timing of such provision may be less specific for clients that are not retail clients.
    - There are particular restrictions on the remuneration structure for staff providing services to retail clients which may not be applicable in respect of staff providing services to professional clients.
    - The information which the firm provides in relation to costs and charges for its services and/or products may not be as comprehensive for professional clients as it would be for retail clients; for example, they are required when offering packaged products and services to provide additional information to retail clients on the risks and components making up that package.

- When handling orders on behalf of retail clients, the firm has an obligation to inform them about any material difficulties in carrying out the orders; this obligation may not apply in respect of professional clients.
- A firm must provide clients with information on costs and associated charges. The information provided may not be as comprehensive for professional clients as it must be for retail clients (the requirement to provide the annual cost and charges statement was removed for professional clients by the UK MiFID quick fix).

2. **Suitability**
   In the course of providing advice or in the course of providing discretionary management services, when assessing suitability for professional clients, the firm is entitled to assume that in relation to the products, transactions and services for which they have been so classified, they have the necessary level of experience and knowledge to understand the risks involved in the management of the investments. The firm will assess this information separately for retail clients and would be required to provide retail clients with a suitability report.
3. **Appropriateness**
   For transactions where the firm does not provide investment advice or discretionary management services (such as an execution-only trade), it may be required to assess whether the transaction is appropriate. In respect of a retail client, there is a specified test for ascertaining whether the client has the requisite investment knowledge and experience to understand the risks associated with the relevant transaction. However, in respect of a professional client, the firm is entitled to assume that they have the necessary level of experience, knowledge and expertise to understand the risks involved in a transaction in products and services for which they are classified as a professional client.
4. **Dealing and Carrying Out Orders**
   A range of factors may be considered for professional clients in order to achieve best execution (price is an important factor but the relative importance of other different factors, such as speed, costs and fees may vary). In contrast, when undertaking transactions for retail clients, the total consideration, representing the price of the financial instrument and the costs relating to execution, must be the overriding factor in any execution.
   In relation to order execution, firms must inform retail clients about any material difficulty relevant to the proper carrying out of orders promptly on becoming aware of the difficulty. This is not required in respect of professional clients.
5. **Reporting Information to Clients**
   For transactions where the firm does not provide discretionary management services (such as an execution-only transaction), the timeframe for providing confirmation that an order has been carried out is more rigorous for retail clients' orders than professional clients' orders.
6. **Remuneration and Incentivisation of Staff**
   In relation to retail clients, firms are specifically required not to make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to staff to recommend a particular financial instrument to a retail client when they could offer a different financial instrument which would better meet that client's needs. For all clients, firms are

nonetheless required to ensure that they do not remunerate or assess the performance of staff in a way that would conflict with their duty to act in the best interests of their clients.

7. **Client Reporting**
   Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the retail client where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%.
   These reports do not have to be produced for professional clients.
8. **Investor Compensation (FSCS & FOS)**
   Eligibility for compensation from the Financial Services Compensation Scheme (FSCS) is not contingent on the categorisation, but on how the organisation is constituted. Hence, depending on how they are constituted may mean they do not have access to the FSCS.
   The services of the Financial Ombudsman Service (FOS) in the UK may not be available to professional clients, unless they are, for example, consumers, small businesses or individuals acting outside of their trade, business, craft or profession.
9. **Exclusion of Liability**
   The FCA rules restrict the firm's ability to exclude or restrict any duty of liability which the firm owes to retail clients more strictly than in respect of professional clients.
10. **Transfer of Financial Collateral Arrangements**
    As a professional client, the firm may conclude title transfer financial collateral arrangements for the purpose of securing or covering present or future, actual or contingent or prospective obligations, which would not be possible for retail clients.
11. **Client Money**
    The requirements under the client money rules in the FCA Handbook (CASS) are more prescriptive and provide more protection in respect of retail clients than in respect of professional clients.

The following are the consequences (protections lost) from a professional client being classified as an 'ECP':

1. **Client Agreement** – there is no regulatory requirement to put in place a client agreement. However, firms could/would provide a copy of their Terms of Business.
2. **Appropriateness** – there are no regulatory requirements to undertake an assessment of the appropriateness of investment services or products provided.
3. **Best Execution** – there are no regulatory requirements to take sufficient steps to obtain (provide) best execution.
4. **Order Handling** – the client order handling requirements in MiFID will not apply.
5. **Product Governance (Target Market Identification and Compatibility)** – the Product Governance requirements that relate to manufacturers of financial instruments will not apply.
6. **Disclosure on Financial Instruments, Costs and Charges, Remuneration and Commissions** – the requirements, and restrictions, within MiFID will not apply.
7. **Package Products** – the disclosure obligations will not apply.

14.4 Communicating with Clients, including Financial Promotions (COBS 4)

14.4.1 Communicating with Retail Clients

A financial promotion is an invitation, or an inducement to engage in investment activity. The term, therefore, covers most ways of marketing financial services: advertising, website content, telephone sales campaigns and direct meetings.

The financial promotion rules apply to firms communicating with clients regarding their designated investment business, and communicating, or approving a financial promotion, other than:

- for qualifying credit, a home purchase plan or a home reversion plan
- promotion for a non-investment insurance contract, or
- the promotion of an unregulated collective investment schemes (CIS) which the firm is not permitted to approve.

They also apply to communications to authorised professional firms in accordance with COBS 18 (Specialist Regimes).

In general, these rules apply to a firm which carries on business with, or communicates a financial promotion to, a client in the UK (including when this is done from an establishment overseas). The majority of these rules do not apply when the client is an ECP. Firms must ensure that financial promotions which they communicate or approve, and which are addressed to clients, are clearly identifiable as such.

This rule does not apply to a third-party prospectus in respect of UK MiFID (or equivalent third-country) business. There are some exceptions in respect of non-UK MiFID business, including prospectus advertisements, image advertising, non-retail communicating and deposits.

The following types of 'communication' includes:

- direct offer financial promotions (these are promotions that make an offer to any person to enter into an agreement and include a form of response or specify the manner of responding), or
- cold calls and other unwritten promotions.

Firms must ensure that if they provide information about designated investment business, or issue, or approve a financial promotion that is likely to be received by a retail client, they adhere to certain rules. These rules require that:

- the firm's name is included on the communication
- the information is accurate and does not emphasise potential benefits without also giving fair and prominent indication of any relevant risks
- it is sufficient for, and presented in a way likely to be understood by, the average member of the group to whom it is directed or by whom it is likely to be received, and
- it does not disguise, diminish, or obscure important items, statements, or warnings.

If comparisons are made, they must be meaningful and presented in a fair and balanced way. For MiFID business, the data sources for the comparisons must be cited, as must any key facts and assumptions used.

If tax treatment is mentioned, firms must explain that this depends on the individual circumstances of each client and that it may be subject to change. Information included in financial promotions must be consistent with that given in the course of carrying on business.

These rules are disapplied for third-party prospectuses and image advertising. For non-MiFID businesses they are also disapplied for excluded communications.

14.4.2 The Purpose of the Rules

The requirements for firms subject to the Consumer Duty were discussed in section 6 of this chapter – ie, client communications and marketing materials are designed to meet the 'Consumer understanding' by enabling and supporting retail consumers to pursue their financial objectives.

Therefore, Principles 6 & 7 will apply only to firms that are not subject to the Consumer Duty.

For firms not subject to the Consumer Duty, the purpose of the financial promotion rules is to ensure that promotions are identified as such, and that they are **fair, clear and not misleading**. The financial promotion rules are therefore consistent with Principles 6 and 7:

- **Principle 6** – a firm must pay due regard to the interests of its customers and treat them fairly.
- **Principle 7** – a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is **clear, fair and not misleading**.

Section 21 of FSMA imposes a restriction on the communication of financial promotions by unauthorised persons. An individual (including a firm) must not communicate a financial promotion unless:

- they are an authorised person, or
- the content of the financial promotion is approved by an authorised person.

The penalty for a breach of Section 21 of FSMA is two years in jail and an unlimited fine.

Fair, Clear and not Misleading

Principle 7 requires firms to communicate to clients in a way which is **fair, clear and not misleading**. There are also specific rule requirements. The rules and requirements of fair, clear and not misleading apply to communications by firms to a client in relation to:

- designated investment business other than a third-party prospectus
- financial promotions communicated by the firm that is not an excluded communication (that takes advantage of specified exemptions, see section 13.4.6), a non-retail communication or a third-party prospectus, and
- a financial promotion approved by the firm.

Firms' compliance with the requirements of the **fair, clear and not misleading** rule should be appropriate and proportionate, taking into account the means and method of the communication, and what information the communication is intended to convey. For example, communications aimed at professional clients do not need to include the same detailed information as those aimed at retail clients.

In connection with communications which are financial promotions, firms should ensure that:

- those which deal with products or services where a client's capital may be at risk make this clear
- those quoting yields give a balanced impression of both the short-term and long-term prospects for the investment
- if an investment product is, or service charges are, complex, or if the firm may receive more than one element of remuneration, this is communicated fairly, clearly and in a manner which is not misleading and which takes into account the information needs of the recipients
- the FCA is named as the firm's regulator and that any communication refers to matters not regulated by the FCA (making it clear that those matters are not regulated by the FCA), and
- those relating to packaged or stakeholder products not produced by the firm itself give a fair, clear and not-misleading impression of the producer, or manager of the product.

14.4.3 FCA Guidance on Prominence

Prominence of relevant information plays a key role in ensuring that a communication is clear, fair and not misleading. As a consequence, there are a number of requirements for financial promotions within COBS that relate to prominence.

The FCA defines prominence as 'the state of being easily seen', ie, in terms of a statement within a financial promotion and likely to be seen by virtue of its size or position.

The FCA's general rule in communicating with retail clients requires firms to ensure that information does not emphasise any potential benefits, without giving a fair and prominent indication of any relevant risks. It must also not disguise, diminish or obscure important items. Firms must use the same 'font' size for the risk warnings as is used in the main part of the financial promotion – to avoid making this section seem less important and being missed by investors.

14.4.4 Powers Provided by the Financial Services Act 2012

The FCA has powers that enable it to ban misleading financial promotions. These allow the FCA to remove promotions immediately from the market, or prevent them being used in the first place, without going through the enforcement process.

The FCA has stated that the use of these powers will be determined by the specific promotion and not used against the firm as a whole. It can be used on its own, or before the FCA takes enforcement action against a firm. It will work separately from the FCA's general disciplinary powers, which it will use when firms fail to comply with the rules, and their overall systems and approach are poor.

How these financial promotions powers work:

1. The FCA gives a direction to an authorised firm to remove its own financial promotion, or one it approves on behalf of an unauthorised firm, setting out its reasons for banning it.
2. Firms can make representations to the FCA, if they think they are making the wrong decision.
3. The FCA will decide whether to confirm, amend, or revoke the direction. If it is confirmed, the FCA will publish it, along with a copy of the promotion and the reasons behind the decision.

Following the third step, firms will be able to refer the matter to the Upper Tribunal, if the FCA decides not to revoke the direction.

The promotions that the FCA will use the power for will not only be the worst cases. It will not always measure harm to consumers in terms of actual or potential financial loss, it will also consider financial promotions that adversely affect consumers' ability to make informed choices and secure the best deal for themselves.

14.4.5 Appointed Representatives

The COBS rules also apply to firms (when acting as 'principals') in relation to the relevant activities carried on for them by their appointed representatives. In particular, firms must ensure that they comply with the COBS rules when they communicate financial promotions via their appointed representatives.

14.4.6 Exemptions to the Financial Promotion Rules

The financial promotion rules are disapplied in certain cases, notably for excluded communications, which are:

- Made to high-net-worth individuals (Article 48 of the FPO) and sophisticated investors (Article 50 and 50A of the FPO).
- Subject to the Financial Promotion Order (FPO). This is an order which makes certain sorts of financial promotion exempt from the regime if they are communicated by an unauthorised person, or originate outside the UK and cannot have an effect within the UK.
- From outside the UK, and would be exempt under the FPO if the office from which they are communicated were a separate unauthorised person (even though it is not).
- Subject to (or exempted from) the Takeover Code.
- Personal quotes or illustration forms.
- One-off promotions that are not cold calls.

The exemption for excluded communications will not generally apply in relation to MiFID business.

In 2023, HM Treasury published its consultation response to financial promotion exemptions for high net worth individual and sophisticated investors.

The changes can be summarised as:

- Increasing the financial thresholds to be eligible for the high-net-worth individual exemption to:
    - income of at least £170,000 (compared to £100,000 previously) in the last financial year, or
    - net assets of at least £430,000 (compared to £250,000 previously) throughout the last financial year.
- Amending the criteria to be eligible for the self-certified sophisticated investor exemption by:
    - removing the criterion of having made more than one investment in an unlisted company in the previous two years, or
    - increasing the company turnover required to satisfy the 'company director' criterion to £1.6 million (ie, directors of companies with at least £1.6 million 18 turnover will remain eligible for the self-certified sophisticated investor exemption).
- Requiring businesses to provide details of themselves in any communications made using the exemptions.
- Updating the title of the certified high net worth individual exemption by removing 'certified'.
- Updating the high net worth individual and self-certified sophisticated investor statements.
    - Applying these changes to the equivalent exemptions for promotion of collective investment schemes.

Going forward, all new financial promotions, even if made to individuals already promoted to under previous exemptions, will need to be made in accordance with the updated exemptions.

Following on from the consultation noted above, HM Treasury laid before Parliament the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment and Transitional Provision) Order 2024 (SI 2024/301). This addresses industry concerns that the proposed amendments to the scope of the financial promotion exemptions introduced in 2023 (SI 2023/1411) negatively impact start-up businesses and the theatre sector, reinstates certain eligibility criteria by introducing the following changes:

- Reducing the financial thresholds to be eligible for the high-net-worth individual exemption to income of at least £100,000 in the last financial year or net assets of at least £250,000 throughout the last financial year.
- Amending the criteria to be eligible for the self-certified sophisticated investor exemption by:
    - reinstating the criterion of having made two or more investments in an unlisted company in the previous two years, and
    - reducing the company turnover required to satisfy the 'company director' criterion to GBP 1 million.
- Providing that investor statements that comply with the 2023 Order remain valid until and including 30 January 2025.

SI 2024/301 came into force in 2024.

14.4.7 Approval of Financial Promotions

The COBS rules on approval of financial promotions complement requirements under the FCA's SYSC. SYSC 3 (Systems and Controls) and SYSC 4 (General Organisational requirements) require that a firm which communicates with a client in relation to designated investment business, or which communicates, or approves a financial promotion, puts in place systems and controls, or policies and procedures in order to comply with the rules on financial promotions.

COBS states that, before an authorised firm approves a financial promotion for communication by an unauthorised person, it must confirm that it complies with the financial promotion rules. If, later, it becomes aware that the financial promotion no longer complies, it must withdraw its approval and notify anyone it knows to be relying on that approval as soon as is reasonably practicable.

Firms may not authorise financial promotions to be made in the course of personal visits, telephone conversations, or other interactive dialogue.

If a firm approves a financial promotion for which any of the financial promotion rules are disapplied, it must do so on the terms that its approval is limited to those circumstances.

Firms Relying on Promotions Approved by Another Party
In relation to non-MiFID business only, a firm is not in breach of the rules if it communicates a financial promotion that has been produced by another party and:

- take reasonable care to establish that another authorised firm has confirmed that the promotion complies with the rules
- take reasonable care that it communicates it only to the type of recipient it was intended for at the time of the confirmation, and
- are aware (as far as it should be) that the promotion has not ceased to be fair, clear and not misleading and the promotion has not been withdrawn.

Direct Offer or Invitations
Direct offer promotions – those making a direct offer or invitation, such as in a newspaper, trade magazine or mailed directly, likely to be received by a retail client must contain:

- prescribed information about the firm and its services
- when relevant, prescribed information about the management of the client's investments
- prescribed information about the safekeeping of client investments and money
- prescribed information about costs and charges
- prescribed information about the nature and risks of any relevant designated investments
- when an investment is the subject of a public offer, any prospectus published in accordance with the Prospectus Directive must be made available
- if a designated investment combines two or more investments or services, so as to result in greater risk than the risks associated with the components singly, an adequate description of

those components and how that reassesses the risk, and

- if a designated investment incorporates a third-party guarantee, enough detail for the client to make a fair assessment of it.

The above need not be included, however, if the client would have to refer to another document containing that information in order to respond to the offer.

14.4.8 Past, Simulated Past and Future Performance

Past Performance

Firms must ensure that information, including indications of past performance, is such that:

- the past performance indication is not the most prominent feature
- it covers at least the immediately preceding five years, or the whole period that the investment has been offered, or the financial index has been established or the service has been provided if this is less than five years. In any event, it must show complete 12-month periods
- reference periods and sources are clearly shown
- there is a clear and prominent warning that the data or figures are historic and are not a reliable indicator for future performance
- if the figures are in a currency other than pounds sterling, the currency is stated and there is a warning about the possible effects of currency fluctuations, and
- if the performance is cited gross, the effect of commissions, fees and other charges is disclosed.

Simulated Past Performance

If firms give figures based on simulated (ie, notional, not having taken place in reality) past performance because the product or service does not have a track record, a firm must ensure that the simulated past performance figures:

- relate to an investment or index
- are based on actual past performance of one or more investments or indices which are the same as, or underlie, the investments being simulated
- meet the rules set out above on past performance (except for the statement that they relate to that investment's past performance, since they don't), and
- contain a prominent warning that they relate to simulated past performance and that past performance is no guide to future performance.

Future Performance

Firms must ensure that information containing an indication of the possible future performance of relevant business, a relevant investment, a structured deposit, or a financial index:

- is not based on, and does not refer to, simulated past performance
- is based on reasonable assumptions supported by objective data
- if it is based on gross performance, discloses the effects of commissions, fees or other charges, and

- contains a prominent warning that such forecasts are not reliable indicators of future performance.

14.4.9 Unwritten Promotions, Cold Calling and Overseas Persons

Unwritten Promotions

A firm must not initiate an unwritten promotion to a particular person outside its premises, unless the individual doing so:

- does so at an appropriate time of day
- identifies themselves and their firm at the outset and makes the reason for the contact clear
- gets clarification of whether the client would like to continue with the communication or terminate it (and does so if requested), and
- gives the client a contact point, if they arrange an appointment with the client.

Cold Calling

Cold calling is the practice of authorised persons or exempt persons contacting people without a prior appointment with a view to communicating a financial promotion to them.

Firms must not cold call unless:

- the recipient has an existing client relationship with the firm and would envisage receiving such a call; or
- the call relates to a generally marketable packaged product which is neither a higher-volatility fund, nor a life policy linked to such a fund, or
- it relates to a controlled activity relating to a limited range of investments, including deposits and readily realisable investments other than warrants or generally marketable non-geared packaged products.

Overseas Persons

Firms are not permitted to communicate or approve financial promotions for overseas firms, unless the promotion sets out which firm has approved or communicated it, and (if relevant) explains:

- that the rules for the protection of investors will not apply
- the extent that the UK compensation scheme arrangements will be available (and if they will not, that fact), and
- if the communicator wishes to do so, the details of any overseas compensation and/or deposit protection scheme applicable.

The firm must not communicate or approve the promotion unless it has no doubt that the overseas firm will deal with its UK retail clients honestly and reliably.

14.4.10 Financial Promotions in Social Media

The FCA published finalised guidance with respect to financial promotions on social media. This was to assist firms in their use of social media and ensure that they are compliant with the FCA's financial

promotion requirements.

Firms are reminded that any form of communication (including through social media) is capable of being a financial promotion, if it includes an invitation or inducement to engage in financial activity. All communications (including financial promotions) must be fair, clear and not misleading. Promotions that fail to be fair, clear and not misleading can pose a risk as they could lead consumers to buy the wrong product, ultimately with unhappy outcomes for them and for firms.

Communications through social media can reach a wide audience very rapidly, so firms must take account of that in their decision when promoting through social media, and when deciding the nature of their promotions. Firms should ensure that their original communication will remain fair, clear and not misleading, even if it ends up in front of a non-intended recipient (through others retweeting on Twitter or sharing on Facebook). One way of managing this risk is the use of software that enables advertisers to target particular groups very precisely.

The requirement to be fair and not misleading requires a balance in how financial products and services are promoted, so that consumers have an appreciation not only of the potential benefits, but also of any relevant risks. Firms should also consider whether it is appropriate to use character-limited media as a means of promoting complex features of financial products or services. It may be possible to signpost a product or service with a link to more comprehensive information, provided that the promotion remains compliant in itself. Alternatively, it may be more appropriate to use 'image advertising' to promote a firm more generally.

In 2023, the FCA published a 'Guidance Consultation', it noted since the finalised guidance was published in 2015, and while many of its key principles still apply, it was based around character-limited media such as 'X' (formerly known as Twitter) and makes no reference to the rise of influencers communicating financial promotions.

Since the guidance was published, 'YouTubers' and 'streamers' have become a major source of financial promotions, and new platforms or private communication channels are increasingly being used to communicate financial promotions.

Therefore, the FCA decided to consult on new, standalone guidance for financial promotions on social media to reflect the current landscape.

In 2024, the FCA published its Finalised Guidance (GC24/1) titled '*Finalised guidance on financial promotions on social media*'.

The FCA noted that where firms worked with affiliate marketers, such as influencers, they must take proactive responsibility for how their affiliates communicate financial promotions. This would include having appropriate monitoring and oversight systems to ensure that affiliates understand their responsibilities and do not communicate illegal or non-compliant financial promotions. The FCA were very clear in the Finalised Guidance that firms remain responsible for the compliance of every promotion they make or cause to be made.

The FCA also confirmed that unauthorised persons, such as influencers, who promote financial products or services that are subject to regulation without the approval of an FCA authorised person (firm) may be committing a criminal offence.

In addition, the FCA noted that when an influencer does not have a commercial relationship with a firm, their communications on social media about financial products or services may still be subject to the financial promotion restriction and require approval to communicate.

The FCA's revised Finalised Guidance sets out in further detail specific areas that firms need to consider and provides some solutions and illustrative examples. These include:

- **Stand-alone compliance**
    - Each communication (eg, a tweet, a Facebook insertion or page, or web page) needs to be considered individually and comply with the relevant rules.
    - All promotions must provide a balanced view of the product or service, the appropriate level of detail for a promotion that supports consumer understanding will depend on factors such as the target audience, what the recipients need to know and the decision they need to make.
- **Prominence**
    - Firms should also consider the target audience of the promotion and their likely information needs – ie, some consumers may be likely to spend less time considering a complex promotion in its entirety.
    - Excessive information may obscure the most significant information or confuse consumers, preventing them from making effective decision.
    - Firms must ensure that where possible, information that is required to be prominent is displayed without needing click through or any other optional action to view it.
- **Suitability of social media for financial promotions**
    - The requirement to support consumer understanding and to be fair, clear and not misleading means there should be balance in how financial products and services are promoted, so that consumers are informed not only of the potential benefits but also of the relevant risks.
    - Some financial products and services have complex features and risks that can be hard for consumers to understand; therefore firms should consider how suitable social media is for the promotion of their product or service.
- **Risk warnings and other required statements**
    - Firms are reminded that there are requirements to include risk warnings or other statements in promotions for certain products or services.
    - These rules are media-neutral and therefore apply to social media as they would to any other medium.
- **Recipients sharing or forwarding communications**
    - If a recipient shares or forwards (such as by retweeting) a firm's communication, responsibility lies with the communicator, so in that case the firm would not be

responsible. The FCA reminds firms, however, that any breaches of its rules in the original communication are still the responsibility of the originating firm, and not the 'retweeter'. Sharing or forwarding by a third party does not 'cure' any original non-compliance.

- **Image advertising**
    - Firms are reminded that it remains possible to advertise their presence in the market through 'image advertising' in a way that is less likely to present difficulties with character limits.
- **Unsolicited promotions**
    - Firms must take into consideration when sending marketing through electronic media that there are specific legal requirements that they must comply with when doing so. Social media are prime channels for making unsolicited promotions. For such promotions and 'cold calling' (unsolicited real-time promotions), the FCA reminds firms of the rules that apply.
- **Approval and record-keeping**
    - Firms must have an adequate system in place to sign-off digital media communications. This sign-off should be by a person of appropriate competence and seniority within the organisation.
- **Compliance with the regime for unregulated non-UK based entities**
    - The territorial scope of the financial promotion regime is deliberately broad, extending to communications which are capable of having an effect in the UK, even where the communicator is based overseas.
    - Financial promotions do not need to be expressly targeted towards UK consumers to be capable of having an effect in the UK and subject to the financial promotion regime:
        - ie, if UK consumers can view the promotion and potentially engage in the investment activity that is being promoted, the communication is likely to be capable of having an effect in the UK.
- **Influencers and social media platforms**
    - The FCA has partnered with the Advertising Standards Agency (ASA) to create an infographic, which is designed to help influencers make an informed choice when they are approached to promote a financial product or service.
    - This encourages influencers to consider whether they are the right person to promote a product or service as well as highlighting when they may be at risk of communicating financial promotions illegally.
- **Firms and their responsibilities as approvers of financial promotions**

- Firms approving the financial promotions of influencers should consider the influencer's audience demographics and whether they are likely to have an audience with characteristics of vulnerability.
- Firms approving the communication of influencers' investment related promotions should ensure they are playing an active role in ensuring the promotion remains compliant for its lifetime.

14.4.11 Financial Promotions of High-Risk Investments

In 2020, the FCA published rules in relation to the restriction of the promotion of certain speculative securities to retail clients. The rules came into effect at the beginning of 2021, meaning retail clients are not permitted to receive promotions in respect of illiquid securities (such as preference shares and mini-bonds).

In 2022, the FCA published a further consultation on strengthening the financial promotion rules for high-risk investments, which include crypto assets. The FCA published its final rules in Q3 2023.

In its consultation, the FCA proposed to make changes in the following areas:

- Classification of high-risk investments:
  - Readily realisable securities.
  - Restricted mass market investments.
  - Non-mass market investments.
- The consumer journey into high-risk investments.
- Strengthen the role of firms approving and communicating financial promotions.
- Applying the financial promotion rules to qualifying cryptoassets.

Therefore, from 2022, the following requirements apply in relation to risk warnings for financial promotions of high-risk investments:

- Promotion of 'non-mass market investments' (NMMI) are banned to retail investors.
- Promotion of 'restricted mass market investments' (RMMI) are subject to certain restrictions to retail investors:
  - Non-readily realisable securities and peer-to-peer agreements.
- Enhanced requirements in terms of risk warnings (where the customer journey into high-risk investments begins).
- Risk warnings:
  - stating that investors could lose all of their money invested.
- Risk summaries:
  - Prescribed risk summaries – should take no more than two minutes to read.

    - Firm can diverge from this if there are valid reasons for doing so.
- Banning incentives to invest:
    - The ban of monetary or non-monetary benefits (ie, refer a friend or new joiner bonuses).
- Cooling off period:
    - Minimum 24-hour cooling off period for first-time investors with a firm.
        - the FCA wants to see firms applying higher standards than the minimum regulatory standards.
- Personalised risk warnings
    - First-time investors with a firm must be provided with a personalised risk warning that must include the client's name.
- Client categorisation:
    - Retail clients must self-certify they meet the criteria to receive promotions on high-risk investments.
    - Retail clients must provide evidence as to why they believe they meet the relevant criteria, ie, a statement on their income/assets.
- Appropriate test:
    - Make the test more robust.
    - Prevent firms from coaching investors to pass the test.
- Record keeping requirements:
    - Additional requirements for firms.
    - Metrics on new client categorisation and appropriateness assessments.

The following Handbook guidance applied from 2023:

- Enhanced requirements for firms approving and communicating financial promotions.
- Displaying the name of the approver and date of approval on the financial promotion.
- Potential for use of Firms 'FRN' if due to limits on space.
- Approvers must have appropriate levels of competence and expertise in the type of investment/ service being promoted.
- Approvers must take an active role in ensuring that the promotion remains compliant while being used.
- Approvers take reasonable steps to ensure compliance with appropriateness rules periodically through the life of the promotion.
- Enhanced conflict of interest requirements for approvers.

- Approvers must undertake preliminary suitability assessments before NMMIs are promoted to retail investors.

14.4.12 Recent Regulatory Developments – UK Government Consultation on Financial Promotions

Regulatory Framework for the Approval of Financial Promotions

The UK's approach to the regulation of financial services recognises the importance of financial services firms being able to promote their products and services, as well as the risks that can arise from misleading or inaccurate promotions. The communication of financial promotions is subject to regulatory safeguards which seek to ensure that consumers are provided with clear and accurate information that enables them to make informed and appropriate decisions.

The UK regime provides safeguards in two key ways:

- A person cannot communicate a financial promotion unless that person is, or the content of the promotion is, approved by a firm which is authorised to carry on a regulated financial services activity.
- The FCA sets binding rules that all authorised firms must comply with when communicating or approving financial promotions.

The scope of the regulatory regime for financial promotions is very broad. It applies to promotions relating to regulated financial services activities (which can only be carried on by a firm which has received authorisation from the FCA or PRA) and certain activities that are unregulated (which can be carried on without the need for a firm to be authorised). It is the use of financial promotions by unauthorised firms that is the focus of the UK government (via HM Treasury).

The government's proposals did not affect the communication of financial promotions by authorised persons or the approval by authorised persons of their own promotions so that they can be communicated, or passed on, by unauthorised persons.

The FCA has identified a number of cases of authorised firms failing to satisfy its requirements in relation to approving the financial promotions of unauthorised persons – where the approving firm failed to undertake adequate due diligence on the promotion.

In 2022, the FCA published a consultation around proposing a 'gateway' for firms who approved financial promotion for third parties; this followed a previous HM Treasury consultation in 2020. This will be known as the 's21 Approver Regime'.

In the existing legislation (FSMA), any authorised person can generally approve financial promotions for unauthorised firms. Once the 'gateway' comes into effect, all firms that want to continue to be able to approve promotions for third parties will need to apply to the FCA for permission to do so.

Therefore, firms that don't apply for, and obtain, permission to do so will not be permitted to approve financial promotions other than their own.

Firms approving financial promotions will also be required to report regularly on what they sign off and on any concerning adverts they cancel approval for, helping the FCA to move faster to crack down on rogue adverts.

The FCA published final rules on the following in term of 'operationalising' the gateway:

- How they will assess applicants at the gateway.
- The basis for the FCA granting or refusal of applications.
- A bi-annual reporting requirement for firms that are given permission to approve financial promotions.
    - Which will include the following information:
        - Total number of approvals, broken down into:
            - ◊ type of products, and
            - ◊ 'marketing restriction' categories that apply to the promoted products.
        - Total number of consumer complaints for approved promotions
        - Revenue from s21 approval activity, and
        - Total revenue – regulated and unregulated.
- A requirement that firms that are granted permission to approve financial promotions must notify the FCA when they approve, or amend or withdraw approval of, a financial promotion, within seven days of doing so.
    - Will apply to qualifying cryptoassets and a product subject to a retail mass marketing ban (ie, non-mass market investments such as speculative illiquid securities).
- Not extend the **compulsory jurisdiction** of the Financial Ombudsman Service to the approval of financial promotions.
- Further consequential changes made to the FCA's non-Handbook guidance for firms that approve financial promotions for investments, and additional text on the Consumer Duty.
- Confirmation of the FCA's intention to conduct a review within 24 months of the rules coming into force for the 's21 Approver Regime'.

Following the publishing of its Policy Statement in 2023, with final rules, the following additional requirements came into force from February 2024:

- Firms approving financial promotions do so to a high standard, ensuring consumers receive high- quality financial promotions that enable them to make effective, well-informed financial decisions.
    - Reduce the number of consumers buying financial products that are not appropriate for their circumstances, due to unclear, unfair or misleading advertising.
    - Prevent harm to consumers by more oversight of firms subject to s21 (firms that approve financial promotions).

The FCA will measure the success of the 'gateway' ('s21 Approver Regime') by:

- gateway admissions, eg, the number of applications received and the ratio of successful to unsuccessful applications
- instances of supervisory investigation, and intervention, involving s21 approval activity
- instances of enforcement action involving s21 approval activity, and
- the data we collect from s21 approvers, such as complaints about approved financial promotion.

14.4.13 Financial Promotions Rules for Cryptoassets

From 2023, FCA rules on the financial promotion of cryptoassets in the UK came into effect. In addition to the rules, the FCA published a Guidance Consultation Paper with proposals to assist firms with the requirements focusing on the central provisions of the financial promotion rules that all financial promotions are fair, clear and not misleading.

A 'qualifying cryptoasset' is any 'cryptographically' secured digital representation of value or contractual rights that is transferable and fungible but does not include cryptoassets which meet the definition of electronic money or existing controlled investment.

HM Treasury amended the following activities related to the buying and selling of investments to include reference to qualifying cryptoassets. Therefore, invitations or inducements to engage in these activities in relation to cryptoassets will be within the scope of the financial promotions regime:

- dealing in securities and contractually based investments
- arranging deals in investments
- managing investments
- advising on investments, and
- agreeing to carry on specified kinds of activity.

The government has introduced a bespoke exemption in the FPO for cryptoasset businesses registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('MLRs'). This exemption enables cryptoasset businesses registered with the FCA under the MLRs but not authorised persons to communicate their cryptoasset financial promotions to UK consumers.

There will be three routes to legally promoting cryptoassets to consumers in the UK:

1. The promotion is communicated by an authorised person.
2. The promotion is communicated by (or on behalf of) a cryptoasset business registered with the FCA under the MLRs in reliance on the exemption of the FPO.
3. The promotion is otherwise communicated in compliance with the conditions of an exemption in the FPO).

The FCA has taken forward the approach that cryptoassets will be classified as 'Restricted Mass Market Investments', meaning that they can only be mass marketed to UK consumers subject to certain restrictions.

The restrictions include:

- **clear risk warnings** – associated risk warnings – general and personalised
- **banning incentives to invest**
- **positive frictions** – cooling-off period (24 hours) & Direct Offer Financial Promotion rules
- **client categorisation requirements** – self-certified sophisticated investor category will not be applied, and
- **appropriate assessments**.

In 2019, the FCA published a consultation on prohibiting the sale to retail clients in investment products that references cryptoassets.

The FCA published a policy statement, with final rules, in October 2020, prohibiting the marketing, distribution and sale in or from the UK to retail clients, of derivatives and exchange-traded notes (ETNs) that reference certain types of unregulated transferable cryptoassets.

In 2020, HM Treasury published a consultation on the promotion of cryptoassets. The consultation sought industry views on a proposal to bring the promotion of certain types of cryptoassets within the scope of financial promotions regulation. The intention being to enhance consumer protection, while continuing to promote responsible innovation.

The government identified that many of the unregulated cryptoassets expose consumers to unacceptable levels of risk. The following are three areas that they saw as priority for action to be taken:

- consumer protection
- financial crime, and
- market integrity.

The HM Treasury made a statement in 2022 that they were planning to strengthen the rules on cryptocurrency advertisements and protect consumers from misleading claims. The statement listed the following:

- The government plans to legislate and address misleading cryptoassets promotions.
- Adverts will be brought into line with other financial advertising, ensuring they are fair and clear.
- New rules will increase consumer protection while encouraging innovation.

The Chancellor of the Exchequer stated:

> *'Cryptoassets can provide exciting new opportunities, offering people new ways to transact and invest – but it's important that consumers are not being sold products with*

> *misleading claims. We are ensuring consumers are protected, while also supporting innovation of the cryptoasset market.'*

The Advertising Standards Authority (ASA) recently published a webpage with advice on adverts for 'Cryptoassets'. The webpage provides advice for advertisers, and includes recent case law examples:

- Regulation of cryptoassets:
    - clearly stating that they are not regulated by the FCA and do not fall under the FSCS or the FOS
    - including recent case law where adverts did not make it clear that the product was not regulated in the UK, ruling that these adverts should have included a statement to the effect that made this clear.
- Do not take advantage of consumers' inexperience or credulity.
- Include all relevant material.
- Make clear that the value can go down as well as up.
- State the basis used to calculate any projections or forecasts.
- Make clear that past performance is not a guide for future performance.

Source of information: ASA website www.asa.org.uk

In a 2023 Policy Statement, the FCA noted that following their consultation in 2022 (CP22/2), where they proposed to classify cryptoassets as 'Restricted Mass Market Investments' (allowing them to be mass marketed to UK consumers subject to certain restrictions & being subject to the overarching requirement that financial promotions must be fair, clear and not misleading), they were going to proceed largely as they consulted on.

They proposed restrictions to include clear risk warnings, banning incentives to invest, positive frictions, client categorisation requirements and appropriateness assessments.

The FCA noted in the Policy Statement that they were seeking outcomes where firms that communicate and approve financial promotions for cryptoassets would do so to a high standard.

Below is a summary of the key requirements relating to the promotion of cryptoassets:

Risk warnings and associated risk summaries

- Firms would need to apply standard risk warning text:
  '*Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong. Take two mins to learn more*.'

Ban on incentives to invest

- The FCA will not be applying the 'shareholder benefit' exemption to cryptoasset promotions.
- Due to the inherently programmable nature of cryptoassets compared with securities, applying this exemption would create an unacceptably high risk of firms arbitraging this rule

and using the exemption to promote benefits that distort consumers' investment decisions.

- The believe that incentives to invest can unduly influence consumers' investment decisions and cause them to invest without fully considering the risks involved.

Direct Offer Financial Promotions rules (DOFP)

- The FCA has taken forward its proposal to introduce a 'personalised' risk warning.

Cooling-off period

- The FCA have taken forward their proposals for a '24-hour' cooling-off period.
- The FCA believe this measure is important to help consumers have sufficient time to consider whether the investment is appropriate for them:
    - They expect most firms will implement this proposal as part of their wider consumer onboarding process.
    - The cooling-off period does not apply to each individual transaction in a cryptoasset.
    - Applying this rule on a transaction-by-transaction basis could itself result in consumer harm – rather this rule only applies to first-time investors with a specific firm.

Client categorisation

- Before a DOFP can be made in relation to cryptoassets, the consumer must be categorised as a 'restricted, high net worth' and 'certified sophisticated' investor.
    - Investors just sign a declaration stating that they meet the relevant criteria – which is valid for 12 months and would need to reassessed.

Appropriateness assessment

- Before an application or order for cryptoassets can be processed in response to a DOFP, the firm would need to assess whether it was appropriate for the consumer
    - This would require them to assess that the consumer has the necessary experience and knowledge to understand the risks involved in relation to the specific product or service offered or demanded.
- The FCA provided the following guidance:
    - The investment must always be assessed as appropriate for a consumer, before an order or application is fulfilled in response to a DOFP
        - Firms are permitted to gather the information necessary to conduct the assessment, and complete the assessment, before the DOFP is shown to the client.
    - Where an investment is assessed as being inappropriate for a consumer, the firm cannot re-assess the appropriateness of that investment for the same client for at least 24 hours.

- The questions firms ask must be different each time a consumer is subject to the assessment.
- Consumers must not be advised of the specific answers that caused the investment to be assessed as inappropriate.
- Firms must not communicate with their clients, encouraging them to retake the test after the investment has been assessed as inappropriate for them if they have not attempted to do so on their own initiative.

Record keeping requirements

- Firms are required to record various metrics throughout the consumer journey to assist the FCA in their monitoring the effectiveness of their proposals/rules.
- Metrics/recording requirements will apply in relation to client categorisation and appropriateness assessments.

Approach to implementation

In 2023, the FCA published non-Handbook guidance on cryptoassets financial promotions, rather than creating new obligations for firms it notes the existing regulatory obligations will apply to firms undertaking/making financial promotions in qualifying cryptoassets.

The guidance provides information on, and sets out the FCA's expectations, of the communication and approval of financial promotions relating to qualifying cryptoassets and helps firms to ensure compliance with the core requirements that all promotions are fair, clear and not misleading.

14.5 Distance Communications (COBS 5)

Firms must provide consumers with distance marketing information in good time before the consumer is bound by a distance contract or offer. Distance communication is where the client and the firm engage and communicate by means other than face to face, ie, over the internet and/or the telephone. The information that must be supplied by a firm includes the following.

Information about the firm:

1. The name and the main business of the firm, the geographical address at which it is established and any other geographical address relevant for the consumer's relationship with the firm.
2. Where the firm has a representative established in the UK, the name of that representative and the geographical address relevant for the consumer's relationship with that representative.
3. Where the consumer's dealings are with any professional other than the firm, the identity of that professional, the capacity in which they are acting with respect to the consumer, and the geographical address relevant to the consumer's relationship with that professional.
4. An appropriate statutory status disclosure statement (GEN 4), a statement that the firm is on the FCA register and its registration number.

Information about the financial service:

5. A description of the main characteristics of the service the firm will provide.
6. The total price to be paid by the consumer to the firm for the financial service, including all related fees, charges and expenses, and all taxes paid through the firm or, when an exact price cannot be indicated, the basis for the calculation of the price, enabling the consumer to verify it.
7. Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the firm's control, and that past performance is no indicator of future performance.
8. Notice of the possibility that other taxes, or costs may exist that are not paid via the firm or imposed by it.
9. Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a firm's offer applies as it stands.
10. The arrangements for payment and performance.
11. Details of any specific additional cost to the consumer for using a means of distance-communication.

Information about the contract:

12. The existence or absence of a right to cancel or withdraw under the cancellation rules (COBS 15).
13. The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
14. Information on any rights the parties may have to terminate the contract early, or unilaterally under its terms, including any penalties imposed by the contract in such cases.
15. Practical instructions for exercising any right to cancel, or withdraw, including the address to which any cancellation or withdrawal notice should be sent.
16. Any contractual clause on the law applicable to the contract, or on the competent court, or both.
17. In which language, or languages, the contractual terms and conditions and the other information will be supplied, and in which language, or languages, the firm, with the agreement of the consumer, undertakes to communicate during the duration of the contract.

Information about redress.

18. How to complain to the firm, whether complaints may subsequently be referred to the FOS and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.

19. Whether compensation may be available from the compensation scheme, or any other named compensation scheme, if the firm is unable to meet its liabilities.

The distance marketing information must be made clear and must be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

- When a distance contract is also a contract for payment services to which the Payment Services Regulations apply, a firm will be required to provide to the consumer only the information specified in bullets 7 to 12 above.
- When a distance contract covers both payment services and non-payment services, this exception applies only to the payment services aspects of the contract. A firm taking advantage of this exception will need to comply with the information requirements in Part 5 of the Payment Services Regulations.
- A firm must ensure that information on contractual obligations to be communicated to a consumer during the pre-contractual phase, is in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if that contract is concluded.
- A firm must communicate to the consumer all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules, in a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.
- A firm will be seen as providing information, or communicating contractual terms and conditions, to a consumer if another person provides the information, or communicates the terms and conditions, to the consumer on its behalf.
- A firm must communicate to the consumer all contractual terms and conditions and the information referred to in the distance marketing disclosure rules, in a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.
- A firm may provide the distance marketing information and the contractual terms and conditions in a durable medium immediately after the conclusion of a distance contract, if the contract has been concluded at a consumer's request.
- A firm must not enforce, or seek to enforce, any obligations under a distance contract against a consumer, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

14.5.1 E-Commerce

A firm must make at least the following information easily, directly and permanently accessible to the recipients of the information services (ie, electronic commerce services) it provides:

1. its name

2. the geographic address at which it is established
3. the details of the firm, including its email address, which allow it to be contacted rapidly and communicated with in a direct and effective manner
4. an appropriate statutory status disclosure statement, together with a statement which explains that it is on the FCA and/or the PRA register and includes its register number
5. if it is a professional firm, or a person regulated by the equivalent of a designated professional body:
   a. the name of the professional body (including any designated professional body) or similar institution with which it is registered
   b. the professional title
   c. a reference to the applicable professional rules and the means to access them, and
6. where the firm undertakes an activity that is subject to value added tax (VAT), its VAT number.

14.6 Information about the Firm, its Services and Remuneration (COBS 6)

14.6.1 Information Requirements Relating to the Nature and Risks of Investments

Firms carrying on UK MiFID business, or equivalent third country business, must provide clients with appropriate information in a comprehensible form about:

- the firm and its services
- designated investments and proposed investment strategies, including appropriate guidance on, and warnings of, risks associated with investments in those designated investments, or in respect of particular investment strategies
- an explanation of leverage and its effects, and the risk of losing the entire investment
- volatility of the price and any limitations on the available market for such investments
- if the client has entered into contingent liability transactions, that they might assume obligations additional to the cost of acquiring the investments
- margin requirements or similar obligations applicable to certain investments
- execution venues, and
- costs and associated charges.

This information will allow the client to be reasonably able to understand the nature and risks of the service and of the specific type of designated investments that are being offered, and to be able to take investment decisions on an informed basis. Firms carrying on non-UK MiFID business with, or for a retail client in relation to derivatives, warrants, or stock-lending activity must also provide the information quoted above.

14.6.2 Information about the Firm

A firm must provide a retail client with the following general information, if relevant:

- The name and address of the firm, and contact details necessary to enable the client to communicate effectively with the firm.
- In respect of UK MiFID business or equivalent third country business, the languages in which the client may communicate with the firm and receive documents and other information from the firm.
- The methods of communication to be used between the firm and the client, including those for the sending and receiving of orders.
- A statement of the fact that the firm is authorised, and the name and contact details of the competent authority that has authorised it.
- The nature, frequency and timing of the reports on the performance of the service to be provided by the firm to the client in accordance with the rules on reporting to clients on the provision of services (COBS 16A for non-MiFID business and/or COBS 16 for MiFID business).

In the case of a common platform firm, a description, which may be provided in summary form, of the firm's conflicts of interest policy (and, at any time that the client requests it, further details of the conflicts of interest policy) and, for non-UK MiFID business carried on for clients when a material interest or conflict of interest may or may not arise, the manner in which the firm will ensure fair treatment of the client.

14.6.3 Information Requirements Relating to Managing Investments

A firm that manages investments for a client must establish an appropriate method of evaluation and comparison, such as a meaningful benchmark, based on the investment objectives of the client and the types of investment included in the client's portfolio, to enable the client to assess the firm's performance.

If a firm proposes to manage investments for a retail client, the firm must provide the client with the following information, if applicable:

- information on the method and frequency of valuation of the investments in the client's portfolio
- details of any delegation of the discretionary management of all, or part of investments or funds in the client's portfolio
- specification of any benchmark against which performance of the portfolio will be compared
- the types of investment that may be included and the types of transaction that may be carried out, including any limits, and
- objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

14.6.4 Information on Safeguarding Investments/Money

Firms holding client money, or investments for retail clients, subject to the UK MiFID custody or client money rules (as applicable), also have to provide the following information, where it is appropriate:

1. that the investments or money may be held by a third party on the firm's behalf
2. what the firm's responsibility is for any acts or omissions of that third party
3. what will happen if the third party becomes insolvent
4. if the investments cannot be separately designated in the country in which they are held by a third party, what this means for the client and what the risks are
5. that the investments are subject to the laws of a non-UK jurisdiction ('third country') and what this means for their rights over them
6. a summary of the steps the firm has taken to protect the client money or investments, including details of any relevant investor compensation scheme or deposit guarantee scheme
7. if the money, or investments are subject to any security interest, lien or right of set-off, this fact and the terms of it, and
8. full and clear information, in a durable medium, in good time before entering into securities financing transactions using their investments, about what the firm's obligations are with regard to those investments and what the risks might be.

Firms holding money or designated investments for professional clients must provide them with the information outlined in points 5 and 7 above.

14.6.5 Disclosure of Costs

Firms must provide retail clients with information on the costs and charges to which they will be subject in respect of both investment services and/or financial instruments, including ancillary services. The requirements no longer apply to ECPs and professional clients, they were removed as part of the UK's MiFID Quick fix package in 2021.

Relevant costs and charges include:

- the total price to be paid, including all related fees, commissions, charges, expenses and any taxes payable via the firm
- if these cannot be indicated at the time, the basis on which they will be calculated so that the client can verify them
- that the commissions charged by the firm must be itemised separately in every case
- if the above are to be paid in a foreign currency, what currency is involved and the conversion rates and costs
- where other costs and taxes not paid or imposed by the firm could be applicable, the fact that this is so;
- how the above items are to be paid or levied, and
- information about compensation schemes.

14.6.6 Timing of Disclosure

Information to clients should be provided in good time before the provision of designated investment business or ancillary services. Alternatively, the firm may provide the information immediately after the provision of designated investment business or ancillary services if:

- at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from providing the information before the provision of a designated investment business or ancillary services, and
- the firm complies with the rule on voice telephone communications, which applies to services provided to consumers (ie, the firm should treat the retail client as a consumer).

Clients have the ability to request (and receive) an itemised breakdown of associated costs and charges – on an individual transaction basis.

14.6.7 Medium of Disclosure

The firm must provide the information in a 'durable' medium, which can be via paper or any instrument which enables the recipient to store information addressed personally to them, in a way accessible for future reference for a period of time adequate for the purposes of the information.

The instrument should also allow the unchanged reproduction of the information stored. In particular, the term 'durable medium' covers CD-ROMs, DVDs, and hard drives or personal computers on which email is stored. It excludes internet sites, unless such sites meet the criteria specified above (ie, unless they enable the recipient to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information).

The firm can also provide this information via a website, providing that the website conditions are satisfied. The website conditions are as follows:

1. There is evidence that the client has regular access to the internet, such as the provision by the client of an email address for the purpose of the carrying out of that business.
2. The client must specifically consent to the provision of that information in that form.
3. The client must be notified electronically of the address of the website, and the place on the website where the information may be accessed.
4. The information must be up to date.
5. The information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

14.6.8 Keeping the Client Up to Date

A firm must notify a client in good time about any material change to the information provided which is relevant to a service that the firm is providing to that client. This notification must be in a durable medium, if the information to which it relates was given in a durable medium.

14.6.9 Existing Clients

A firm does not need to treat each transaction in respect of the same type of financial instrument as a new, or different service. This means that it does not need to comply with the disclosure rules in relation to each transaction. The firm should, however, ensure that the client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

14.6.10 Compensation Information

A firm which carries on MiFID business must make available to a client, who has used or intends to use those services, the information necessary for the identification of the compensation scheme or any other investor compensation scheme of which the firm is a member, or any alternative arrangement provided for in accordance with the investor compensation scheme. If the client so requests, the firm must provide information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation. This information must be provided in a durable medium or via a website, if the website conditions are satisfied.

14.7 Client Agreements (COBS 8 and 8A)

If a firm carries on designated investment business, other than advising on investments, with or for a new retail client, the firm must enter into a written basic agreement, on paper or other durable medium, with the client setting out the essential rights and obligations of the firm and the client.

The firm must, in good time before a retail client is bound by any agreement relating to designated investment business or ancillary services, or before the provision of those services, whichever is the earlier, provide that client with:

a. the terms of any such agreement, and
b. the information about the firm and its services relating to that agreement, or to those services, including information on communications, conflicts of interest and authorised status.

A firm must provide the agreement and information in a durable medium or, where conditions are satisfied, via a website.

Firms may provide the agreement and the information immediately after the client is bound by any such agreement if the firm, at the request of the client, concluded the agreement using a means of distance communication which prevented the firm from doing so. Firms must establish a record that includes the document or documents agreed between it and a client which set out the rights and obligations of the parties, and the other terms on which it will provide services to the client.

These records must be maintained for at least whichever is the longer of:

a. five years for MiFID business, or three years for non-MiFID business
b. the duration of the relationship with the client, or

c. in the case of a record relating to a pension transfer, pension opt-out, or free-standing additional voluntary contribution (FSAVC), indefinitely.

14.8 Investment Advice

14.8.1 Adviser Charging

The purpose of the adviser charging rules is to:

- improve the clarity with which firms describe their services to consumers
- address the potential for adviser remuneration to distort consumer outcomes, and
- increase the professional standards of advisers.

Restricted advice is when an adviser can only recommend certain products, product providers or both. Therefore, they might only offer products from one company, or just one type of product. They could also focus on one particular market.

The approach for implementing the adviser rules meant that they apply to advised sales for a defined range of retail products, but not to non-advised business – such as execution-only and discretionary. However, firms that carry out discretionary management and provide advice as part of that service are operating within the scope of the requirements.

The range of instruments available for advice under the 'adviser charging' rules was extended to include recommendations on investment trusts shares, not just a regular savings scheme, as well as unauthorised collective investment trust schemes.

Advisers who are not independent (ie, do not select instruments from the whole of the market) are classified as restricted. They must describe this restricted service to consumers, with a short description to help consumers understand the service that is being provided to them.

Advisers are not permitted to be remunerated (paid) from the product provider when making a personal recommendation to a consumer. They must charge consumers for the advice and services that they are providing. The adviser and the consumer must agree the charge (fee), prior to the service being provided.

The adviser charging rules in COBS 6.2B (describing advice services) note that a firm must not hold itself out to a retail client as acting independently unless the personal recommendations in relation to retail investment products are made on the basis of them evaluating the entire marketplace on an unbiased and unrestricted basis.

Firms that are not independent, and only offer restricted advice, must therefore disclose in writing to a retail client, in good time, before the provisions of its services in respect of a personal recommendation or basic advice in relation to a retail investment product.

A firm that provides independent advice in respect of a relevant market or part of the market that does not include all retail investment products must include in its disclosure to the retail client an

explanation of that market – including the types of retail investment products which constitute that market.

If a firm provides restricted advice, the disclosure must explain the nature of the restriction.

If a firm provides both independent advice and restricted advice, the disclosure must clearly explain the different nature of the 'independent' advice and 'restricted' advice services. Disclosure must be made in a durable medium or through a website. A firm is able to provide the disclosure by using a services and costs disclosure document or a combined initial disclosure document.

If a firm provides restricted advice and engages in spoken interaction with a retail client, the firm must disclose orally in good time before the provision of its services in respect of a personal recommendation that it provides restricted advice and the nature of that restriction.

The FCA has undertaken a thematic review to ascertain how effectively the rules are being adhered to by firms. It assessed whether advisory firms were soliciting payments for entering into service or distribution agreements; agreements that could lead them to channel business to particular providers and affect the advice given to clients. In addition, it also looked at whether providers were making payments to advisers in order to secure distribution of their products.

The FCA identified certain practices that caused them some concerns, in particular the creation of conflicts of interest which could result in firms not acting in their customers' best interest. The review identified certain practices where there was the potential for influencing personal recommendations and instances of conflicts of interest around receiving payments from providers.

The review's key findings were:

- The removal of commission paid by providers to advisers and platforms had reduced product bias from adviser recommendations – reflected in a decline in the sale of products which previously paid higher rates of commission.
- Product prices had fallen by at least the amount previously paid in commission, with evidence that some product prices might fall further.
- Most advisers were now qualified to the new minimum standards – with an increase in the number of advisers going beyond the minimum required standards.
- This indicated positive moves towards increasing professionalism in the advice market.
- There was little evidence that the availability of advice had reduced significantly, with advisers still willing and able to take on more clients.
- While a small group of consumers with little to invest might find it more difficult to find an adviser, there were still those in the market willing to serve them.
- More time is needed to see the full effect of the Adviser Charging rules on some key issues, including access to advice, the quality of advice and charges.

14.9 Suitability (Excluding Basic Advice) (COBS 9 and 9A)

The COBS rules on the suitability requirements apply when firms:

- make personal recommendations relating to designated investments, or
- manage investments.

There are specific rules relating to the provision of basic advice (personal recommendations on stakeholder products). Firms may, if they choose, apply those rules instead of the more general rules on suitability when advising on stakeholder products.

For non-MiFID business, the rules apply for:

- retail clients, or
- where the firm is managing the assets of an occupational, stakeholder or personal pension scheme.

14.9.1 The Requirement to Assess Suitability, Timing and Content of a Suitability Report

The overarching aim of the suitability rules is to ensure that firms take reasonable steps to ensure that personal recommendations (or decisions to trade) are suitable for their clients' needs.

MiFID Business

Firms must undertake a suitability assessment when making a personal recommendation on whether or not to buy, hold, or sell a financial instrument or investment.

Investment firms must obtain from clients/potential clients such information as is necessary for them to understand the essential facts about the client and have a reasonable basis for determining that recommendations, including providing a portfolio management service, satisfy the following criteria:

a. meet the client's investment objectives, including risk tolerance
b. clients have the financial ability to bear any related investment risks consistent with their investment objectives, and
c. the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of their portfolio.

Firms must ensure that the information regarding a client's/potential client's knowledge and experience in the investment field includes the following:

a. the types of service, transaction and financial instrument with which the client is familiar
b. the nature, volume and frequency of the client's transactions in financial instruments and the period over which they have been carried out, and
c. the level of education and profession/relevant former profession of the client/potential client.

The information regarding the financial situation of the client/potential client shall include information on the source and extent of their regular income, assets, including liquid assets, investments and real property, and regular financial commitments.

Although a firm may not be permitted to make a personal recommendation or take a decision to trade if it does not have the necessary information, clients may still ask the firm to provide another service, such as arranging a deal or to deal as agent for the client. In this situation, the firm must ensure that it receives written confirmation of the instructions.

Firms must also bear in mind the client's best interests rule and any obligation it may have under the rules relating to appropriateness when providing the different service.

When providing investment advice to retail clients, firms must before the transaction is concluded, provide the client with a suitability report in a durable medium specifying the advice given and how the advice meets their objectives.

Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, the firm may provide the suitability report in a durable medium immediately after the client is bound by any such agreement, provided that the client has agreed to receive the suitability report after the conclusion of the transaction and the firm has given the client the option of delaying the transaction in order to receive the suitability report in advance.

When providing investment advice, firms must provide a report to retail clients that includes an outline of the advice given and how the recommendation is suitable for them, including how it meets their objectives and personal circumstances.

Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established only cover changes in the services or instruments involved and/or the circumstances of the client and do not need to repeat all the details of the first report.

Non-MiFID Business

When a firm makes a personal recommendation or is managing a client's investments, it should obtain the necessary information regarding the client's:

- knowledge and experience in the investment field, relevant to the specific type of financial instrument or service
- financial situation, including the ability to bare losses, and
- investment objectives, including risk tolerance.

This enables the firm to make the recommendations, or take the decisions, which are suitable for the client.

A firm must provide a client with a suitability report if it makes a personal recommendation to the client, if the client:

- acquires a holding in, or sells all or part of a holding in:
    - a regulated collective investment scheme
    - an investment trust, either directly or through an investment trust savings scheme
    - an investment trust where the shares are to be held in an individual savings account (ISA) which has been promoted as the means for investing in one or more specific

investment trusts

- buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme
- elects to make income withdrawals or purchase a short-term annuity, or
- enters into a pension transfer or pension opt-out.

A firm must also provide a suitability report if it makes a personal recommendation in connection with a life assurance policy.

There are some exceptions to the requirement to provide a suitability report. These include:

- where the firm is acting as investment manager for a retail client, makes a personal recommendation in connection with a regulated collective investment scheme
- if the client is resident outside the UK and the client is not present in the UK at the time of acknowledging consent to the proposal form to which the personal recommendation relates
- if the personal recommendation is made by a friendly society in connection to a small life policy with a premium not exceeding £50 a year or (if payable weekly) £1 a week
- if the personal recommendation is to increase a regular premium to an existing contract, or
- invest additional single premiums or single contributions to an existing packaged product, to which a single premium or single contribution has previously been paid. It is worth noting that regarding the second bullet point, an individual 'in transit' at a UK airport is not deemed to be in the UK.

In terms of timing, a suitability report must be provided for retail clients:

- in connection with a life policy, before the contract is concluded, unless the necessary information is provided orally, or cover is required immediately (in which case the report must be provided immediately after the contract is concluded)
- in connection with a personal pension scheme or a stakeholder pension, where the cancellation rules apply, within 14 days of concluding the contract, or
- in any other case, as soon as possible after, the transaction is effected or executed.

If the transaction is the sale of a life policy by telephone, and the contact between the firm and client before the contract is concluded by telephone, the suitability report must comply with the Distance Marketing Directive (DMD) rules and be provided immediately after conclusion of the contract.

In respect of timing, a suitability report must be provided when, or as soon as possible after, the transaction is effected or executed in respect of professional clients.

14.9.2 Information Required to Make a Suitability Assessment

In order to make a suitability assessment, a firm should establish, and take account of, the client's:

- knowledge and experience of investment relevant to the specific type of designated investment or service

- investment objectives, and
- level of investment risk that they can bear financially that is consistent with their investment objectives.

In order to do so, a firm should gather sufficient information from its client to understand the essential facts about them. It must have a reasonable basis to believe that (bearing in mind its nature) the service or transaction:

- meets their investment objectives
- carries a level of investment risk that they can bear financially, and
- carries risks that they have the experience and knowledge to understand.

In terms of assessing the client's knowledge and experience, firms should gather information on:

- the types of service, transaction or investment with which they are familiar
- the nature, volume, frequency and period of their involvement in such transactions or investments, and
- their level of education, profession or relevant former profession.

Firms must not discourage clients from providing this information (for example, because it would rule a particular transaction out and result in a loss of business to the firm). They are entitled to rely on the information the client provides, unless it is manifestly out of date, inaccurate or incomplete or the firm knows the information to be false.

If a firm does not obtain the information it needs to assess suitability in this way, it must not make a personal recommendation to the client or take a decision to trade for them.

Assessing Suitability – Professional Clients

A firm is entitled to assume that a professional client (per se and elective professional clients) in respect of UK MiFID has the necessary experience and knowledge in that area. A firm is entitled to assume that a per se professional client is able to financially bear any related investment risks consistent with their investment objectives.

However, a firm is not permitted to make this same assumption for elective professional clients.

14.9.3 Regulatory Publications

Finalised Guidance – Assessing Suitability (Establishing the risk a customer is willing and able to take and making a suitable investment selection)
The FCA published finalised guidance on suitability requirements to provide guidance and assist firms in understanding their obligations.

The FCA noted that during a review of a sample of investment files assessed as unsuitable, over half of these were assessed as unsuitable on the grounds that the investment selection failed to meet the risk that the customer was willing and able to take. This level of failure was deemed unacceptable by the regulator. It has taken, and continues to take, tough action to address these failings with individual firms.

Prompted by these results and its ongoing concerns in this area, and to help firms and trade bodies to tackle the issues, the FCA published finalised guidance that looks at:

- how firms establish and check the level of investment risk that retail customers are willing and able to take (in the wider context of the overall suitability assessment)
- the potential causes of failures to provide investment selections that meet the risk a customer is willing and able to take, and
- the role played by risk-profiling and asset-allocation tools, as well as the providers of these tools.

The work in this area also identified common approaches that can lead to an inadequate assessment of the risk a customer is willing and able to take, including:

- Although most advisers and investment managers consider a customer's attitude to risk when assessing suitability, many failed to take appropriate account of the customer's capacity for loss.
- If firms used a questionnaire to collect information from customers, the regulator was concerned that these often-used poor question and answer options, had over-sensitive scoring or attributed inappropriate weighting to answers. Such flaws can result in inappropriate interpretation of customer responses.
- The regulator saw examples of firms failing to have a robust process to identify customers that are best suited to placing their money in cash deposits because they are unwilling or unable to accept the risk of loss of capital.

The FCA concluded that a firm should ensure that, in particular:

- it has a robust process for assessing the risk a customer is willing and able to take, including:
    - assessing a customer's capacity for loss
    - identifying customers that are best suited to placing their money in cash deposits because they are unwilling or unable to accept the risk of loss of capital
    - appropriately interpreting customer responses to questions and not attributing inappropriate weight to certain answers
- tools, where used, are fit for purpose and any limitations recognised and mitigated
- any questions and answers that are used to establish the risk a customer is willing and able to take, and descriptions used to check this, are fair, clear and not misleading
- it has a robust and flexible process for ensuring investment selections are suitable, given a customer's investment objectives and financial situation, and understands the nature and risks of products or assets selected for customers, and
- it engages customers in a suitability assessment process (including risk-profiling) which acts in the best interests of those customers.

14.9.4 FCA Approach to Insistent and Vulnerable Clients

Insistent Clients

The FCA defines an insistent client as:

> *'receiving a personal recommendation from a FCA-regulated firm, but decides to enter into a transaction which is different from that recommended by the firm in the personal recommendation, and wishes the firm to facilitate that transaction.'*

A firm can execute the transaction on behalf of the client, but they must communicate with the client in a fair, clear and not misleading manner while paying due regard to the interests of the client.

The information which the firm should communicate to the insistent client is:

- the firm did not recommend the transaction; therefore the transaction will not be in accordance with the firm's personal recommendation
- the reasons why the transaction will not be in accordance with the firm's personal recommendation
- the risks of the transaction proposed by the insistent client, and
- the reasons why the firm did not recommend that transaction to the client.

The firm must receive an acknowledgement from the 'insistent client' that the transaction was not in accordance with a personal recommendation made by the firm and that the transaction was undertaken following specific instructions from the client.

Vulnerable Clients

Protecting vulnerable consumers is a key focus for the FCA, it is embedded within the Consumer Duty.

A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care.

The FCA's view of vulnerability is that all customers are at risk of becoming vulnerable, but this risk is increased by having characteristics of vulnerability. These could be poor health, such as cognitive impairment, life events such as new caring responsibilities, low resilience to cope with financial or emotional shocks and low capability, such as poor literacy or numeracy skills.

Not all customers who have these characteristics will experience harm. But they may be more likely to have additional or different needs which, if firms do not meet them, could limit their ability to make decisions or represent their own interests, putting them at greater risk of harm.

The FCA's approach is to drive improvements in the way firms treat vulnerable consumers and bring about a practical shift in firms' actions and behaviour. The FCA wants vulnerable consumers to experience outcomes as good as other consumers and to get consistently fair treatment. As anyone can find themselves in vulnerable circumstances at any time, the FCA's guidance is relevant to firms serving retail customers, including some business customers, regardless of the firm's size or sector.

To achieve good outcomes for vulnerable customers, firms should take appropriate action to:

- **understand the needs** of their target market/customer base

- make sure staff have the right **skills and capability** to recognise and respond to the needs of vulnerable customers
- **respond to customer needs** throughout product design, flexible customer service provision and communications, and
- **monitor and assess** whether they are meeting and responding to the needs of customers with characteristics of vulnerability and make improvements where this is not happening.

Actions firms should take to treat vulnerable customers fairly

- Understanding the needs of vulnerable customers
    - Understand the nature and scale of characteristics of vulnerability that exist in their target market and customer base.
    - Understand the impact of vulnerability on the needs of consumers in their target market and customer base, by asking what types of harm or disadvantage customers may be vulnerable to, and how this might affect the consumer experience and outcomes.
- Skills and capability of staff
    - Embed the fair treatment of vulnerable consumers across the firm.
    - All staff should understand how their role affects the fair treatment of vulnerable consumers.
    - Client facing staff have the necessary skills and capability to recognise and respond to a range of characteristics of vulnerability.
    - Offer practical and emotional support to frontline staff dealing with vulnerable consumers.
- Taking practical action
- Product and service design:
    - Consider the potential positive and negative impacts of a product or service on vulnerable consumers. Design products and services to avoid potential harmful impacts.
    - Take vulnerable consumers into account at all stages of the product and service design process, including idea generation, development, testing, launch and review, to make sure products and services meet their needs.
- Customer service
    - Set up systems and processes in a way that will support and enable vulnerable consumers to disclose their needs.
    - Deliver appropriate customer service that is flexible to the needs of vulnerable consumers.

    - Make consumers aware of support available to them, including relevant options for third party representation and specialist support services.
    - Put in place systems and processes that support the delivery of good customer service, including information about a customer's needs.
- Communications
    - Communications and information about products and services are understandable for consumers in their target market and customer base.
    - Consider how to communicate with vulnerable consumers, taking into consideration their needs.
- Monitoring and evaluation
    - Implement appropriate processes to evaluate where they have not met the needs of vulnerable consumers:
        - to identify training and development requirements, and
        - review management information, appropriate to the nature of business, on the outcomes being delivered for vulnerable consumers.

In March 2025, the FCA has published a review, along with and good and poor practice examples to help firms provide the right care consistent with the Consumer Duty. Sarah Pritchard, executive director, competition, markets and international, said:

> *'It can be hard to tell your bank or insurer about your specific needs, but those who ask for help tend to feel more supported. We've seen good examples where financial firms are making a difference for vulnerable customers, but we know that vulnerable people report more negative experiences than others. 'We want firms to build on the good work identified, to help people open up and make sure they get the support they may need.'*

As part of the review, the FCA evaluated firms' actions in line with FG21/1: 'Guidance for firms on the fair treatment of vulnerable customers' to:

1. Test how firms are supporting customers in vulnerable circumstances.
2. Consider whether our existing vulnerability guidance remains appropriate in light of the Consumer Duty.

The FCA found many examples of positive actions by firms across sectors, as well as some areas for improvement. They also saw a renewed focus among firms on delivering good outcomes for consumers in vulnerable circumstances because of the Consumer Duty.

The FCA noted that from the 'Financial Lives' survey and 'consumer research' that they commissioned, that consumers in vulnerable circumstances continue to report poor outcomes when compared with other consumers. Although the research showed that consumers were able to report good examples

of firms responding flexibly to meet their needs and offer tailored support, consumers continued to report challenges, particularly if they have multiple characteristics of vulnerability.

As part of the review, the FCA gathered data to understand:

1. Actions firms have taken to understand and respond to the needs of customers in vulnerable circumstances.
2. The outcomes experienced by customers in vulnerable circumstances.
3. Stakeholders' views of the Guidance, including its continuing relevance under the Consumer Duty.

FCA Findings (Overall)

Areas of Good Practice

Good Practice	Areas for improvement
Effective use of monitoring outcomes. • Some firms incorporated feedback from lived experience panels and focus groups into their development processes, and considered how customers in vulnerable circumstances used their products as part of product reviews processes.	Ineffective outcomes monitoring. • Most firms' monitoring was unable to show how they effectively monitor and take action on outcomes for customers in vulnerable circumstances. This includes: ◦ Not being clear on what good outcomes look like or having clear ways of measuring them. ◦ Not escalating issues or making changes where needed.
Offering flexible and tailored consumer support. • The FCA saw examples of firms delivering flexible and tailored support, strengthened by training frontline staff on how to support customers with characteristics of vulnerability.	Failure to give appropriate support. • Some firms failed to: ◦ Appropriately support staff in identifying customers in vulnerable circumstances. ◦ Encourage customer disclosure. ◦ Provide support promptly and with an appropriate level of care.
Clear and timely communications. • The FCA saw firms take steps to review and improve the clarity of their messages to customers, tailor communications, and provide these in a timely manner to make	Failure to communicate clearly to meet the needs of customers in vulnerable circumstances. • Firms not providing appropriate or accessible channels to customers in

sure customers understood product information.	vulnerable circumstances, and a lack of testing of consumer understanding.
Incorporating consumers experiences into product and service development processes. • Some firms incorporated feedback from lived experience panels and focus groups into their development processes, and considered how customers in vulnerable circumstances used their products as part of product reviews processes.	Lack of tailored training and embedding consumers' needs into product service design. • Most firms the FCA engaged with could not evidence how they had embedded the needs of customers in vulnerable circumstances into their product and service design processes. • Lack of training on vulnerability for product and design staff.

Consumer Duty Outcomes – 'Governance and Outcomes Monitoring'

Good Practice	Areas for improvement
Clearly define a good outcome. • Firms that could effectively monitor outcomes for customers in vulnerable circumstances tended to set out what a good outcome for a particular product or service looked like. • This helped support and structure how firms monitor whether customers receive good outcomes.	Lack of clarity on what firms consider to be good and poor outcomes. • Firms either find it challenging to monitor outcomes for customers in vulnerable circumstances, have underestimated the depth of monitoring required, or choose only to monitor readily available data. ◦ for example, data on whether staff have handled customer calls in line with the firm's processes, which does not directly measure customer outcomes. • Firms could not always show a clear understanding of the needs and characteristics of customers within their target market and a clear vision for what good looks like for customers with different or additional needs.
Use good quality data to understand the outcomes of customers in vulnerable circumstances.	Poor quality or insufficient data preventing firms from effectively measuring customer outcomes, and how these differed for customers in vulnerable circumstances.

• Firms who collected relevant data to make evidence-based assessments of their customers' experiences were better able to understand whether they were delivering good outcomes. • They could then use this to inform their approach to improving outcomes.	• Firms often relied on data that lacked breadth and granularity. • This limited their ability to compare and reach conclusions about outcomes of different groups of consumers. • Firms often monitored outputs of processes – such as call metrics, time taken to transfer funds (eg, in bereavement cases) and staff training records. But this alone may not give a full understanding of the outcomes for customers in vulnerable circumstances. • Firms had gaps in data from distributors and third parties in their distribution chains – or that this MI was less developed. ◦ this limited firms' understanding of customer outcomes across the distribution chain.
Have clear escalation processes to identify poor outcomes. • Some firms proactively reviewed customer experience and outcomes. • Where outcomes monitoring tended to be better, firms acted where they saw poor outcomes, responding flexibly to customers' circumstances.	Unclear and inconsistent approaches regarding when to act and what actions to take in response to poor outcomes for particular groups. • Firms were not always able to demonstrate how they use data to identify areas for improvement and establish clear and effective escalation processes where poor outcomes are identified. • It was often hard to see when or how escalations would happen in response to poor outcomes for customers in vulnerable circumstances, due to unclear policies, processes and thresholds for taking action based on ongoing outcomes monitoring. • Many firms pointed to actions they had taken to make improvements for customers in vulnerable circumstances. ◦ The FCA saw limited evidence of firms consistently reviewing the effectiveness of actions.

	• While firms evidenced interventions to improve individual customer outcomes, they often did not consider improvements across the whole product or service.
Have strategies to make improvements. • Such firms escalated issues to senior leadership, adapted processes as needed, and evaluated the impact of their interventions.	Lack of engagement, challenge and direction from senior leaders. • While firms had established organisation-wide vulnerability policies, only 39% of firms had formal governance bodies or committees that oversee and can influence outcomes for customers in vulnerable circumstances.
Be able to show what they did where they identified poor outcomes and evaluate whether those actions are effective.	
Have senior leadership that is engaged on outcomes for customers in vulnerable circumstances. • Some firms' senior leaders set clear, consistent strategies across business lines, giving appropriate priority to the delivery of good outcomes for customers in vulnerable circumstances. • Those leaders also engaged with key management information (MI) and decision-making.	

Consumer Duty Outcomes – 'Consumer Support'

Good Practice	Areas for improvement
Take steps to identify signs of vulnerability and encourage customers to disclose their needs. • Using centralised systems to store information about a customer's circumstances or needs, which could be accessed by colleagues across almost all of a firm's retail business areas.	Take steps to identify signs of vulnerability and encourage customers to disclose their needs. • The FCA noted it was difficult for firms to identify signs of vulnerability, and encouraging customers to disclose their needs was challenging.

◦ this meant customers did not have to repeat potentially sensitive information. • Using artificial intelligence (AI) to help identify potential characteristics of vulnerability.	◦ in particular, the FCA saw this in firms that have primarily digital customer journeys.
Take a variety of actions to make sure staff have the appropriate skills and capabilities to recognise and respond to vulnerability. This includes empowering and supporting frontline staff and having clear processes to refer customers to specialist teams where appropriate. • Providing internal guidance documents and process manuals for frontline staff on how they should respond to customers with particular characteristics of vulnerability. • Sharing materials created by charities or trade bodies with relevant staff and signposting the availability of third-party support to customers or customer representatives where appropriate. • Removing or adjusting performance targets related to call times and volume of cases for frontline staff dealing with customers in vulnerable circumstances. • Managing the wellbeing of staff who deal with customer trauma by allowing them to step away from call-handling if they have dealt with challenging calls. • Having specialist support teams to support customers with particularly complex needs. For example, some firms had a specialist team that handled all bereavement cases. ◦ this enabled staff to better understand and more effectively respond to the needs of customer representatives affected by bereavement.	Respond flexibly to customers' needs and act with an appropriate level of care when engaging with customers in vulnerable circumstances. • Inflexibility in processes led to staff making unsuitable suggestions or requests. • Limitations in the skills and capability of frontline staff and in some firms' systems capabilities.
Tailor consumer support to respond flexibly to customers' identified needs.	

• Adapting standardised processes where appropriate to deliver good consumer outcomes.	

Consumer Duty Outcomes – 'Consumer Understanding'

Good Practice	Areas for improvement

Make sure communications are clear and written in plain English.
• Most firms reported taking action to provide communications in plain English and minimise jargon.
• Some firms made written communications and information easier to understand by applying readability and plain numbers checks.
  ◦ firms used plain English guidelines, avoided using jargon whenever possible and explained unfamiliar terms.
  ◦ firms also reformatted documents, with changes that included using accessible fonts/font size, bullet points, short sentences, short paragraphs and increasing spacing of content.
	Consistency in providing clear information.
	• The FCA review found that consumers in vulnerable circumstances (15%) were more likely than others (13%) to report that they had failed to get the information they needed from firms.
	  ◦ for consumers with a combination of poor health, negative life events and low resilience, this figure increased to 32%.

Communicate in a timely way. • Of the firms that reported taking significant action to improve communications, 90% said they had taken steps to provide communications in a timely manner and at appropriate touchpoints in the customer journey.	Timeliness of communications. • FCA consumer research found that a greater proportion of customers in vulnerable circumstances (16%) reported a slow response to enquiries compared to other customers(11%). • Timeliness can be subjective and customers' expectations may vary. ◦ for example, where their circumstances create a heightened

	sense of urgency, such as when a customer needs to pay a bill. ◦ it's important for firms to consider this in their approach to communications. • The consumer research found a number of negative outcomes were caused by firms not communicating in a timely way. ◦ these included consumers not being able to plan ahead and feelings of low self-worth. • These findings demonstrate the importance of timely communication to good consumer outcomes.
Tailor communications to target markets/customer bases and offer channels that meet the particular needs of customers in vulnerable circumstances. • Adopted tailoring communications to the needs of consumers and avoiding one-size-fits-all approaches.	Tailoring communications and offering appropriate channels to meet customers' needs. • In consumer research, customers in vulnerable circumstances were less likely than others to say their financial service provider's communication channels met their needs. • This applied across all main drivers of vulnerability and was particularly pronounced for those who had low confidence in managing their money.
Test consumers' understanding of communications and make changes where required. • Firms that demonstrated best practice used consumer testing or third-party reviews to assess whether their communications met the needs of consumers in vulnerable circumstances. ◦ they used this insight to make changes. • Firms periodically test their communications on an ongoing basis.	Testing and reviewing communications with consumers via feedback or insight-gathering. • The Consumer research survey found that consumer testing was a less commonly taken action. ◦ testing the relevance, clarity and timeliness of communications is likely to help firms to ensure consumers in vulnerable circumstances understand the information they need to make decisions in their best interests.

	◦ where appropriate, firms must test their communications before sharing them with customers, to identify whether they are supporting good outcomes. They should also monitor their communications to check whether they are effective. ◦ if communications are found to be leading to poor consumer outcomes, firms should take remedial action and continue to monitor whether outcomes improve.

Consumer Duty Outcomes – 'Products and Services'

Good Practice	Areas for improvement
Firms providing apps and features designed to block gambling transactions. • Gave current account users the ability to switch off transactions to gambling merchants. • Included positive friction design features to guard against impulse gambling. • Streamlined in-app journeys to find information about the help and support available. • Firms worked with gambling charities to provide additional training to staff, as well as establishing a referral option for support from the charity.	Training product and service design staff. • Few firms are training product and service design staff on vulnerability – and training is not covering often enough how their role can affect customers in vulnerable circumstances.
Product design teams engaging with third parties (eg, charities for specific disabilities) with relevant knowledge when reviewing and designing products.	Designing for customers in vulnerable circumstances. • Firms were often not able to show how they are designing products and services (or reviewing existing products) to make sure they meet the needs of customers in vulnerable circumstances.

Firms embedding inclusive design principles into the product design process. • firms set out explicit and detailed questions in their product review framework. • The extra level of detail prompted staff to: ◦ Consider whether management information indicated that customers in vulnerable circumstances were more likely to take out a given product or incur fees. ◦ Identify features of the product that could cause foreseeable harm. • Firms also included vulnerability in its risk assessment framework for product governance, so it was prominent as a possible risk indicator.	Using data. • Firms need to do more to incorporate data and insight about vulnerability in their customer base and target market and customer outcomes into their product design and review processes.
Insurers designing products to take account of customers' pre-existing medical conditions.	Finding suitable financial products and services.

14.10 Appropriateness (for Non-Advised Services) (COBS 10 and 10A)

The rules on non-advised sales apply to a range of UK MiFID (and some non-UK MiFID) investment services and products which do not involve advice or discretionary portfolio management. Specifically, they apply to:

- firms providing MiFID investment services other than the provision of personal recommendations, or the managing of investments
- firms arranging deals, or dealing, in warrants and derivatives for retail clients, when the firm is, or should be, aware that the client's application, or order is in response to a direct offer financial promotion
- firms which assess appropriateness on behalf of other MiFID firms.

As noted in 14.9.2 above, a firm is entitled to assume that a professional client (per se and elective professional clients) in respect of UK MiFID has the necessary experience and knowledge in that area. A firm is entitled to assume that a per se professional client is able to financially bear any related investment risks consistent with their investment objectives regarding non-advised (execution only) services.

However, they are not permitted to make this same assumption for elective professional clients. In assessing appropriateness, the firm:

- must determine whether the client has the experience and knowledge to understand the risks involved, and
- may assume that a client classified as a professional client for certain services or products has the necessary knowledge and experience in that field for which it is classified as a professional client.

In terms of a client's knowledge and experience, a firm should obtain information (to the extent appropriate to the circumstances) on:

- the types of service, transaction, or investment with which they are familiar
- the nature, volume, frequency and period of their involvement in such transactions or investments, and
- their level of education, profession or relevant former profession.

The firm must not discourage a client from providing this information. A firm is entitled to rely on information provided by a client, unless it is aware that the information is out of date, inaccurate or incomplete. A firm can use information it already has in its possession. A firm may satisfy itself that a client's knowledge alone is sufficient for them to understand the risk involved in a product or service. When reasonable, a firm may infer knowledge from experience.

14.10.1 Circumstances when Assessment is Unnecessary

Firms are not required to ask clients to provide information or assess appropriateness if:

- the service is execution only or, for the receipt and transmission of client orders, in relation to particular financial instruments (see below) and at the client's initiative, or
- the client has been clearly informed that the firm is not required to do so in this particular case, and that they will therefore not get the benefit of the protection under the rules on assessing suitability, or
- the firm complies with its obligations regarding conflicts of interest. Principle 8 of the Principles for Businesses states that 'a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client', or
- it relates to insurance distribution activity

The particular financial instruments are as defined in UK MiFID, refer to chapters 1 and 3 for more details on the full list of applicable financial instruments.

Financial instruments classified as 'non-complex' include:

- shares in companies admitted to trading on a UK/EEA Regulated Market, MTF or an equivalent third country market:

    - except shares that embed a derivative or is a collective investment scheme that is not a UCITS
- bonds or other forms of securitised debt admitted to trading on a UK/EEA Regulated Market, MTF or an equivalent third country market:
    - except those that embed a derivative
- money market instruments:
    - except those that embed a derivative
    - shares or units in a UCITS
- structured deposits:
    - except where the structure makes it difficult for the client to understand the nature of the risk of return or the cost of exiting the product before the end of the term
- insurance-based investment products:
    - where the product provides investment exposure to the above list of financial instruments, and the client can understand the risk involved.

Firms do not need to reassess appropriateness each time if a client is engaged in a series of similar transactions or services, but they must do so before beginning to provide the service. If a client was engaged in a course of dealings of this type before MiFID I came into effect in 2007, then the firm may assume that they have the necessary experience and knowledge to understand the risks. This does not mean, however, that the other criteria may necessarily be deemed to have been met.

14.10.2 The Obligation to Warn Clients

If a firm believes, based on the above assessment, that the product or service contemplated is not appropriate for the client, it must warn them of that fact. It may do so in a standardised format.

Further, if the client declines to provide the information the firm needs to assess appropriateness, the firm must warn them that it will then be unable to assess the product or service's appropriateness for them (and again it may do so in standard format). If the client then asks the firm to proceed regardless, it is up to the firm to decide whether to do so based on the circumstances.

14.10.3 Product Disclosure – Key Investor Information Documents (KIIDs) and Key Features Documents (KFDs)

Key Investor Information Documents (KIIDs)

For each UCITS scheme that an authorised fund manager (AFM) manages, it must produce a key investor information document (KIID).

The KIID must be fair, clear, not misleading and be consistent with relevant parts of the prospectus.

KIIDs must include appropriate information about the essential characteristics of the UCITS scheme, which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product being offered to them, and therefore make investment decisions on an informed basis.

In addition, it must provide information on the following essential elements in respect of the UCITS scheme:

a. identification of the scheme
b. a short description of its investment objectives and investment policy
c. past performance or, where relevant, performance scenarios
d. costs and associated charges, and
e. risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the scheme.

With the introduction of the key information document (KID) under the new EU Packaged Retail and Insurance Based Investment Products (PRIIPs) regulation, there will no longer be the requirement to provide a KIID for certain products that fall within scope of the PRIIPs Regulation.

Key Features Documents (KFDs)

The rules on product disclosure require that a firm prepares a disclosure document in good time before it needs to, in respect of:

- each packaged product
- cash deposit ISAs
- cash deposit child trust funds (CTFs)
- a key features illustration for each packaged product it produces.

KIIDs cover the terms and features of a product in a prescribed level of detail. The exceptions are as follows:

- When another firm has agreed to prepare such a document.
- The information is already provided in enough detail in another document.
- There are some specific rules for reinsurance and pure protection insurance contracts.

Firms must provide particular information on the nature and risks of designated investments to clients for whom they undertake MiFID business. They must also do so for retail clients in relation to certain other business.

A KFD must:

- include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a retail client to be able to make an informed decision about whether to proceed explain:
    - the arrangements for handling complaints about the product

- that compensation might be available from the FSCS if the firm cannot meet its liabilities in respect of the product (if applicable)
- that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a client may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent
- (for a CTF) that stakeholder, cash-deposit and security-based CTFs are available and which type the firm is offering, and
- (for a personal pension scheme that is not an automatic enrolment scheme) clearly and prominently, that stakeholder pension schemes are generally available and might meet the client's needs as well as the scheme on offer.

14.10.4 Cancellation and Rights to Withdraw

The rules on 'cancellation' or 'withdrawal' apply to:

- most firms providing retail financial products based on designated investments or deposits, or
- firms entering into distance contracts with consumers, relating to deposits or designated investments.

They are intended to ensure that clients entering into the relevant range of transactions have the opportunity to reconsider within a certain period of time, and to cancel the transaction. If a consumer does so, the effect is that they withdraw from the contract and it is terminated.

For example, should a client who receives a cancellation notice in respect of an advised purchase of an authorised unit trust or **open-ended investment company (OEIC)** wish to exercise their right to cancel, they must do so within 14 days.

If cancellation or withdrawal rights apply, firms must tell the consumer of their rights in good time before (or if that is not possible, immediately after) the consumer is bound by the contract, and they must do so in a durable medium. They must tell the consumer of:

- the existence of the cancellation or withdrawal right
- its duration
- the conditions for exercising it (including information on any amount the consumer may have to pay)
- what happens if they do not exercise it, and
- practical details of how to exercise it, including the address to which they must send any notification.

A firm need not do this if the consumer is already receiving similar information from it, or another person, under the COBS rules (distance marketing disclosure rules and providing product information).

Cancellation or withdrawal rights do not apply to clients who have discretionary managed portfolios.

The record-keeping retention period is:

- indefinitely for pension transfers, pension opt-outs and FSAVCs
- at least five years in relation to a life policy, pension contract, personal pension scheme or stakeholder pension schemes, or
- at least three years in any other case.

14.10.5 Packaged Retail and Insurance-based Investment Products (PRIIPs)

The aim of the PRIIPs legislation is to help investors to better understand and compare the key features, risk, rewards and costs of different PRIIPs, through access to a short and consumer-friendly 'KID'.

The KID is a simple document providing important information to investors in a clear and understandable manner, with respect to collective investment schemes, and other 'packaged' investment products offered by banks or insurance companies.

UCITS already contains a requirement around disclosure to investors, a 'KIID' and a 'KFD', as noted above in section 14.10.3. These documents are due to be replaced by the KID – but they are subject to a deferral period before PRIIPs will apply.

The scope of PRIIPs is distinguished by the broadly comparable functions they perform for retail investors. They typically provide exposure to multiple underlying assets, deliver capital accumulation over a medium- to long-term investment period, entail a degree of investment risk (although some may provide capital guarantees), and are normally marketed to retail investors.

They can be categorised into four groups:

1. investment funds
2. insurance-based investment products
3. retail structured securities, and
4. structured term deposits.

The PRIIPs requirements will apply to a 'manufacturer' and an 'adviser'.

A PRIIP manufacturer (or any person who changes an existing PRIIP, such as a distributor) is required to:

- prepare a KID for each PRIIP they produce, and
- publish each KID on their website.

A person who advises a retail investor on a PRIIP or sells a PRIIP to a retail investor must provide the retail investor with a KID in good time before any transaction is concluded.

Therefore, the Regulation applies to:

- retail investment product providers
- life companies
- discretionary investment management firms
- firms providing services in relation to insurance-based investments
- fund managers
- stockbrokers and other firms that provide advice to retail clients on funds, structured products and derivatives
- financial advisers, and
- firms operating retail distribution platforms.

As the Regulation only applies where the PRIIP is made available to retail investors, the definition of a 'retail client' is key to the application of the requirements for firms. A 'retail client' is defined as:

- a 'client' as defined in UK MiFID, or
- customers as referred to in the UK Insurance Mediation Directive (UK IMD), where they would not qualify as professional clients under UK MiFID.

Products that are not PRIIPs

The following would NOT be considered to be PRIIPs:

- non-life insurance/general insurance, and life insurance that only pays benefits on death or incapacity due to injury, sickness or infirmity (insurance products that do not offer investment opportunities are excluded from the scope of the Regulation)
- deposits other than structured deposits (deposits solely exposed to interest rates are excluded from the scope of the Regulation)
- investment funds dedicated to institutional investors are excluded (since they are not for sale to retail investors)
- corporate shares and bonds held directly
- pension products – having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits (ie, occupational pension schemes – where a contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider)
- annuities where the amount payable to the annuitant does not fluctuate (eg, a purchased life annuity that pays a fixed amount of income for life or an annuity that pays a fixed income for a specified term), and
- certain securities such as issued by member states, their regional or local authorities, central banks, public international bodies, non-profit making bodies or credit institutions.

Key Information Documents (KIDs)

The PRIIPs Regulation requires that a KID is a stand-alone, standardised document prepared for each investment. A KID can be up to a maximum of three A4 pages.

Each KID will need to contain the following information, presented in a pre-determined sequence of sections. The sections are as follows:

- Purpose.
- What is this product?
- What are the risks and what could I get in return?
- What happens if (name of the PRIIP manufacturer) is unable to pay out?
- What are the costs?
- How long should I hold it and can I take money out early?
- How can I complain?
- Other relevant information.

14.10.6
Changes to PRIIPS Scope and Amendments to Regulatory Technical Standards

In 2021, the FCA consulted on proposals to address identified persistent concerns of the onshored (retained EU) PRIIPS Regulation.

The Policy Statement and final rules introduced the following changes:

- Clarify the scope of the PRIIPs Regulation for corporate bonds:
    - making it clearer that certain common features of these instruments do not make them into a PRIIP.
- Introduce interpretative guidance to clarify what it means for a PRIIP to be 'made available' to retail investors.
- Amend the PRIIPs RTS to:
    - replace the requirements and methodologies for presentation of performance scenarios in the KID with a requirement for narrative information on performance to be provided
    - address the potential for some PRIIPs to be assigned an inappropriately low summary risk indicator in the KID
    - address concerns about certain applications of the 'slippage' methodology when calculating transaction costs.

The changes took effect in 2022.

Refer to chapter 5 for details on the UK 'new' retail disclosure framework.

In September 2024, the government and the FCA issued a joint statement regarding the reforms to retail disclosure requirements. The government will introduce legislation that will exempt investment trusts from the current PRIIPS regulation. This is a temporary measure, as they will be included within the scope of the future UK retail focused disclosure framework.

The FCA issued a forbearance statement to provide clarity and certainty for firms ahead any the new legislation taking effect. Therefore, from 19 September 2024 and until the new UK retail disclosure framework comes into effect (date to be confirmed), they will not take any supervisory or

enforcement action, if an investment trust chooses not to comply with the requirements of the current PRIIPS regulations and associated technical standards.

14.11 Product Governance (PROD)

14.11.1 Product Governance Requirements

The purpose of the UK MiFID II requirements, adopted into the FCA's Product Intervention and Product Governance (PROD) Sourcebook, is to ensure that firms have adequate and appropriate product oversight and governance processes in place.

Product oversight and governance refers to the 'systems and controls' that firms must have in place to design, approve, market and manage products throughout the products' life cycle to ensure they meet legal and regulatory requirements.

Good governance results in products that meet the needs of one or more identifiable target markets, are sold to clients in the target market assessment audience by appropriate distribution channels and deliver appropriate outcomes for clients. The MiFID rules and requirements largely replicated the previous UK regime applicable to retail structured products.

However, the legislation did not tailor the new requirements to financial instruments; the result is that they apply to vastly different financial instruments in terms of risk profile and complexity. Determining the proportional application was one of the key challenges that firms faced in implementing UK MiFID.

The scope of what constitutes a manufacturer and a distributor is purposely wide. A manufacturer creates, develops, issues and/or designs MiFID financial instruments for sale to clients. This does include firms advising corporate issuers on the launch of new products.

Manufacturers must implement a thorough product approval process consisting of:

- identifying the target market for each product (target market analysis)
- conducting a scenario analysis regarding risk (scenario analysis)
- providing distributors with the appropriate information about the product
- implementing management body oversight of the product governance framework, including managing/identifying any possible conflicts of interest and determining whether the product could represent a threat to the orderly functioning of the market
- establishing a product review process which includes gathering information from distributors to determine if the product remains consistent with the identified target market, and
- reviewing the charging structure.

A distributor offers, recommends or sells an investment product and/or service to a client. Distributors must ensure that their products meet the needs of the relevant client market by:

- at a business level – conducting target market analysis of their distribution strategy

- ensuring the products they distribute are appropriate for the target market of their client base
- carrying out periodic reviews of their distribution and providing management information to manufacturers, and
- conducting a scenario analysis regarding risk (scenario analysis).

Following the introduction of the Consumer Duty, there are new requirements that apply to firms regarding product development.

Firms would only need to comply with one set of relevant rules, with the requirements in the Consumer Duty or the requirements in PROD (refer to section 6 of this chapter for details on the Consumer Duty).

14.11.2 Target Market Assessment

Manufacturers

Manufacturers are required to identify the potential target market for each financial instrument at a sufficiently granular level and:

- specify the type(s) of client for whose needs and objectives the financial instrument is compatible, and
- identify any group(s) of client(s) for whom the needs and objectives of the financial instrument are not compatible.

Manufacturers must determine for each financial instrument whether it meets the identified needs and objectives of the target market, including undertaking an assessment of the following:

- whether the financial instrument's profile is consistent with the target market, and
- whether the design of the financial instrument is driven by features that benefit the client and not the firm's business model (which relies on poor outcomes to be profitable).

Manufacturers that distribute their products through other firms must determine the needs and objectives of the clients for whom the product is compatible based on:

- their theoretical knowledge of, and past experience with, the financial instrument or similar financial instruments, and
- the needs and objectives of potential end clients.

Distributors

Distributors must determine the 'target market' for the respective financial instrument, even if the target market was not defined by the manufacturer.

When identifying the target market for a financial instrument, distributors must consider the following categories:

1. client type
2. knowledge and experience (specific knowledge of product type and product features; length and depth of experience in product type and product features)

3. financial situation, with a focus on the ability to bear losses (specify the percentage of losses target clients should be able and willing to afford):
    - to a level specified in the product
    - up to the amount invested, or
    - beyond the invested amount.
4. risk tolerance and compatibility of the risk/reward profile (general attitude clients have to the risks of investments; risk attitudes should be categorised, ie, 'risk-oriented', 'speculative', 'balanced', 'conservative'), and
5. client's objectives and needs (specify the investment objectives and needs of target clients that a product is designed to meet).

In addition, distributors must obtain information from manufacturers in respect of the product(s).

14.11.3 Scenario Analysis

Manufacturers must undertake a scenario analysis to assess the risks of poor outcomes for clients and to determine in which circumstances these poor outcomes may occur.

The scenario analysis must cover negative market conditions, under the 'what would happen if' scenario:

- The market environment deteriorates.
- The manufacturer experiences financial difficulties.
- The financial instrument fails to be commercially viable.
- Demand for the financial instrument is much higher than expected.

Manufacturers must consider the charging structure proposed for each financial instrument, including assessment of the following:

- whether the financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market
- whether the charges undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument
- whether the charging structure of the financial instrument is appropriately transparent for the target market, such that it does not disguise charges or is too complex to understand.

Manufacturers must consider whether the financial instrument may represent a threat to the orderly functioning, or to the stability, of financial markets before deciding to proceed with the launch of the financial instrument.

14.11.4 Information Sharing and Disclosure

A manufacturer must make available to any distributor of that financial instrument:

- all appropriate information on the financial instrument
- all appropriate information on the product approval process
- the identified target market of the financial instrument, including information about the target market assessment undertaken
- information about the appropriate channels for distribution of the financial instrument, and
- must ensure that the information is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

When providing information to distributors, a manufacturer should make it clear if that information is not intended for end client use.

To support the reviews carried out by manufacturers, a distributor must provide the following information on each financial instrument it distributes:

- sales information, and
- post-sale review undertaken.

14.11.5 Proportionality

Manufacturers must regularly review the product or financial instruments it manufactures, taking into account any event that could materially affect the potential risk to the identified target market.

In doing so, a manufacturer must assess for each financial instrument at least the following:

- whether the financial instrument remains consistent with the needs, characteristics and objectives of the identified target market
- whether the intended distribution strategy remains appropriate
- whether the financial instrument is being distributed to the target market, and
- whether the financial instrument is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

In addition, it would need to review financial instruments prior to any further issue or relaunch if it is aware of any event that could materially affect the potential risk to clients and identify crucial events that would affect the potential risk or return expectations of the financial instrument.

Distributors must regularly review the financial instruments they distribute and the investment services they provide, taking into account any event that could materially affect the potential risk to the identified target market. This would encompass assessing whether the financial instrument remains consistent with the needs and objectives of the identified target market and whether the distribution strategy remains appropriate.

14.12 Dealing and Managing (COBS 11)

14.12.1 Best Execution

The rules on best execution apply to UK MiFID and non-UK MiFID firms and business. However, there is an exemption from the requirements for firms acting in the capacity of an operator of a regulated CIS when purchasing or selling units or shares in that scheme.

The best execution rules under COBS require firms to execute client orders on the terms that are most favourable to their client.

Under the original MiFID rules, investment firms were required to take 'reasonable steps' to obtain the best possible outcome for their clients. MiFID II intensified the best execution obligation by replacing the term 'reasonable steps' with 'all sufficient steps'. Broadly, they apply if a firm owes a contractual or agency obligation to its client, ie, it is acting on behalf of that client – firms must obtain the best possible outcomes for their client.

For each transaction it engages in, an investment firm must assess (this is called the four-fold test) if the client is placing a legitimate reliance on the firm and/or the firm is using its discretion. In relation to over-the-counter (OTC) transactions (bilateral transactions), when a duty of best execution exists, investment firms must have processes in place to consistently check the fairness of the pricing they provide and retain any relevant market data to allow them to justify their pricing decisions.

The 'four-fold' test, noted below, identifies the level to which the client places reliance on the firm to achieve best execution. Firms must assess each of the tests individually (and on a cumulative basis) and determine whether they owe the client a duty to ensure 'best execution'.

- Did the client or the investment firm initiate the transaction?
- Is the client able to 'shop around for prices/quotes, or are they only able to ask you for a quote?
- Will the client be unable to identify the relative levels of price transparency within a market?
- Has the client confirmed that they place reliance with the investment firm?

Given the differences in the structures of financial instruments, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that will be effective and appropriate for all classes of instruments. Therefore, best execution obligations should be applied in a manner that takes into account all the different circumstances associated with the particular types of financial instruments.

Firms must take all sufficient steps to obtain, when executing orders, the best possible result for their clients, taking into account the execution factors. These factors are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order. The relative importance of each factor will depend on the following criteria and characteristics:

- the client, including how they are categorised
- the client order
- the financial instruments involved, and
- the execution venues to which that order could be directed.

Best execution is not merely how to achieve the best price. Any of the other factors mentioned above must also be considered and, depending on the criteria or characteristics, could be given precedence. For some transactions, for example, the likelihood of execution should be given precedence over the speed of execution. In other transactions, the direct and/or implicit execution costs of a particular venue could be so high as to be given precedence over the price of the instrument on this venue.

The Role of Price

For retail clients, firms must take account of the total consideration for the transaction, ie, the price of the financial instrument and the costs relating to execution, including all expenses directly related to it, such as execution venue fees, clearing and settlement fees, and any fees paid to third parties.

Best Execution (Venues)

When a firm could execute the client's order on more than one execution venue, the firm must take into account both its own costs and the costs of the relevant venues in assessing which will give the best outcome. Its own commissions should not allow it to discriminate unfairly between execution venues, and a firm should not charge a different commission or spread to clients for execution in different venues, if that difference does not reflect actual differences in the cost to the firm of executing on those venues.

14.12.2 Order Execution Policies

Firms are required to monitor not only the execution quality obtained but also the quality and appropriateness of their execution arrangements and policies. Ongoing execution monitoring must be reviewed by senior management and/or relevant committees and fed back into execution policies and arrangements to drive improvements in the firm's processes.

Firms must establish an order execution policy to enable them to obtain the best possible results for their clients. For each class of financial instrument the firm deals in, this must include information about the different execution venues where the firm executes its client orders, and the factors that will affect the choice of venue used. Furthermore, the policy must include those venues that enable the firm consistently to obtain the best possible result for its clients.

Firms are not expected to obtain explicit consent from clients to the best execution policy. Rather, this policy should be provided to clients at the onboarding stage and added to the firm's website (MiFID disclosures). A client's continued relationship with the firm confirms that they have no issues with the policy. If a client does not consent to the policy, they will simply cease to undertake business/enter into transactions with the firm.

Firms must review their order execution policies whenever a material event occurs, but at least annually, and must notify clients of any material changes to their order execution arrangements or execution policy. However, the FCA does not define the term 'material change', rather it is for firms to determine whether any changes to their policy requires them to advise clients.

14.12.3 Specific Client Instructions

When a firm receives a specific instruction from a client, it must execute the order as instructed. It will be deemed to have satisfied its obligation to obtain the best possible result if it follows such specific instructions (even if an alternative means of executing the order would have given a better result).

Firms should not induce clients to instruct an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the client, if they know that any instruction to the client will have the likely effect of preventing it from obtaining the best possible result for the client.

14.12.4 Compliance with Policies, and the Obligations on Portfolio Managers and Firms Receiving/Transmitting Orders

Firms must monitor the effectiveness of their execution arrangements and policies to identify and (if need be) correct any deficiencies.

In addition, they must be able to demonstrate to their clients, on request, that they have executed their orders in accordance with their execution policy.

Portfolio managers must act in their clients' best interests when placing orders for them, on the basis of the firm's investment decisions.

Firms receiving and transmitting orders for clients must also act in their client's best interests when transmitting those orders to other parties (eg, brokers) to execute. This means taking account of the execution factors listed above (unless the client has given specific instructions, in which case these must be followed). Portfolio managers, and receivers or transmitters of orders, must also maintain order execution policies, but need not get client consent to them.

The policy must identify, in respect of each class of instrument, the entities with which the orders are placed or to which they transmit orders for execution. The entities must have execution arrangements that enable the firm to comply with its obligations under the best execution requirements when it places an order with, or transmits an order to, that entity for execution.

Recent Developments – FCA Review of Best Execution in UK Listed Cash Equities (Wholesale Banks)

In December 2025 the FCA published the results, and findings, from a review of wholesale banks active in UK listed cash equities dealing and execution.

The FCA notes that the sample (8 wholesale banks) provided broad coverage across the market and included large and mid-size banks, accounting for just over a third of all transactions in the cash equities market. The FCA also noted that although the review focused on cash equities, many of the findings would be applicable to other products.

The FCA's assessment considered:

1. Whether banks had suitably scoped their best execution obligations.
2. The strength of banks' governance and oversight.
3. The robustness of banks' best execution monitoring and management information (MI).

4. Whether banks are identifying and managing conflicts of interest appropriately when internalising client order.

Findings

- The FCA noted that they were encouraged to find stronger practices compared to their previous thematic review undertaken in 2014.
- Of the areas assessed, the FCA noted that banks generally had strong practices in assessing the scope of best execution. There was no evidence that internalisation was damaging client outcomes.
- Banks' monitoring of best execution was able to identify good and poor outcomes, the FCA also saw evidence of banks taking action to address examples of poor outcomes.
- In contrast, the quality of management information (MI) to support senior management oversight was variable.
    - The FCA found some MI was comprehensive, but we also found examples of it being either too high level or overly complex.
- The FCA observed some good practices in governance and oversight, this was also where it found the least progress made since the 2014 review.
    - It found the need for improvement in the challenge from the second line of defence
    - The banks which were the strongest in this area had empowered their compliance functions, supporting them with the right data and tools

How Banks have Assessed the Scope of their Best Execution Obligations

- The FCA noted that it found banks had a better understanding of the scope of the best execution obligations compared to its 2014 thematic review.
- Good practice in this review saw most banks assessing their obligations in quote-driven markets. They recognised that even when dealing on risk on request for quotes (RFQ) with non-retail clients, there may be limited instances where they may in fact be executing on behalf of a client, and so best execution applies.
    - To evaluate for these outcomes, firms periodically applied the four-fold test to their activities.

Good Practice

- A bank found that trades with client-specific instructions were a common reason for outliers in its best execution framework.
    - In response, it applied additional monitoring to trades with specific instructions and custom-built algorithms to determine where a client may need to be educated about how their instructions were affecting their outcomes.

Poor Practice

- In quote-driven markets, the FCA found some banks inflexible in their best execution framework.
    - It saw some banks apply the four-fold test only at a single point in time or with limited frequency without considering that market dynamics, conventions and client behaviour can change.
- Firms' frameworks should be flexible enough to ensure best execution is applied and evidenced.

Ongoing Review of Scope

- The FCA noted that the identified sampled banks had reassessed the application of best execution to their business at least annually as part of reviewing the Order Execution Policy (OEP) and execution arrangements more broadly.
    - One bank reviewed the scope of its obligations quarterly.
- The FCA observed that banks apply a range of approaches to the scope review.
- While most did a high-level assessment of their trading activities against the factors included in the four-fold test, others applied a more detailed approach.
    - One bank supported the review with attestations from different desks on their activities; the results of the attestations were reported to the best execution committee overseeing the review with supporting data which, for example, captured the number of quotes won by the desk.
    - Another bank conducted sample testing of transactions traded on an RFQ basis in non-equities markets to assess factors of the four-fold test post-event.
        - This included reviewing the level of competition in the market and the type of client and counterparty activity.

Governance and Oversight

- The FCA found all banks had reasonable governance frameworks that supported the delivery of best execution under senior management oversight, however, their practical effectiveness varied.
- Clear accountability.
    - The FCA noted that the sampled banks could show that responsibility for best execution sat with the business as risk owners, with ultimate responsibility resting with business heads
- Dedicated oversight committees.
    - The FCA noted that every bank had a committee monitoring the effectiveness of their best execution policy, arrangements and outcomes.

        - These committees involved both senior management and independent functions.
        - The committees had authority to approve changes and met at least annually, with most meeting quarterly.
- Working groups at larger groups.
    - These focused on specific areas of execution, such as algorithm performance, smart order router (SOR) monitoring, liquidity provision or venue specific execution.
        - they operated under delegated authority from the main committee.
- Good practice included independent functions participating in these groups as well as the oversight committee.

Poor Practice (Areas for Improvement)

Committee scrutiny:

- At a minority of the sampled banks, the best execution committee's challenge and scrutiny of data was weak.
    - In some cases, the FCA saw no evidence of committee follow-up or questioning when presented with information that was rare or unusual.
    - Additionally, the compliance function did not review execution quality metrics in committee MI packs.
- This lack of scrutiny can undermine oversight effectiveness and risk limiting improvements in client outcome.

Challenge from compliance:

- At all of the sampled banks, compliance participated in the best execution oversight committees.
    - While the FCA observed some robust challenge from compliance through their committee involvement at some banks, at others the role of compliance appeared limited to providing updates.

Framework testing:

- Most of the sampled banks' frameworks, while reasonably designed, rarely concluded that the bank had failed to deliver best execution.
    - Therefore, escalation was limited.
    - In such circumstances, the FCA noted that it is good practice for senior management to consider whether their frameworks are being tested robustly enough to uncover poor outcomes or required improvements.

Data and evidence:

- The FCA identified that some senior managers in the sampled banks relied unduly on client retention as an indicator of best execution and often received only high-level MI as proof of their delivery.
    - Rather than relying on commercial justifications or the absence of poor outcomes, senior management should ensure decisions are based on objective, measurable data and clear evidence that execution arrangements align with client interests.

Oversight from Second Line of Defence (Compliance)

- Although the robustness of second line oversight varied across banks, the key weaknesses identified in the FCA's 2014 review remained at many banks.
    - At most banks, compliance typically focused on challenging processes rather than actual outcomes.
    - For some, this reflected compliance functions still not having the right tools, including access to relevant data such as price feeds to assess outcomes, and having to rely on front office explanations to interpret data.
- In contrast, it found examples of stronger and effective challenge at banks which had empowered compliance functions, supporting them with the right data and tools, and ensuring their voice was heard at all forums.
- The FCA observed that several banks had not fully assessed how effectively their frameworks would operate under varying market conditions.
    - For example, some calibrated their best execution thresholds according to liquidity in the underlying market.
    - However, others had made few considerations about how they could gain assurance to demonstrate that their frameworks remained appropriate in less liquid environments or during periods of market stress.
- The FCA noted that firms should ensure their arrangements are sufficiently tailored to all relevant asset classes so they can demonstrate their delivery of best execution across a range of market conditions and product types.

Monitoring and Management Information

- The FCA did not observe the same monitoring issues that were reported in its 2014 thematic review.
    - In most cases, banks had well-established processes in place that covered a range of execution factors and enabled them to identify both good and bad outcomes.

- The FCA saw evidence of banks acting to address issues that its monitoring had identified.

Areas for improvement:

- Monitoring:
  - One bank failed to evidence that it was monitoring more than the price of its executions which is contrary to the FCA's expectations for multiple parameters.
    - Some of the sampled banks reviewed the tolerance threshold for outliers at least annually, with one bank reviewing quarterly.
      - Where there was a formal review, good practice evidenced both business and compliance challenge. At one bank, the thresholds had not been revised since their introduction several years ago, raising concerns about their effectiveness, given changing market conditions and the firm's arrangements over time.
  - The sampled banks adopted varied approaches when reviewing outlier trades to establish root causes.
    - Two banks checked all their outlier trades, one bank checked all trades beyond a certain limit of their tolerance threshold and the others took a sample-based approach. Trends from this analysis were typically shared with the banks' best execution committee or working groups.
      - The FCA noted that it found that the banks which regularly analysed outlier trades demonstrated more actions to continuously evolve their arrangements than those which did not.
      - The biggest driver of outlier trades for most banks were client specific instructions where best execution is limited to the aspects of the trade not covered by the instruction.
- Reporting MI:
  - An area where some banks had challenges was in monitoring and reporting MI for their high-touch business.
    - Another bank did not have processes capable of producing MI for client order handling instructions that came through in a non-systematic way, such as through phone calls, email or chat.
    - One bank had not implemented continuous monitoring of best execution for high-touch trades and so no metrics or information on this was included in the best execution committee packs.

14.12.5 Client Order Handling

Firms must apply procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to the other orders or trading interests of the firm and have in place an appropriate policy. This rule is also consistent with the need for firms to avoid conflicts of interest, if possible.

In particular, these should allow comparable client orders to be executed in the order in which they are received.

Therefore, firms should ensure that:

- executed client orders are promptly and accurately recorded and allocated
- comparable orders are executed sequentially and promptly, unless this is impracticable, or client interests require otherwise
- retail clients are informed of any material difficulty in the prompt execution of their order, promptly on the firm becoming aware of this, and
- if the firm is responsible for overseeing or arranging settlement, that the assets or money are delivered promptly and correctly.

Firms must not misuse information relating to client orders and must also take steps to prevent its abuse (for example, in order to profit by dealing for its own account).

Firms' Order Handling Policy will deal with orders left by a client which state 'good till cancelled' or 'good to the close'. In these circumstances, firms should discuss and agree with the client what their understanding of such a restriction placed on an order means – as firms, markets, or jurisdictions may have different interpretations of the terms.

14.12.6 Aggregation and Allocation

Firms may aggregate their own-account deals with those of a client, or aggregate two or more clients' deals, only where:

- it is unlikely to disadvantage any of the aggregated clients
- the fact that **aggregation** may work to their disadvantage is disclosed to the clients, or
- an order allocation policy has been established which provides (in sufficiently precise terms) for the fair allocation of transactions; this must cover how volume and price of orders will affect allocation, and it must also cover how partial allocations will be dealt with.

When an aggregated order is only partly executed, the firm must then allocate the various trades in order with this allocation policy.

When firms have own-account deals in an aggregated order along with those of clients, they must not allocate them in a way which is detrimental to the clients.

In particular, a firm must allocate the client orders in priority over its own, unless it can show that without the inclusion of its own order, less favourable terms would have been obtained. In these circumstances, it may allocate the deals proportionately.

The firm's order allocation policy must incorporate procedures preventing the reallocation of own-account orders aggregated with client orders in a way detrimental to a client.

14.12.7 Client Limit Orders

Unless the client instructs otherwise, a firm which receives a client limit order for shares listed on a Regulated Market, and which cannot immediately execute it under the prevailing market conditions, must make the limit order public (in a manner easily accessible to other market participants) immediately so that it can be executed as soon as possible. It need not do so, however, for orders over normal market size.

It may do this by:

- transmitting the order to a Regulated Market or MTF operating an order book trading system, or
- ensuring the order is made public and can be easily executed as soon as market conditions allow.

14.12.8 The Personal Account Dealing Rules – Application and Purpose

The personal account dealing rules apply to firms that conduct designated investment business. These rules require firms to establish, implement and maintain adequate arrangements aimed at preventing certain activities when:

- these activities may give rise to conflicts of interest
- the individual involved in these activities has access to inside information, as defined in the UK MAR, and
- the individual involved in these activities has access to other confidential information relating to clients or transactions with or for clients.

The arrangements should aim to prevent the following activities:

1. Entering into a personal transaction that is:
    - contrary to UK MAR
    - involves misuse or improper disclosure of confidential information, or
    - conflicts with the firm's duties to a customer.
2. Improperly advising or procuring so that anyone else enters into a transaction that (if it had been done by the employee himself) would have fallen foul of point 1 above or a relevant provision.
3. Improperly disclosing information or opinion, if he knows, or should know, that the person to whom he has disclosed it is likely to enter into a transaction that (if it had been done by the employee himself) would have fallen foul of point 1 above or of a relevant provision, or encouraging someone else to do so.

The relevant provisions are the rules on:

- Personal account transactions undertaken by financial analysts contained elsewhere in COBS
- The misuse of information relating to pending client orders (section 14.12.5 of this chapter).

Firms must keep records of all personal transactions notified to them, and of any authorisation or prohibition made in connection with them.

14.12.9 Compliance with, and Exceptions to, the Personal Account Dealing Rules

The arrangements must ensure that the affected employees are aware of the restrictions on personal transactions, and of the firm's procedures in this regard. They must be such that the firm is informed promptly of any such personal transaction, either by notification of it, or some other procedure enabling the firm to identify it.

When outsourcing takes place, the arrangements must be such that the outsource must maintain a record of personal transactions undertaken by any relevant person and provide this record to the firm promptly on request.

The rules on personal account dealing are disapplied for:

- deals under a discretionary management service, if there is no prior communication between the portfolio manager and the relevant person (or any other person for whose account the transaction is being executed) about the deal, and
- deals in units or shares in certain classes of fund, if the relevant person (and any other person for whom the deals are effected) is not involved in the management of the fund.

14.12.10 Churning and Switching

Churning is the activity of dealing excessively frequently for a client, in order to generate additional fees and/or commissions for the firm. It is relevant when, for example, a firm manages a client's portfolio on a discretionary basis. Switching is the activity of selling one investment and replacing it with another.

The FCA's guidance on churning and switching is contained in the COBS rules on suitability. It states that, in the context of assessing suitability, a series of transactions that look suitable in isolation may not be suitable if the recommendations or trading decisions to make them are so frequent as to be detrimental to the client.

It also states that firms should bear the client's investment strategy in mind when determining how frequently to deal for him.

14.13 Underwriting and Placing (COBS 11A)

Firms who provide the investment service of 'underwriting' and 'placing' (ie, bringing new issues to the market), must provide clients (issuers) with certain information before accepting a mandate to manage a new offering.

Investment firms that provide advice on corporate finance strategy, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

a. the various financing alternatives available with the firm, and an indication of the amount of transaction fees associated with each alternative
b. the timing and the process with regard to the corporate finance advice on pricing of the offering
c. the timing and the process with regard to the corporate finance advice on placing of the offering
d. details of the targeted investors, to whom the firm intends to offer the financial instruments
e. the job titles and departments of the relevant individuals involved in the provision of corporate finance advice on the price and allotment of financial instruments, and
f. the firm's arrangements to prevent or manage conflicts of interest that may arise where the firm places the relevant financial instruments with its investment clients or with its own proprietary book.

Firms are required to be able to identify all underwriting and placing operations and ensure that adequate controls are in place to manage any potential conflicts of interest. They must have in place a centralised process to identify all underwriting and placing operations and record such information, including the date on which the firm was informed of potential underwriting and placing operations.

Firms must be able to identify all potential conflicts of interest arising from other activities of the investment firm, or group, and implement appropriate management procedures. In cases where an investment firm cannot prevent or manage a conflict of interest by way of implementing appropriate procedures, the investment firm shall not engage in the operation.

Firms must have in place systems, controls and procedures to identify and prevent or manage conflicts of interest that arise in relation to possible under-pricing or over-pricing of an issue or involvement of relevant parties in the process.

In particular, firms must as a minimum requirement establish, implement and maintain internal arrangements to ensure both of the following:

a. that the pricing of the offering does not promote the interests of other clients or the firm's own interests, in a way that may conflict with the issuer client's interests, and
b. the prevention or management of a situation where persons responsible for providing services to the firm's investment clients are directly involved in decisions about corporate finance advice on pricing to the issuer client.

Firms must provide clients with information about how the recommendation as to the price of the offering and the timings involved is determined.

14.14 Investment Research (COBS 12)

14.14.1 Conflicts of Interest in Relation to Investment Research

Conflicts management rules on the production and dissemination of investment research apply to all firms, especially where they fall under UK MAR.

Refer to chapter 3, section 3, for further details.

14.15 Reporting Information to Clients (COBS 16 and 16A)

14.15.1 Confirmation of Transactions and Periodic Statements – Reporting to Clients

Firms are required to ensure that clients receive adequate reports on the services they provide to them. These must also include any associated costs.

If a firm (other than one managing investments) carries out an order for a client, it must:

- provide the essential information on it, promptly, and in a durable medium (if the transaction relates to derivatives and options)
- provide the client with information about the status of their orders on request, and
- send a 'notice' confirming the deal details as soon as possible (but no later than on the next business day); when the confirmation is received from a third party, the firm must pass the details on no later than the business day following receipt.

The 'notice' to be provided to the client should include the following information:

- identification of the firm
- name and/or designation of the client
- trading day and time
- type of order (eg, limit order/market order/client-specific instructions)
- venue where the transaction was executed
- financial instrument
- buy/sell indicator
- nature of the order if other than buy/sell (ie, exercise of an option)
- unit price
- total consideration

- total of the commissions, expenses and any mark-up/-down applied to the transaction
- rate of exchange where the transaction involves the conversion of funds from one currency to another in order to settle the transaction in the client's base currency, and
- client's responsibility in respect of settlement of the transaction.

Firms do not need to send the required information where the client is receiving the same required information from another person.

For non-MiFID business only, there are some exceptions to the above rules and requirements, namely if the client has confirmed that confirmations need not be sent either in general or in specified circumstances.

Firms must keep copies of all confirmations sent to clients:

- for MiFID business, for at least five years from the date of dispatch, and
- for non-MiFID business, for at least three years from the date of dispatch.

For the purpose of calculating the unit price in the trade confirmation information, if the order is executed in tranches, firms may supply clients with the information about the price of each tranche or the average price.

14.15.2 Confirmation of Transactions and Periodic Statements – Periodic Reporting

Firms managing investments on behalf of clients must provide them with a periodic statement in a durable medium, unless these are provided by another party. For retail clients, this must be at least quarterly, with the following exceptions:

- if the client receives deal-by-deal confirmations, and certain higher-risk investments are excluded, the statement may be sent every 12 months, and
- if the client has authorised that his portfolio be leveraged, the statement must be provided monthly.

A firm must make and retain a copy of any periodic statement:

- for MiFID business, for a period of at least five years, or
- for non-MiFID business, for a period of at least three years.

If firms manage investments for clients or operate certain types of account for them which include uncovered open positions in a contingent liability transaction, they must report any losses over a pre- agreed limit to the client. They must do so by the end of the business day on which the limit is breached. If this happens on a non-business day, they must do so by the end of the next business day.

A contingent liability transaction is one that involves any actual or potential liability for the client that exceeds the cost of acquiring the instrument. For the purpose of calculating the unit price in the

trade confirmation information or periodic information, if the order is executed in tranches, firms may supply clients with the information about the price of each tranche or the average price.

14.16 Specialist Regimes (COBS 18)

This chapter of COBS seeks to identify the relevant parts of COBS that do not apply and are most likely not to apply to firms undertaking the following activities:

- trustee firms
- energy market activity and oil market activity
- corporate finance business
- stock lending activity
- residual CIS operators and small authorised UK AIFMs
- UCITS management companies
- full scope UK AIFMs and incoming EEA AIFM branches
- Lloyd's
- insurance special purpose vehicles (ISPVs)
- depositaries
- ICVCs (investment companies with variable capital)
- UCITS qualifiers, AIFM qualifiers and service companies
- authorised professional firms, and
- operating an electronic system in relation to lending.

Prior to the implementation of UK MiFID, the UK applied fewer prescriptive provisions in terms of the application of conduct of business requirements to firms undertaking this type of business activity.

For each section of COBS 18 the Sourcebook seeks to highlight the applicable parts of COBS that do not apply – based on the activity in question, as well as highlighting certain rules that are unlikely to apply.



15. Client Assets Sourcebook (CASS)

The rules relating to the custody and safeguarding of client money and assets are contained in the FCA's 'CASS' Sourcebook. The CASS rules are designed to ensure that firms take adequate steps to protect those client assets for which they are responsible.

Within CASS, the requirement to segregate client money from a firm's own money is aimed at ensuring that, if the firm fails, client money will not be used to repay its creditors. Usually this is done by ensuring that it is placed promptly in a designated client money account with a bank and ensuring that the bank treats client money as separate from the firm's own money.

CASS, in general, applies to every firm, with some specific exemptions. It applies directly in respect of activities conducted with, or for, all categories of client, ie, retail clients, professional clients and eligible counterparties.

CASS 6 contains the custody rules that apply when a firm holds financial instruments for a client in the course of MiFID business, and when it is safeguarding and administering investments in the course of non-MiFID business.

CASS 7 contains the client money rules, applying to a UK MiFID investment firm either when:

- it holds client money in the course of its UK MiFID business
- in the course of investment business that is non-UK MiFID business in respect of any investment agreement entered into, or to be entered into with or for a client, or
- it holds money in respect of which CASS 5 – Client money: insurance mediation activity applies, and the firm elects to apply the provisions of CASS 7.

Firms must, when holding safe custody assets belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the firm's insolvency and to prevent the use of safe custody assets belonging to a client on the firm's own account, except with the client's express consent. Firms must also introduce adequate organisational arrangements to minimise the risk of loss or diminution of client's safe custody assets. When a firm accepts client money, it must take the necessary steps to ensure that the client money is deposited in accordance with the requirement of CASS 7.13.3 (depositing client money) in that it is held in an account or accounts identified separately from any accounts used to hold money belonging to the firm.

CASS 7.13.3 stipulates that a firm, on receiving any client money, must promptly place this money into one or more accounts opened with any of the following:

- a central bank
- a credit institution ('bank') subject to the Capital Requirements Directive (CRD)
- a bank authorised in a third country, or
- a qualifying money market fund.

There are a number of circumstances when the client money rules will not apply, for example, when money is held in connection with a delivery versus payment (DVP) transaction (unless the DVP does not occur by the close of business on the third business day following the date of payment of a delivery obligation), or when it becomes due and payable to the firm. Banks holding monies as deposits with themselves are also exempted.

Following the global financial crisis of 2007–08 a number of insolvency appointments resulted in changes to the CASS requirements. Although the CASS regime performed relatively well in facilitating the return of client assets and

money (compared with some overseas jurisdictions), the failure of Lehman Brothers and the financial crisis in general highlighted a number of issues relating to existing market practices.

Changes made to the CASS rules included the following issues:

- **Increased reporting to clients** – daily reporting on client money and assets holdings to all prime brokerage clients. This means that clients know exactly what is happening to their assets, what transactions have been completed and, if relevant, which and how many of their assets have been re-hypothecated.
- **Holding client money with group banks** – restricting the placement of client money deposits held in client bank accounts within a group to 20%. This limits the amount by which a client is exposed to group credit risk. The rules apply at an entity level if it is a credit institution (subject to the CRD), a bank authorised in a third-country, a qualified money market fund or the entity operating or managing a qualifying money market fund and a member of the same group as the firm.
- **Prohibiting the use of general liens in custodial agreements**.
- **Creating a new controlled function with specific responsibility for client money and assets** – a senior individual within the firm should be responsible for oversight and protection of client assets and money. Proportionate to the size of the firm, this should be one named individual who will be subject to the SM&CR Certification Regime (they would not normally be a Senior Manager under the SM&CR Regime).
- **Introducing a Client Money and Assets Return (CMAR)** – a monthly return for medium-large firms and twice a year for small firms, providing the FCA with an overview of firm-specific CASS holdings – enabling the FCA to make regulated interventions on a firm-specific or thematic basis.

15.1 Due Diligence and the Establishment of Client Bank Accounts

Firms that do not deposit client money with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the

credit institution, bank or qualifying money market fund where the money is deposited, and in the arrangements for the holding of this money.

Firms must keep a record of the grounds upon which they satisfy themselves as to the appropriateness of their selection of a credit institution, a bank or a qualifying money market fund. The firm must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the firm ceases to use the third party to hold client money.

15.2 Reconciliation of Client Assets

A firm must keep such records and accounts as necessary to enable it, at any time and without delay, to distinguish safe custody assets held for one client from safe custody assets held for any other client, and from the firm's own assets.

CASS 6.6 sets out the obligations on firms to perform internal and external reconciliations. Broadly, reconciliations should be undertaken, as often as necessary, to ensure the accuracy of a firm's records and accounts, between its internal accounts and those records of third parties who hold the assets in safe custody. If possible, they should be done by someone who has not been involved in the production or maintenance of the records that are being reconciled.

If the reconciliation shows a discrepancy, the firm must make good (or provide the equivalent of) any shortfall for which it is responsible. If another person is responsible, the firm should take reasonable steps to resolve the position with that person.

Firms are required to inform the FCA without delay of any failure to comply with the reconciliation requirements, including reconciliation discrepancies and making good any such differences.

15.3 Reconciliation of Client Money

The main purpose for firms to carry out reconciliations is to ensure that their internal records of client money held matches the actual amount of client money

held.

CASS 7.15 sets out the obligations of firms to perform internal and external reconciliations.

15.3.1 Internal Client Money Reconciliations

As explained in CASS 7.12.1R, in order to comply with its obligations under CASS 7.15.5R (Records, accounts and reconciliations), and when relevant SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance), firms must carry out internal reconciliations of records and accounts of client money the firm holds in client bank accounts and client transaction accounts.

The following methods of reconciliation are deemed to be appropriate for these purposes by the FCA (the standard method of internal client money reconciliation).

- Each business day, a firm that adopts the normal approach should check whether its client money resource, being the aggregate balance on the firm's client bank accounts, as at the close of business on the previous business day, was at least equal to the client money requirement as at the close of business on that day.
- Each business day, a firm that adopts the alternative approach should ensure that its client money resource, being the aggregate balance on the firm's client bank accounts, as at the close of business on that business day is at least equal to the client money requirement as at the close of business on the previous business day. No excess or shortfall should arise when adopting the alternative approach.

For the purposes of performing its reconciliations of records and accounts, a firm should use the values contained in its accounting records, for example its cash book, rather than values contained in statements received.

If a reconciliation shows a discrepancy, the firm must investigate to identify the reason for the discrepancy and ensure that either any shortfall is paid into the client bank account, or any excess is withdrawn from the client bank account by close of business on the day the reconciliation is performed.

15.3.2 External Client Money Reconciliations

This means cross-checking the internal client money accounts against the records of third parties (eg, banks) with whom client money is held. Firms must perform external reconciliations as often as is necessary, and as soon as reasonably practicable after the date to which the reconciliation relates. If there is a discrepancy, the firm must investigate and correct it as soon as possible. If it cannot do so, and the firm should be holding a greater amount of client money, it must pay its own money into the client bank account pending resolution of the discrepancy, which it must correct as soon as possible.

If a firm has not complied with these requirements or is for some reason unable to comply in a material aspect with a particular requirement, it must inform the FCA in writing.

The FCA believes that an adequate method of reconciling client money balances with external records is as follows:

- a reconciliation of a client bank account as recorded by the firm with the statement issued by the bank (or other form of confirmation issued by the bank), and
- a reconciliation of the balance on each client transaction account as recorded by the firm, with the balance of that account as set out in the statement (or other form of confirmation) issued by the person with whom the account is held.

15.3.3 Exemption from CASS

CASS does not apply to, inter alia:

- ICVCs
- UCITS qualifying schemes
- a credit institution under the BCD, in relation to deposits held with itself (held as 'banker' not as 'trustee')
- coins held for the value of their metal
- money transferred under title transfer collateral arrangements

- money held in connection with a DVP transaction (unless payment does not occur after three business days)
- money due and payable to the firm
- if a firm carries on business in its name but on behalf of the client when that is required by the nature of the transaction and the client is in agreement, or
- the custody rules (CASS 6) do not apply if a client transfers full ownership of a safe custody asset to a firm for the purpose of securing or otherwise covering present or future, actual contingent or prospective obligations.

Specific rules within CASS may be disapplied depending on the nature of a firm's activities. The details are set out within the individual rules.

There are specific requirements that firms must comply with in order to cease to treat any unclaimed balances as client money or assets which is allocated to an individual client. Firms are able to pay away such balances to a registered charity, providing that the firm can demonstrate that it has taken reasonable steps to trace the clients concerned and return the balance, and has held the balance concerned for at least six years in respect of client money and 12 years for clients' assets.

If a firm wishes to make use of the new requirements, then the governing body must approve of this and unconditionally undertake to pay to the clients concerned a sum equal to the balance paid away to charity in the event of the client seeking to claim the balance in the future.

Reasonable steps that a firm must undertake in the course of being able to demonstrate it has taken 'reasonable steps' in respect of client money and client assets include:

- determining the correct contact details for the client, and
- writing to the client at the last known address either by post or by electronic mail (e-mail).

Firms may also use any available means to determine the correct contact details for the client, including telephoning the client, searching internal records, media

advertising, searching public records, mortality screening, using credit reference agencies or tracing agencies.

15.3.4 CASS Audit

If a firm holds client money and assets, then it must have an annual CASS assurance audit performed. The audit assurance report is submitted to the FCA. The Supervision Manual (SUP) determines the type of report that must be completed.

Where a firm claims that it does not hold client assets, the external auditor will be required to complete a limited assurance client assets report. The auditor must state whether anything has come to its attention that causes it to believe that the firm held client money or custody assets during the period covered by the report. Where a firm has the permission to hold, and has held clients' assets during the period, then a reasonable assurance report must be undertaken.

The Financial Reporting Council (FRC) is the body responsible for setting the standard for CASS audit reviews. The FRC has developed a 'Client Asset Assurance Standard' (Standard) which establishes requirements and provides guidance for CASS auditors reporting to the FCA in accordance with its SUP rules in respect of engagements that involve evaluating and reporting on a regulated firm's (firm) compliance with the FCA's CASS rules and other rules relevant to the holding of client assets.

The Standard establishes requirements with respect to:

a. the process for forming, and the expression of, reasonable assurance opinions
b. the process for forming, and the expression of, limited assurance opinions
c. the provision of reasonable assurance to the FCA with respect to a firm's proposed adoption of:

1. the alternative approach to client money segregation
2. a non-standard method of client money reconciliation, and

d. CASS auditor confirmations in respect of non-statutory client money trusts.

The key objectives of the CASS Assurance Standard are to:

a. improve the quality of CASS audits and other CASS assurance engagements
b. adequately support and challenge CASS auditors when undertaking CASS assurance engagements and, in particular, to define the nature and extent of the work effort required for both reasonable assurance and limited assurance CASS assurance engagements without undermining the importance of the CASS auditor's judgement
c. support the objectives of the FCA's client assets regime regarding the effective safekeeping of client assets and client monies and in particular to guard against systemic failure of the CASS regime
d. manage the expectations of:

1. the management of firms that hold client assets, and
2. third-party administrators (when a CASS auditor is engaged to provide assurance to the FCA on client assets that it handles or accounts for)

e. support the effective training of CASS auditors by both the accounting bodies and other training organisations
f. help to establish realistic expectations regarding the integrity of the UK client assets regime with the beneficial owners of client assets, and
g. underpin the effectiveness of the FRC's enforcement and disciplinary activities with respect to CASS assurance engagements.

Prior to starting an audit, the CASS auditor would need to obtain an understanding of the firm's business model and permissions it has received from the FCA.

The CASS auditor must gain an understanding of the major activities that the firm uses to monitor internal controls relevant to its compliance with the CASS rules and how the firm initiates remedial actions in response to deficiencies in its controls. Where the firm has an internal audit or compliance function, which

covers those major activities intended to ensure compliance with the CASS rules, the CASS auditor shall perform or obtain, as appropriate, and document:

- an evaluation of whether the function's organisational status and relevant policies and procedures adequately support the objectivity of the internal auditors, or compliance function
- an understanding of the nature of the internal audit or compliance function's responsibilities with respect to client assets
- an assessment of whether the function applies a systematic and disciplined approach, including quality control, and
- the activities the function has performed or intends to perform with respect to client assets.

The CASS auditor shall consider how the design of control activities:

- enables the firm to identify where client assets may arise in the business
- seeks to ensure that client assets are segregated and safeguarded effectively
- addresses the performance of internal and external reconciliations as required by the CASS rules, and
- addresses the establishment and acknowledgement of trust status over client assets.

The CASS auditor shall further evaluate whether there is adequate segregation of duties and if the design of the system incorporates sufficiently robust controls over system changes. The auditor must give an opinion on the following, as well as stating/identifying where the applicable requirements have or have not been met:

- The firm has maintained systems adequate to enable it to comply with the custody rules, the collateral rules, the client money rules and the mandate rules throughout the period.
- The firm was in compliance with the custody rules, the collateral rules, the client money rules and the mandate rules at the date at which the report was made.

- In the case of an investment management firm, personal investment firm, a UCITS firm, securities and futures firm, a firm acting as trustee or depositary of an AIF, a firm acting as trustee or depositary of a UCITS or IFPRU (Prudential Sourcebook for Investment Firms) investment firm, or MIFIDPRU (Prudential Sourcebook for MiFID investment firms) firm, when a subsidiary of the firm is, during the period, a nominee company in whose name custody assets of the firm are registered, that nominee company has maintained throughout the period systems for the custody, identification and control of custody assets which adequately included reconciliations at appropriate intervals between the records maintained (whether by the firm or the nominee company) and statements or confirmations from custodians or from the person who maintained the record of legal entitlement.
- If there has been a secondary pooling event during the period, the firm has complied with the relevant client money distribution rules in relation to that pooling event.

The CASS auditor will provide a 'nil' return where there have been no breaches identified.

The client assets report is made up of two parts:

- Part 1 is the auditor's opinion, and
- Part 2 is a breaches schedule.

The FCA expects that the list of breaches will include every breach of a rule in CASS insofar as that rule is within the scope of the client assets report and is identified in the course of the auditor's review of the period covered by the report, whether identified by the auditor or disclosed to it by the firm, or by any third-party.

For the purpose of determining whether to qualify its opinion or express an adverse opinion, the FCA would expect an auditor to exercise its professional judgement as to the significance of a rule breach, as well as to its context, duration and incidence of repetition. The FCA would expect an auditor to consider the aggregate effect of any breaches when judging whether a firm has failed to comply with the requirements described above.

Under FSMA (Communications by Auditors) Regulations 2001, CASS auditors have duties in certain circumstances to make reports to the FCA, including reporting breaches of the FCA's rules that it reasonably believes may be of material significance to the FCA. Therefore, where a CASS auditor becomes aware of such breaches, it does not wait to report them to the FCA by means of the breaches schedule that it appends to its routine assurance reports to the FCA.

The consequence of regulatory failure is the potential to be censored by the FCA, and depending upon the nature and seriousness of the regulatory failure, the penalty could lead to a fine.

Review of Auditors' Client Assets Reports
Firms are required to review the 'draft' client assets report and where necessary provide an explanation of the circumstances that gave rise to each of the breaches identified in the draft report, and any remedial actions that they have undertaken or plan to undertake to correct those breaches.

The FCA expects firms to use the client assets report as a tool to evaluate the effectiveness of the systems that they have in place for the purpose of complying with the CASS requirements.

The auditor must deliver to the firm the final report within four months of the end of the period covered.

15.3.5 Rights of Use

The 'rights of use' is an arrangement under which a client transfers full ownership of assets to a collateral- taker (ie, an investment firm) for the purpose of securing or otherwise covering the performance associated with relevant financial obligations.

As there is a transfer of full ownership of assets to a firm, they cease to be client assets and so are not subject to CASS requirements. The exception to this is if the money and assets belong to a retail client and the purpose of title transfer is to secure or cover that client's present or future, actual, contingent or prospective obligations under a **contract for difference (CFD)** or a contract that is a future and that is entered into with a firm acting as market maker.

Title transfer collateral arrangements (TTCAs) are normally used by firms that undertake derivatives business, where the firms enter into margined transactions with clients. These arrangements allow those firms to treat margin (the amount paid by the client as collateral to open the position or bet) as their own working capital, rather than client money (which must be segregated). Often, those firms subsequently use that money to fund their hedging arrangements.

15.3.6 Rehypothecation

Rehypothecation is an alternative name for repledging – in other words, a party that receives a pledge of collateral and then pledges the same collateral to a third party. In practice this is operated by brokers/ prime brokers for hedge fund clients, where typically the hedge funds will post collateral against loans that they have taken out and the collateral is used by the broker/prime broker for its own purposes. The benefit to the hedge fund is lower costs of financing.

In the repo and derivatives market, rehypothecation is often referred to as 'reuse'.

The collapse of both Lehman Brothers and MF Global highlights the pitfalls of clients allowing the firm to reuse their assets as its own. In both cases internal records and accounts were incomplete and it was difficult to identify which assets had been pledged to the firm by which clients and who was owed what. Given the issues that the collapse of Lehman Brothers raised, where firms' collateral was frozen on a global basis while the authorities tried to unwind/unpick who was owed what, it is surprising that in 2011 the same thing happened again to clients of MF Global – who had sold/repledged over £10 billion of customer collateral.

In both cases, clients had to fight to regain assets pledged, because they were treated as unsecured creditors. This also highlighted inadequate record keeping, systems and controls at the firms.

15.3.7 Bare Security Interests

If a client has lodged collateral with a firm and it is provided on the provision that the collateral is just pledged or a charge is placed on the assets, the firm is not

permitted to reuse the assets.

The client remains the legal owner of those assets until the bare security interest is exercised or crystallises on the client's default.

15.3.8 CASS Resolution Pack

A CASS Resolution Pack enables the authorities to be able to identify whether a firm has held/is holding client money and client assets in the event of a crisis, such as insolvency. Firms must maintain their CASS Resolution Pack at all times.

Firms must be able to retrieve documents required under the CASS resolution pack as soon as practicable, no later than within 48 hours.

The purpose of the CASS resolution pack is to assist an insolvency practitioner in returning client money and custody assets to clients in a timely manner should the firms cease to trade. The insolvency of Lehman Brothers International (Europe) and MF Global UK highlighted difficulties in returning client assets in a timely manner and determining who had control over the clients' assets.

Firms subject to CASS 6 (Custody rules) and CASS 7 (Client money rules) will be required to produce and maintain a CASS resolution pack. Firms are not required to complete a pack if they only hold client money for insurance mediation business (under CASS 5) and if they only arrange safeguarding and administration of assets.

Firms will need adequate internal procedures and processes for monitoring the content of their CASS resolution pack. If there are changes to processes and procedures, these will need to be updated in the pack within five days of the change occurring.

The individual performing the CASS operational oversight function must report annually to the firm's board in respect of compliance with the CASS resolution pack requirements. If a firm is unable to comply with the CASS resolution pack requirements then it must notify the FCA immediately.

Contents of a CASS Resolution Pack
The following documents and information must be immediately retrievable:

- **Institutions** – identification of the institution appointed to hold client money, to hold or control client money in a client transaction account or for the deposit of safe custody assets.
- **Individuals** – identifies each senior manager and director and any other individual and the nature of their responsibility within the firm who are critical/important to the performance of operational functions related to any regulatory obligations, and the individual to whom the firm has appointed the carrying out/performance of the CASS operational oversight function.
- **Agreement with institutions** – a copy of the executed agreement, including any side letters or other agreements used to clarify/modify the terms of the executed agreement, between the firm and institutions, that relate to the holding of client money or safe custody assets – including written notification or trust acknowledgement letters sent/received.
- **Custody assets** – the most recent internal and external reconciliation relating to safe custody assets.
- **Client money** – the most recent internal and external reconciliation relating to client money. The following documents and information must be retrievable as soon as possible, but within no later than 48 hours.
- **Master documents** – containing information sufficient to retrieve each document in the firm's CASS resolution pack.
- **Agents** – documents identifying each appointed representative, tied agent, field representative or other agent of the firm which received client money or safe custody assets in its capacity as the firm's agent.
- **Group structure** – documents identifying and providing certain other information with respect to each group member and/or third party (a 'third-party outsourcer') involved in the performance of operational aspects of the firm's obligations under the client money/client assets rules.
- **Service providers** – copies of each executed agreement, side letter and/or amendment agreement with any third-party outsourcer.
- **Access to service providers** – documents which describe how to:

  a. gain access to relevant information held by, and

b. effect a transfer of client money or safe custody assets held by each third-party outsourcer.

- **Procedures** – copy of the firm manual in which procedures for the management, recording and transfer of client money and safe custody assets that the firm holds are found.
- **Due diligence** – records of the grounds upon which the firm satisfied itself of the appropriateness of its selection of each third party with which it deposits safe custody assets and client money.
- **Client agreements** – if safe custody assets have been used for securities financing transactions, a copy of the consent from clients to use the assets and the assets used (number/type).
- **Records and accounts** – documents which enable the firm to distinguish client money and safe custody assets of one client from that of another client or the firm's own money.
- **Reconciliation methods** – explanation of the methods of internal reconciliation of client money balances.
- **Client categorisation and agreements** – copies of all agreements with retail and professional clients, records of client categorisation and supporting documentation and relevant documentation relating to recategorising of a client.

15.3.9 Mandate

A mandate is required from the client when the client is giving the firm control over their assets and/ or liabilities. A mandate is required if a firm is undertaking designated investment business (including UK MiFID business), insurance mediation activity (except if it relates to a reinsurance contract) and debt management activity. In most instances, the mandate will be provided to the firm through the firm's terms of business.

Where a client has a mandate with a firm over the control of their assets held at a third party, the client money (CASS 7) and custody rules (CASS 6) will not apply. A mandate is any means that gives the firm the ability to control a client's assets or liabilities, which meet the conditions in (1) to (6) below:

1. They are held at a third party.
2. They are obtained by the firm from the client, and with the client's consent.
3. If those means are obtained in the course of, or in connection with, the firm's insurance mediation activity, they are in written form at the time they are obtained from the client.
4. They are retained by the firm.
5. They put the firm in a position where it is able to give any or all of the types of instructions described in (a) to (d):

    a. instructions to another person in relation to the client's money that is credited to an account maintained by that other person for the client
    b. instructions to another person in relation to any money to which the client has an entitlement, if that other person is responsible to the client for that entitlement (including if that other person is holding client money for the client)
    c. instructions to another person in relation to an asset of the client, if that other person is responsible to the client for holding that asset (including if that other person is safeguarding and administering investments, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS), and
    d. instructions to another person such that the client incurs a debt or other liability to that other person or any other person (other than the firm).

6. Their circumstances are such that the client's further involvement would not be necessary for the firm's instructions described in 5(a) to 4(d) to be given effect.

The FCA has defined a mandate as 'any means that give a firm the ability to control a client's assets or liabilities'.

The mandate rules require firms to establish and maintain records and internal controls to prevent any misuse of the mandate authority granted by the client.

A mandate can take any form and need not state that it is a mandate. It can be a stand-alone document containing certain information conferring authority to

control a client's assets or liabilities on the firm, a specific provision within a document or agreement that also relates to other matters or can be provided by a client verbally or be in paperless form.

A firm must establish and maintain adequate records and internal controls in respect of its use of the mandates. This would include:

- an up-to-date list of each mandate that the firm has obtained, including a record of any conditions placed by the client or the firm's management on the use of the mandate and, where a mandate was received in non-written form in the course of, or in connection with, its designated investment business, the details required under CASS 8.3.2C R
- a record of each transaction entered into by the firm for each mandate
- internal controls to ensure that each transaction entered into by the firm is carried out in accordance with any conditions established by the client or the firm
- details of the procedures and internal controls around the giving of instructions under the mandates that the firm has, and
- where the firm holds a passbook or similar document belonging to the client, internal controls for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the client held by the firm.

The required list of mandates that a firm must maintain should be in a durable medium that allows storage of information in a way accessible for future reference by the regulator or by an auditor preparing a client money report. The record must also be able to be updated and amended where necessary, with the ability to ascertain the details of the mandate list prior to changes/updates being made.

If the instruction/authority for the mandate was provided verbally by the client, then the entry on the mandate list must contain the following information:

- the nature of the mandate (eg, debit card details, direct debits)
- the purpose of the mandate (eg, collecting insurance premiums)
- how the mandate was obtained (eg, by telephone)

- the name of the relevant client, and
- the date on which the mandate was obtained.

Firms must retain records for each mandate for the following periods after they cease to have the mandate:

- for a minimum of five years if the relevant mandate was held by the firm in the course of, or in connection with, its UK MiFID business, and
- a minimum of one year for all other instances.

15.4 Recent Developments (FCA Consultation Paper on Changes to CASS)

In December 2025 the FCA published a consultation paper titled '*Targeted clarification of Handbook materials*', which made proposals to the CASS regime.

The proposed changes address longstanding operational challenges and introduce clearer expectations for firms that hold client money or safe custody assets. While not a comprehensive rewrite of the regime, the proposals will require firms to update processes, governance documentation and consumer disclosures.

The proposals support the aims of the Consumer Duty Requirements Review. By reducing unnecessary administrative burdens and better aligning CASS rules with operational realities, firms may be able to allocate resources more effectively and focus on delivering good outcomes for customers.

The consultation closed for comments on 27 January 2026, with the FCA expecting to publish a final policy statement in 2026. The FCA noted that the changes to CASS would come into effect three months after they are made.

The FCA are consulting on proposed amendments to CASS 6 and 7, as follows:

- Amending record-keeping requirements for certain due diligence relationships (CASS 6 and 7).

- Under CASS 6 and 7, firms must retain records of both the initial due diligence conducted on third parties and any subsequent periodic reviews, from the time the due diligence or periodic review was completed, until five years after the relationship with the third-party ends.
- The FCA is proposing to amend the rules in CASS 6 and 7 so that firms must retain due diligence records for five years from the date they are created and/or modified. This aligns the record retention requirement for due diligence records with the general record-keeping provisions in CASS.

- Broadening reconciliation rules to allow the use of records that were not envisaged when the rules were introduced (CASS)

  - Under CASS 6, firms must conduct external custody reconciliations as regularly as necessary, and as soon as reasonably practicable after the date the reconciliation relates to. There should be no more than one month between reconciliations.
  - The FCA is proposing adding provisions to the rules on how often firms must conduct external custody reconciliations. There are two specific scenarios in which it would allow them to conduct their external custody reconciliations less frequently. These arise where operational realities prevent them from obtaining statements at least monthly.

- Broadening reconciliation rules to recognise scenarios where an external statement may be receipted less frequently, for example when a fund manager in the normal course of business will only provide a statement on a quarterly basis (CASS 6).

  - Under CASS 6, firms must reconcile their internal records and accounts against the records of the third party responsible for registering the legal title to safe custody assets. For units in collective investment schemes, this typically means reconciling against fund managers' records. The desired outcome of this rule

is to ensure that firms use reliable external sources of information for external custody reconciliations.

    - The FCA proposes to amend CASS 6 to explicitly permit firms to use Euroclear UK & International Investment Fund Service as a source for the external custody reconciliation, subject to specific conditions. Firms would be required to comply with the requirements in CASS 6 for the treatment of any discrepancies notified to them by Euroclear. The FCA will also add guidance explaining it is best practice for firms to conduct an external custody reconciliation each business day in respect of assets for which they receive information on their holdings from Euroclear.

- Where firms receive or hold client money or assets for retail clients, clarifying how the Duty applies to certain CASS rules (CASS 6 and 7).

    - The Consumer Duty sets standards for firms serving retail clients, requiring them to act in good faith, avoid foreseeable harm, and support customers in pursuing their financial objectives.
    - CASS 6 allows firms to enter into securities financing transactions (SFTs) with clients' safe custody assets, and CASS 7 states that firms must pay interest on client money to a retail client unless they have previously notified the client in writing.
    - The FCA is proposing to amend CASS rules to clarify that firms must act in a way that is compatible with the Duty as well as meeting the requirements in CASS.
    - The FCA proposes to amend CASS 7 to clarify that, for retail clients, a firm may only retain interest earned on their client money if it has both notified the client and doing so is compatible with the Consumer Duty.
    - The FCA is not proposing any amendments relating to the retention of non-retail client money.

- Adding flexibility within the rules for the treatment of money held in client bank accounts relating to bank interest earned on client money (CASS 7).

- There are circumstances where bank interest may be received into client accounts in a way that causes a firm to breach the CASS rules. Some of these breaches are ultimately caused by operational realities outside a firm's control. CASS does not specify how to handle these situations, and this can prevent firms from acting in their clients' best interests when segregating bank interest received into client bank accounts.
- The FCA is proposing changes to the CASS rules to clarify how firms should treat bank interest received into client accounts. These changes aim to reduce unnecessary breaches and ambiguity, while protecting client money. The proposals cover two scenarios:
    - receipt of firm-owed interest into client accounts, and
    - receipt of interest into client accounts before it is due and payable to the client.

15.4.1 Why CP25/37 Matters for CASS Regulated Firms

The FCA's proposals focus on four key themes:

- reducing avoidable CASS breaches
- updating rules to reflect modern market practices
- strengthening protections for retail clients under the Consumer Duty, and
- improving consistency across record keeping and reconciliations.

These changes will impact reconciliations, due diligence, client money interest handling and retail client disclosures.

15.4.2 Client Money Interest: Clearer Rules That Reduce Avoidable Breaches

The FCA proposes a new election for early interest and conditional permission for firm-owned interest to be paid into a client bank account.

Under current rules, interest paid into a client bank account before it becomes due and payable creates operational difficulty. Removing and later reintroducing the interest can increase insolvency risk, while leaving it in the account can create a breach.

CP25/37 proposes a new election that permits firms to treat early interest as unallocated client money from the moment it is received, provided the interest will become due and payable to clients at a specified point within one month of receipt. When the firm can identify the portion belonging to clients or the portion belonging to the firm, it must allocate or remove those funds promptly and no later than the next business day.

This new treatment removes ambiguity and provides a compliant method for managing early interest.

Where banks insist on crediting firm-owned interest to a client bank account, the firm currently breaches CASS even when it has taken reasonable steps to prevent this.

Under the proposals, a firm may accept such payments only if it has:

- Requested in writing that the bank directs the payment to a firm account.
- Removed the firm-owned interest from the client account by the next business day.

This allows firms to manage situations that arise due to bank processes rather than shortcomings in their own controls.

15.4.3 Due Diligence Records: Updated Retention Requirements Across CASS 6 and CASS 7

Firms would only need to retain due diligence records for five years from its creation or modification, not five years after the relationship ends.

CASS 6 and CASS 7 currently require firms to retain initial due diligence on custodians and banks until five years after the relationship ends. In long-standing relationships this can result in persistent breaches when old records cannot be sourced.

15.4.4 External Custody Reconciliations – Modernisation and Clear Conditions for Exceptions

Euroclear IFS would be formally recognised and new exceptions allow firms to reconcile less frequently when statements cannot be obtained.

Firms frequently rely on Euroclear's Investment Funds Service (IFS) for fund unit holdings, but currently require a modification to reconcile against IFS data. The FCA proposes to formally permit the use of IFS records as an external reconciliation source, subject to contractual undertakings that cover daily and monthly reconciliations and prompt notification of discrepancies.

This modernises CASS 6 and supports more efficient reconciliation processes.

The FCA acknowledges that fund managers and third parties sometimes cannot provide monthly statements, either temporarily or on a structural basis.

CP25/37 introduces two scenarios in which firms may reconcile less frequently:

1. Temporary disruption arising from circumstances inherent to the asset, for example insolvency proceedings, delistings or complex corporate actions.
2. Structural refusal by a third party to provide statements monthly despite reasonable efforts by the firm to obtain them.

Firms must document all attempts to obtain the required information, adjust their systems and controls to mitigate the risk of less frequent reconciliations and conduct an annual review of the situation.

This approach avoids recurring breaches while maintaining robust oversight.

15.4.5 Consumer Duty: Explicit Requirements for Interest Retention and the Lending of Retail Custody Assets

Firms must ensure certain CASS permissions for retail clients meet Consumer Duty expectations, including fair value and client understanding.

The FCA proposes an amendment to CASS 7.11 that would allow firms to retain interest on retail client money only if:

- The client has been notified in writing.
- The arrangement is compatible with the Consumer Duty, including the fair value and consumer understanding outcomes.

This change ensures that interest practices for retail clients reflect the Duty's emphasis on good outcomes.

The consultation introduces a separate rule for retail clients when safe custody assets are used for securities financing transactions. Firms would be required to:

- Obtain express prior consent on specified terms.
- Restrict use of the assets to those agreed terms.
- Ensure the arrangements and consent process are compatible with the Consumer Duty.

If assets are held in an omnibus account, firms must either obtain consent from every retail client whose assets may be used or operate controls that ensure only consenting clients' assets can be included. Aside from the direct consequences of an agreed transaction, firms must not use retail clients' assets for their own account or the account of any other person.

Consumer Duty Excluded from the CASS Audit

Although the Duty is embedded within these rules, the FCA proposes that the CASS auditor will not be required to test firms' Consumer Duty compliance. Duty related assurance must therefore be addressed through firms' internal governance rather than the statutory CASS audit.



16. Supervision (SUP)

16.1 Applications to Vary and Cancel Part 4A Permissions (SUP 6)

Firms can apply to the PRA and/or the FCA to vary a Part 4A permission, including where the firm ceases to carry on any of the regulated activities for which it has Part 4A permission (or expects to do so in the short term, normally less than six months).

Under Section 20(1) of FSMA – Authorised persons acting without permission, a firm is prohibited from carrying on a regulated activity in the UK (or purporting to do so) otherwise than in accordance with its permission.

Firms wishing to change their Part 4A permission can apply to the PRA and/or the FCA under Section 44 of FSMA – Variation at request of the authorised person.

Firms intending to expand their business should assess, taking appropriate professional advice where necessary, whether they will need to apply to the PRA and/or the FCA to vary their Part 4A permission before making any changes. When a firm intends to transfer its business to a different legal entity (for example, the business is to be transferred from a sole trader to a partnership), it will need to apply to the PRA and/or the FCA for cancellation of its Part 4A permission, and the

entity to which the business is to be transferred will need to apply for a new Part 4A permission.

A firm which is seeking to vary its Part 4A permission substantially or cancel its Part 4A permission should discuss its plans with its usual supervisory contact at the PRA and/or the FCA as early as possible before making its application, in order to comply with Principle 11 of the Principles for Businesses. This is to help the PRA and/or the FCA and the firm to agree the correct approach for the firm. When a firm intends to cease carrying on one or more regulated activities permanently, it should give prompt notice to the PRA and/or the FCA to comply with Principle 11. A firm should consider whether it needs to notify the PRA and/or the FCA before applying to vary or cancel its Part 4A permission.

Under Section 55H or 55L of FSMA (as enacted by the Financial Services Act 2012), a firm may apply to the PRA and/or the FCA to vary its Part 4A permission to:

1. allow it to carry on further regulated activities
2. reduce the number of regulated activities it is permitted to carry out
3. vary the PRA and/or the FCA's description of its regulated activities (including by the removal or variation of any limitations)
4. cancel any requirement applied for by the firm or imposed by the PRA under Section 55M and/or by the FCA under Section 55L of FSMA – imposition of requirements, or
5. vary any such requirement.

A firm may apply to vary its Part 4A permission to add a new regulated activity and at the same time remove a regulated activity for which it currently has permission.

When a firm wishes to cease carrying on an activity for which it has Part 4A permission, it will usually apply to vary its Part 4A permission to remove that activity. If a firm wishes to cease carrying on an activity in relation to any specified investment, it will apply to vary its Part 4A permission to remove that specified investment from the relevant activity.

When a firm is requesting to amend its Part 4A permission for regulated activities that would cause a significant change in the firm's business or risk profile, then the regulator may require the firm to complete appropriate parts of the full

application pack (see the FCA and/or the PRA website: How do I get authorised) as directed by the PRA regulators FCA.

Applications for variation involving significant changes may be processed by the firm's usual supervisory contact at the FCA and/or the PRA, in conjunction with the Permissions department. Examples of an application for variation of Part 4A permission which may represent a significant change include, but are not limited to, an application:

- to carry on new regulated activities such as accepting deposits
- to extend the insurance business of a firm which already has Part 4A permission, which includes carrying out or effecting contracts of insurance (or both), to new classes of specified investment, or
- to remove a requirement preventing a firm from holding or controlling client money, or
- which causes the firm to change prudential category by, for example, removing a requirement relating to prudential category.

16.1.1 When Will the PRA/FCA Grant an Application for Variation of Permission?

The regulators are required by Section 41(2) of FSMA to ensure that a firm applying to vary its Part 4A permission satisfies and will continue to satisfy the threshold conditions in relation to all the regulated activities for which the firm has or will have Part 4A permission after the variation.

However, the regulators must take such steps as they consider necessary in relation to a particular firm, to meet any of their regulatory objectives. This may include granting a firm's application for variation of Part 4A permission when it wishes to wind down (run off) its business activities and cease to carry out new business as a result of no longer being able to satisfy the threshold conditions.

In addition, they may also refuse the application, if it appears that any of the regulators regulatory objectives would be adversely affected if the application were to be granted, and it is desirable in order to meet their regulatory objectives for the application to be refused.

16.1.2 Commencing New Regulated Activities

If the variation of the Part 4A permission is given, then the regulators will expect the firm to commence that regulated activity in accordance with its business plan (revised as necessary to take account of changes during the application process), or scheme of operations for an insurer.

Under Section 55L (FCA) and Section 55M (PRA) of FSMA, the PRA and/or the FCA can refuse an application from a firm to cancel its Part 4A permission if it appears that it is desirable for the application to be refused in order to meet any of the PRA and/or the FCA regulatory objectives.

A firm will be expected to demonstrate to the regulators that it has ceased carrying on regulated activities. As part of the application process, the regulator may require the firm to provide confirmation or verification from a professional adviser on certain matters to supplement the report, verifying that the activities have been ceased by the firm.

16.2 Waiver and Modification Rules (SUP 8)

Firms can apply for a waiver and modification of certain rules in the PRA and/or the FCA Handbook, although following the implementation of MiFID, the regulators have decreased the scope and limitation on the rules that can be waivered or modified for firms.

The PRA and/or the FCA is required by Section 148(6) of FSMA to publish a waiver unless it is satisfied that it is inappropriate or unnecessary to do so. If the regulator publishes a waiver, it will not publish details of why a waiver was required or any of the supporting information given in a waiver application.

Once the regulator has granted a waiver, it may vary it with the firm's consent, or on the firm's application. If a firm wishes the regulator to vary a waiver, it should give reasons for the application. If the waiver that has been varied has previously been published, the regulator will publish the variation, unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representation made by the firm.

A waiver can be revoked at any time, but only if the conditions in Section 148(4) of FSMA are no longer satisfied and when the waiver is otherwise no longer appropriate.

A waiver can be revoked with immediate effect, if the regulator considers that this is necessary, for example, in order to prevent undue risk to consumers.

If the regulator proposes to revoke a waiver, or revokes a waiver with immediate effect, it will:

1. give the firm written notice either of its proposal or of its action, giving reasons
2. state in the notice a reasonable period (usually 28 days) within which the firm can make representations about the proposal or action. If a firm wants to make oral representations, it should inform the regulator as quickly as possible, specify who will make the representations and which matters will be covered: the regulator will inform the firm of the time and place for hearing the representations and may request a written summary, and
3. after considering any representations, in the case of a proposed revocation, give the firm written confirmation of its decision to revoke the waiver or not; or, in the case of a revocation that has already taken effect, either confirm the revocation or seek the firm's consent to a new waiver.

If the waiver that has been revoked has previously been published, the regulator will publish the revocation unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representations made by the firm.

16.3 Supervision – FCA Approved Persons (SUP 10A), PRA Approved Persons (SUP 10B) and FCA Senior Management Regime for Approved Persons (SUP 10C)

Refer to section 2 (SM&CR) and section 3 (APER) in this chapter.

16.4 Notifications to the FCA (SUP 15)

A firm is required to provide the FCA with a wide range of information to enable them to meet their responsibilities for monitoring the firm's compliance with requirements imposed by or under FSMA. Some of this information is provided through regular reports, including reporting requirements and transaction reporting.

In addition, other chapters in the Handbook set out specific notification and reporting requirements. Principle 11 (Relations with regulators) includes a requirement for a firm to disclose appropriately anything relating to the firm of which the FCA would reasonably expect notice.

SUP 15 sets out:

1. Guidance on the type of event or change in condition which a firm should consider notifying in accordance with Principle 11. The purpose of the guidance is to set out examples and not to give comprehensive advice to firms on what they should notify in order to be in compliance with Principle 11.
2. Rules on events and changes in condition that a firm must notify the regulator of. These are the types of event that the regulator would expect to be informed, usually as soon as possible, if it is to be able to carry out its monitoring function effectively and react in good time to developments that may require a regulatory response.
3. Rules on core information that a firm must provide, for example, its name and address and the names of its other regulators, so that the regulator is able to maintain a relationship with the firm and with those regulators.
4. Rules requiring a firm to ensure that information provided is accurate and complete. Section 398 of FSMA makes it an offence to knowingly or recklessly provide information which is false or misleading in a material particular, in purported compliance with any requirement imposed by, or under FSMA, firms must also take due care to ensure the accuracy of information and ensure that information is complete.
5. To implement the provisions of UK MAR for the reporting of transactions about which there is reasonable suspicion of market abuse.

A firm must notify the regulators immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:

1. the firm failing to satisfy one or more of the threshold conditions
2. any matter which could have a significant adverse impact on the firm's reputation
3. any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm, or
4. any matter in respect of the firm which could result in serious financial consequences to the UK financial system or to other firms.

A firm must also notify the FCA of:

a. a significant breach of a rule (which includes a principle) or Statement of Principle
b. a breach of any requirement imposed by FSMA, or by regulations, or an order made under FSMA by HM Treasury (except if the breach is an offence, in which case (c) applies)
c. the bringing of a prosecution for, or a conviction of, any offence under FSMA
d. a breach of a directly applicable provision in UK MiFID
e. a breach of any requirement in Regulation 4C(3) (or any successor provision) of FSMA 2000 (Markets in Financial Instruments) Regulations 2007, or
f. a breach of a directly applicable provision in the auction regulation.

A firm must notify the regulators immediately if:

1. civil proceedings are brought against the firm and the amount of the claim is significant in relation to the firm's financial resources or its reputation
2. any action is brought against the firm under Section 71 of FSMA, actions for damages, or Section 150, actions for damage
3. disciplinary measures or sanctions have been imposed on the firm by any statutory or regulatory authority, professional organisation or trade body

(other than the PRA and/or the FCA) or the firm becomes aware that one of those bodies has started an investigation into its affairs

4. the firm is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion, or
5. it is an Occupational Pension Scheme (OPS) firm, which is a trustee, and is removed as trustee by a court order.

A firm must notify the regulators immediately if one of the following events arises and the event is significant:

1. It becomes aware that an employee may have committed a fraud against one of its customers.
2. It becomes aware that a person, whether or not employed by it, may have committed a fraud against it.
3. It considers that any person, whether or not employed by it, is acting with intent to commit a fraud against it.
4. It identifies irregularities in its accounting, or other records, whether or not there is evidence of fraud.
5. It suspects that one of its employees may be guilty of serious misconduct concerning their honesty or integrity, and which is connected with the firm's regulated activities, or ancillary activities.

A firm must notify the regulators immediately of any of the following events:

1. the calling of a meeting to consider a resolution for winding up the firm
2. an application to dissolve the firm, or to strike it off the Register of Companies
3. the presentation of a petition for the winding up of the firm
4. the making of, or any proposals for the making of, a composition, or arrangement with any one or more of its creditors
5. an application for the appointment of an administrator, or trustee in bankruptcy to the firm
6. the appointment of a receiver to the firm (whether an administrative receiver or a receiver appointed over particular property)
7. an application for an interim order against the firm under Section 252 of the Insolvency Act 1986 (or, in Northern Ireland, Section 227 of the Insolvency

(Northern Ireland) Order 1989)

8. if the firm is a sole trader:
    - an application for a sequestration order on the firm, or
    - the presentation of a petition for bankruptcy, or
9. anything equivalent to (1) to (8) above occurring in respect of the firm in a jurisdiction outside the UK.

Notifications of Suspicious Transactions

A firm which arranges or executes a transaction with or for a client in a qualifying investment admitted to trading on a prescribed market, and which has reasonable grounds to suspect that the transaction might constitute market abuse, must notify the FCA without delay.

Firms must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves market abuse, taking into account the elements constituting market abuse. If the firm becomes aware of a fact, or information that gives reasonable ground for suspicion concerning a transaction, it must make a notification to the FCA without delay.

16.5 Transaction Reporting (SUP 17A)

Transaction reporting requirements apply to a:

1. UK MiFID investment firm
2. third country investment firm
3. person who is the operator of an approved reporting mechanism or of a regulated market, or MTF that is used by a firm to report transactions to the FCA, and
4. firm acting in its capacity as a manager, or operator of:
    - a collective investment undertaking
    - a pension scheme
    - an OPS
    - a personal pension scheme, or

- a stakeholder pension scheme.

A firm which executes a transaction in any of the following must report the details of the transaction to the PRA:

1. any financial instrument admitted to trading on a UK or EU regulated market, or a prescribed market (whether or not the transaction was carried out on such a market)
2. any OTC derivative, the value of which is derived from, or which is otherwise dependent upon, an equity- or debt-related financial instrument which is admitted to trading on a UK or EU regulated market, or on a prescribed market, or
3. a basket or index of instruments which includes one or more financial instruments admitted to/ traded on a UK or EU regulated or prescribed market.

Must report the details of the transactions to the FCA.

Under UK MiFID II, both firms (where they are subject to the requirements) must make a report to the FCA. Firms must report the required details of the transaction to the FCA as quickly as possible, but no later than the close of the working day following the day upon which that transaction took place.

Up to 65 data fields have to be reported by firms to the FCA.

Regulatory Developments

Refer to chapter 5 for details on the FCA's November 2025 consultation on improving the UK MiFID transaction reporting regime.



17. Decision Procedure and Penalties Manual (DEPP)

17.1 The Regulatory Decisions Committee (RDC)

In the interests of fairness, FSMA requires that, when the FCA makes decisions about the issue of warning and decision notices, it follows procedures that are 'designed to secure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based'.

Thus, rather than allowing the FCA's enforcement team to make the decisions which are implemented in the statutory notices outlined above, these decisions are made by a relatively independent committee called the Regulatory Decisions Committee (RDC).

The RDC is a committee of the FCA's board and is accountable to that board. However, it is independent to the extent that it is outside the FCA's management structure. Only the chairman is an FCA employee; the rest of the members represent the public interest and are either current or retired practitioners with financial services knowledge and experience, or non-practitioners.

The RDC meets either in its entirety, or as a panel, depending on the issue under review. In either case, the chairman or deputy must be present. The RDC also has its own legal function. It is not advised on cases by the same legal team that advises the FCA's enforcement team, who will have originally brought the case to the RDC.

The RDC has responsibility for statutory decisions, such as to:

- specify a narrower description of a regulated activity than that applied for in a Part 4A permission, or limit a Part 4A permission, in a way which will make a fundamental change
- refuse an application for a Part 4A permission, or cancel an existing Part 4A permission
- refuse an application for approved person status, or withdraw an existing approval
- make a prohibition order in relation to a person that will prohibit them from gaining approved person status, or to refuse to vary such an order, and
- exercise the FCA's powers to impose a financial penalty, make a public statement on the misconduct of an approved person, issue a public censure against an authorised person, or make a restitution order against a person.

If a statutory notice decision is not made by the RDC, it will be made under the executive procedures of the FCA. These executive procedures enable the FCA to use statutory powers when individual guidance or voluntary agreement is felt to be inappropriate. A typical example of when these executive procedures might be used is if the FCA has particular concerns and therefore requires a firm to submit reports, such as those on trading results, customer complaints, or reports, detailing the firm's management accounts.

17.2 Notices

FSMA gives the FCA the power to issue a variety of notices to authorised firms and/or approved persons, collectively referred to as statutory notices.

- **Warning notices** give the recipient details about the action the FCA proposes to take and why it proposes to do so. They also give the recipient the right to make representations as to why the FCA should not take this action. New powers provided in the Financial Services Act 2012 permit the FCA to publicly announce that it has begun disciplinary action against a firm, or individual. It will be able to publish details of a warning notice proposing disciplinary action, to signal the start of formal enforcement proceedings. However, the FCA will have to consult with the recipient of the warning notice before publishing the details.
- **Decision notices** give details of the action that the FCA has decided to take, leaving room for appeal by the recipient.
- **Supervisory notices** give the recipient details regarding action the FCA has taken or proposes to take. A typical supervisory notice might limit a firm's Part 4A permission with immediate effect (and hence it would seem reasonable for the FCA to alert the public to the fact that the firm is no longer permitted to carry on certain activities).

In addition, the FCA can issue the following notices, which are referred to as 'secondary statutory notices'.

- **Further decision notices** may follow the issue of a decision notice, when the FCA has agreed with the recipient to take a different action from that proposed in the original decision notice. The FCA can issue a further decision notice only with the consent of the recipient.
- **Notices of discontinuance** let the recipient know that, if the FCA has previously sent it a warning notice and/or a decision notice, it has decided not to proceed with the relevant action.
- **Final notices** set out the terms of the final action which the FCA has decided to take and the date that it is effective from. They are also, unlike warning and decision notices, published by the FCA, on its website.

The rules permit the FCA to publish a warning notice, including the firm name, but not the individual concerned, unless it deems it necessary and relevant to publish details of the individual. The FCA considers that this will provide more transparency, and make the regulatory process more open, and give confidence to people that it is acting in their best interest. The published warning notice will

normally include a brief summary of the facts that gave rise to the warning notice to enable consumers, firms, and market users to understand the nature of the FCA's concerns.

The FCA will follow a three-stage approach to making a decision about publication:

1. Whether any information should be published.
2. Whether the identity of the subject should be published. The assumption will be that no publication will provide the identity of individuals unless:
    a. it is not possible to describe the nature of the concerns without making it possible to identify the individual
    b. it is necessary to avoid another person being mistakenly believed to be the individual in breach
    c. it would help to protect consumers or investors
    d. it is necessary to maintain public confidence in the financial system, or the market, or
    e. it is desirable to quash rumours in the market.
3. Consultation – no decision will be made to publish until the firm and/or the individual has been consulted.

17.3 The Regulatory Enforcement Processes

Regulatory enforcement measures are one of the ways the FCA can address instances of non-compliance with its requirements. There are three possible forms of formal disciplinary sanction:

- public statements of misconduct (relating to approved persons, ie, individuals)
- public censures (relating to authorised persons, ie, firms), and
- financial penalties (fines).

The imposition of regulatory enforcement measures (such as fines and public statements or censures) assists the FCA in meeting its statutory objectives.

In addition to these formal measures, the FCA can take a lower-key approach, if it feels this is more appropriate. It could, for example:

- issue a private warning, or
- take supervisory action, such as:
    - varying or cancelling the firm's Part 4A permission, or removing its authorisation
    - withdrawing an individual's approved person status, and
    - prohibiting an individual from performing a particular role in relation to a regulated activity.

These measures might be used if the FCA considers it necessary to take protective, or remedial action (rather than disciplinary action), or when a firm's ability to continue to meet its threshold conditions, or an individual approved person's fitness and propriety, are called into question.

When the FCA is considering formal discipline against an authorised firm and/or an approved person, it is required by FSMA to issue one or more notices. As we saw, these notices fall into two categories: warnings and decisions.

Warnings are not in themselves disciplinary events, since for an action to be regarded as disciplinary, a decision must have been made, and a warning is just that, no more and no less. Indeed, the decision notices themselves may not be absolutely final. They may be:

- discontinued by the issue of a notice of discontinuance
- varied by agreement in a further decision notice, or
- simply confirmed in a final decision notice.

17.3.1 Criteria for Disciplinary Action

In determining whether to take regulatory enforcement measures, the FCA will consider the full circumstances that may be relevant to the case. These include, but are not limited to, the following:

- The nature and seriousness of the suspected breach:

- Was it deliberate or reckless?
- Does it reveal serious or systemic weakness of the management systems or internal controls of the firm?
- How much loss, or risk of loss, was there to consumers and other market users?

- The conduct of the firm after the breach:
  - How quickly, effectively and completely was the breach brought to the attention of the FCA?
  - Has the firm taken remedial steps since the breach was identified, for example, by identifying and compensating consumers who suffered loss, taking disciplinary action against the staff involved, addressing systemic failures and taking action to avoid recurrence of the breach in the future?
- The previous regulatory record of the firm or approved person:
  - Has the FCA (or a previous regulator) taken any previous disciplinary action?

17.3.2 The Enforcement Measures

Private Warnings

These are issued when there are concerns regarding the behaviour of the firm, or an approved person, but decides it is not appropriate to bring formal disciplinary action. It might include cases of potential (but unproven) market abuse, or cases when the FCA considered making a prohibition order, but decided not to do so.

In such circumstances, the FCA believes it is helpful to let the recipient know that they came close to disciplinary action, and the private warning serves this purpose. The circumstances giving rise to a private warning might include, a minor matter (in nature or degree), or when the firm, or approved person has taken full and immediate remedial action. The benefit of a private warning is that it avoids the reputational damage that would follow from more public sanctions, such as a fine or public censure.

The private warning will state that the FCA has had cause for concern but, at present, does not intend to take formal disciplinary action. It will also state that the private warning will form part of the FCA's compliance history and will require the recipient to acknowledge receipt and invite a response.

Variation of Permission

Part 4A permission granted to the firm by the FCA can be varied on the FCA's own initiative. The FCA's powers to vary and cancel a person's Part 4A permission are exercisable in the same circumstances. However, the statutory procedure for the exercise of each power is different, and this may determine how the FCA acts in a given case.

When it considers how it should deal with a concern about a firm, the FCA will have regard to:

a. the responsibilities of a firm's management to deal with concerns about the firm, or about the way its business is being or has been run, and
b. the principle that a restriction imposed on a firm should be proportionate to the objectives the FCA is seeking to achieve.

Examples of circumstances in which the FCA will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted, include when:

a. in relation to the grounds for exercising the power under Section 55L (FCA) or 55M (PRA) of FSMA, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:
    - the firm's material and financial resources appear inadequate for the scale, or type of regulated activity it is carrying on; for example, if it has failed to maintain professional indemnity insurance, or if it is unable to meet its liabilities as they have fallen due, or
    - the firm appears not to be a fit and proper person to carry on a regulated activity because it has:

- not conducted its business in compliance with high standards which may include, putting itself at risk of being used for the purposes of financial crime, or being otherwise involved in such crime
- not been managed competently and prudently and has not exercised due skill, care and diligence in carrying on one or more, or all, of its regulated activities, or
- breached requirements imposed on it by, or under the Act (including the principles and the rules), for example, in respect of its disclosure, or notification requirements, and the breaches are material in number, or in individual seriousness, and

b. in relation to the grounds for exercising the power under Section 55L (FCA) and 55M, it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6–10 of the FCA's Principles (see PRIN 2.1.1R) to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the firm's regulated activity.

Withdrawal of a Firm's Authorisation

The FCA will consider cancelling a firm's Part 4A permission in two major circumstances:

- if the FCA has very serious concerns about a firm, or the way its business is conducted,
- if a firm's regulated activities have come to an end, but it has not applied for cancellation of its Part 4A permission.

The grounds on which the regulator may exercise its power to cancel an authorised person's permission under Section 55J of FSMA (as enacted by the Financial Services Act 2012) and are the same as for a variation are described in EG 8.1. Examples of the circumstances in which the FCA may cancel a firm's Part 4A permission include:

- non-compliance with an FOS award against the firm

- material non-disclosure in an application for authorisation or approval, or material non-notification after authorisation, or approval has been granted (the information which is the subject of the non- disclosure or non-notification may also be grounds for cancellation)
- failure to have, or maintain adequate financial resources, or a failure to comply with regulatory capital requirements
- non-submission of, or provision of false information in, regulatory returns, or repeated failure to submit such returns in a timely fashion
- non-payment of FCA fees, or repeated failure to pay FCA fees except under threat of enforcement action
- failure to provide the FCA with valid contact details, or failure to maintain the details provided, such that the FCA is unable to communicate with the firm, and
- repeated failures to comply with rules, or requirements
- a failure to cooperate with the FCA, which is of sufficient seriousness that the FCA ceases to be satisfied that the firm is fit and proper; for example, failing without reasonable excuse to:
    - comply with the material terms of a formal agreement made with the FCA to conclude, or avoid disciplinary or other enforcement action, or
    - provide material information, or take remedial action reasonably required by the FCA.

Section 55L of the Act sets out further grounds on which the FCA may cancel the permission of authorised persons which are investment firms. Depending on the circumstances, the FCA may need to consider whether it should first use its own initiative powers to vary a firm's Part 4A permission before going on to cancel it. Among other circumstances, the FCA may use this power if it considers it needs to take immediate action against a firm because of the urgency and seriousness of the situation.

Withdrawal of Approval

As well as having the power to withdraw authorisation of the firm, the FCA has the power to withdraw the approval of particular individuals to fulfil controlled

functions. The FCA is required first to issue a warning notice to the approved person and the firm, followed by a decision notice. The FCA's decision can be referred to the **Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal)**.

The FCA recognises that withdrawing approval will often have a substantial impact on those concerned. When considering withdrawing approval it will take into account the cumulative effect of all relevant matters, including:

- The competence and capability of the individual (embracing qualifications and training). Does he have the necessary skills to carry out the controlled function he is performing?
- The honesty, integrity and reputation of the individual. Is he open and honest in dealings with consumers, market participants and regulators? Is he complying with his legal and professional obligations?
- The financial soundness of the individual. Has he been subject to judgement debts or awards which have not been satisfied within a reasonable period?
- Whether the individual failed to comply with the Statements of Principle, or was knowingly involved in a contravention of the requirements placed on the firm.
- The relevance, materiality and length of time since the occurrence of any matters indicating that the approved person is not fit and proper.
- The degree of risk the approved person poses to consumers and to the confidence consumers have in the financial system.
- The previous disciplinary record and compliance history of the approved person.
- The particular controlled function and nature of the activities undertaken by the approved person.

The FCA will publicise the final decision notice in relation to the withdrawal of approval, unless this would prejudice the interests of consumers.

Prohibition of Individuals

Under Section 56 of FSMA, the FCA has the right to make a prohibition order against an individual. This order can prohibit the individual from carrying out

particular functions, or from being employed by any authorised firm if the FCA considers it necessary for the achievement of its four statutory objectives. The prohibition order may relate just to a single specified regulated activity, or to all regulated activities. It may also relate to the individual's ability to work for a particular class of firms, or to all firms.

Prohibition orders are generally used by the FCA in cases which seem more serious than those that would merit mere withdrawal of approval, ie, there may be a greater lack of fitness and propriety. The FCA will consider all the factors listed above, which could otherwise have resulted in a withdrawal of approval. It will also consider factors such as whether the individual has been convicted of, or dismissed, or suspended from employment for, the abuse of drugs or other substances, or has convictions for serious assault. The FCA might feel it appropriate to issue a prohibition order against someone who continues to fulfil a controlled function after approval has been withdrawn.

As with withdrawal of approval, the FCA is required to firstly issue a warning notice to the approved person and the firm, followed by a decision notice. The FCA decision can be referred to the Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal). It will generally publicise the final decision notice in relation to the prohibition of an individual.

Public Censure and Statement of Misconduct

The FCA is empowered under FSMA to issue a public censure on firms it considers to have contravened a requirement imposed on it by, or under, the Act. For approved persons, the FCA may issue a public statement of misconduct when a person has failed to comply with the Statements of Principle, or has been knowingly involved in a firm's contravention of a requirement imposed on it by, or under, the Act.

As with other disciplinary actions, the steps required of the FCA are to:

- issue a warning notice (including the terms of the statement or censure the FCA is proposing to issue)
- follow this by a decision notice, and
- subsequently provide the right to go to Upper Tribunal.

Financial Penalties

As an alternative to public censures or statements of misconduct, the FCA is able to impose financial penalties on firms contravening requirements imposed on it by, or under, FSMA, and on approved persons failing to comply with the Statements of Principle, or having been knowingly involved in a firm's contravention of requirements.

The FCA provides guidance as to the criteria used to determine whether to issue public censures or statements (with no fine), rather than impose a financial penalty. It includes the following factors:

- If the firm or person avoided a loss or made a profit from their breach, a financial penalty will be more appropriate to prevent the guilty party from benefiting from their actions.
- If the breach or misconduct is more serious in nature or degree, a financial penalty is likely to be imposed.
- Admission of guilt, full and immediate cooperation and taking steps to ensure that consumers are fully compensated may lessen the likelihood or reduce the amount of the financial penalty.
- A poor disciplinary record or compliance history may increase the likelihood of a financial penalty, as a deterrent for the future.
- Whether FCA guidance has been followed by the firm.

As is usual for disciplinary matters, there will be a warning notice, decision notice and final decision notice, and ordinarily the final decision will be made public by the FCA issuing a press release. However, in circumstances where it would be unfair on the person, or prejudicial to the interests of consumers, the FCA may choose not to issue a press release.

17.3.3 Defences

Under Section 22 of FSMA (Regulated Activities), for an activity to be a regulated activity it must be carried on by way of business. The activity of accepting deposits will not be regarded as carried out by way of business by a person they do not hold themselves out as accepting deposits on a day-to-day basis and if the deposits accepted are accepted only on particular occasions. In determining

whether deposits are accepted only on particular occasions, the frequency of the occasions and any distinguishing characteristics must be taken into account.

A person managing assets on a discretionary basis while acting as trustee of an Occupational Pension Scheme (OPS) may in certain circumstances be regarded as acting by way of business even if they would not, in the ordinary meaning of the phrase, be regarded as doing so.

A person who carries on an insurance mediation activity will not be regarded as doing so by way of business unless they take up or pursues that activity for remuneration.

Whether or not an activity is carried on by way of business is ultimately a question of judgement that takes account of several factors (none of which is likely to be conclusive). These include the degree of continuity, the existence of a commercial element, the scale of the activity, and the proportion which the activity bears to other activities carried on by the same person, but which are not regulated. The nature of the particular regulated activity that is carried on will also be relevant to the factual analysis.

Section 19 of the Act (General Prohibition) provides that the requirement to be authorised under the Act only applies in relation to activities that are carried on in the UK. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example, because a client is outside the UK, or because some other element of the activity happens outside the UK, the question may arise as to where the activity is carried on.

Chapter 2 of the 'PERG' Sourcebook provides guidance on what activities fall within scope of FSMA, and therefore require them (ie, an individual and/or a firm) to be authorised in order to undertake and carry out, and offer these services to others, regulated activities.

Source of information: FCA website ('The Perimeter Guidance Manual' (PERG))

17.3.4 The Upper Tribunal

As has been noted above, any person who receives a decision notice (including a supervisory notice) has the right to refer the FCA's decision to the Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal). The individual or firm has 28 days in which to do so, and during this period the FCA cannot take the action it has proposed. It must give the person or firm a full 28 days to decide whether to refer the decision.

The Upper Tribunal is independent of the FCA and is appointed by the government's Ministry of Justice (formerly the Department of Constitutional Affairs).

The Upper Tribunal will involve a full rehearing of the case and will determine on the basis of all available evidence whether the FCA's decision was appropriate. The hearing may include evidence that was not available to the FCA at the time and the Tribunal's decision is binding on the FCA. While the Upper Tribunal has generally not overturned many of the FCA's decisions to date, it has been known to do so, an important factor in demonstrating that it is independent in its decision-making and prepared to challenge the FCA where it sees fit.

It is possible for a firm or individual to appeal a decision of the Upper Tribunal itself (but only on a point of law, for this, permission is needed either from the Upper Tribunal itself or from the Court of Appeal).

17.3.5 FCA Consultation Paper – 'A New Approach to Enforcement'

In 2024, the FCA published a consultation paper (CP24/2) titled '*Our Enforcement Guide and publicising enforcement investigations – a new approach*'.

The FCA noted in the consultation paper that reducing and preventing serious harm is one pillar of their three-year strategy, with enforcement playing a vital role in delivering this aim effectively. Fines, bans and prosecutions are often what the public notices most about their enforcement work. But enforcement action is not just simply about individual instances of punishment, rather its greatest impact is as a deterrence – educating the whole market on standards and expectations and identifying where others have fallen short.

The FCA's approach to transparency is underpinned by their statutory obligations in FSMA and the Legislative and Regulatory Reform Act 2006 (LRRA) to:

- exercise their functions as transparently as possible
- consider publishing information about regulated firms and individuals, and
- have regard to the principle that regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent.

The FCA rarely publishes any information about the investigations they have opened and their progress, unless and until it results in actual or proposed outcomes such as censures or penalties. However, the FCA note that by this time, the reassurance, educational value, and effectiveness of that information, which benefits consumers and the industry, is often significantly reduced.

In December 2024, the FCA published a second consultation paper regarding its 'revised' approach to enforcement regarding naming firms under investigation. The second consultation closed for comments on 17 February 2025, the FCA noted that the board would decide on the proposals in Q1 2025.

In March 2025, the FCA CEO published a letter to the Treasury Select Committee to advise that the FCA will not be taking forward their enhanced approach to transparency of investigations.

The FCA noted that they will be proceeding with the following aspects of their proposals:

- Reactively confirming investigations which are officially announced by others, typically market announcements or other disclosures made by firms themselves or sometimes announcements by a partner regulator. Of our 37 open investigations into regulated or listed firms, 22 are already public. But our current approach means that, even when the investigation is already known, we are generally not able to confirm or deny its existence.
- Public notifications which focus on the potentially unlawful activities of unregulated firms and regulated firms operating outside the regulatory perimeter, where doing so protects consumers or furthers the investigation. Around 60% of our investigations into firms relate to

activities of unregulated firms, which are often frauds involving significant consumer harm, where we have no supervisory tools available.

- Publishing greater detail of issues under investigation on an anonymous basis, perhaps via a regular bulletin such as Enforcement Watch. This may help highlight more quickly significant areas of concern and where firms may consider making improvements.

Source of information: FCA website

17.4 Publishing Information about Enforcement Warning Notices

As noted above in section 17.2 ('Notices'), the FCA has powers to provide information about enforcement action it is taking against individuals and firms.

The FCA's approach is to advance its consumer protection and integrity objectives, by publishing information earlier about its enforcement action. The FCA will be more open and transparent about the types of behaviour that it considers to be acceptable.

Following the issue of a warning notice, the FCA can publish information about that notice in a warning notice statement. However, the FCA will only identify the individual in the warning notice if it thinks it is appropriate.

17.5 Issuing Statutory Notices – A New Approach to Decision Makers

In 2021, the FCA published new rules relating to the issuing of statutory notices.

The FCA noted that it needed to transform in order to make fast and effective decisions and prioritise the right outcomes for consumers, markets and firms. The FCA consulted on streamlining its decision making and governance so that it can respond more quickly, meaning that some specific decision making would be moved from the RDC to the FCA's Authorisations, Supervision and Enforcement Divisions.

The 'decision-making' framework utilises the FCA's existing executive procedures framework. The FCA decided to change who decides when to issue a statutory notice in some cases. Currently, decisions to issue a statutory notice are made by the RDC and under executive procedures – the FCA will now make more decisions under executive procedures.

The FCA decided to transfer decision-making from the RDC to executive procedures in certain authorisations, interventions, straightforward cancellation cases and decisions whether to commence civil and criminal proceedings.

Who is the Decision Maker

Category of decision	'Previous' decision maker	'New' decision maker
Authorisations (refusal of permission)	Executive Procedures and RDC	Executive Procedures
Straightforward cancellations (eg, threshold conditions)	RDC	Executive Procedures
Interventions (variation of permission and imposition of requirements non-fundamental)	Executive Procedures and RDC	Executive Procedures
Approvals to commence civil or criminal proceedings	RDC (or Executive Procedures where criminal proceedings under legislation other than FSMA)	Executive Procedures



18. The Cost of Non-Compliance

It can be concluded from the approach to enforcement, and from fines handed out to both firms and individuals over recent years, that enforcement is now very much central to the regulator's strategic vision, and that higher penalties are an inevitable part of that process.

The regulator's approach to financial enforcement penalties supports its ongoing commitment to the principle of credible deterrence and the improvement of standards within firms in relation to market misconduct and their dealings with customers. The imposition of harder-hitting financial penalties that better reflect the scale of a firm's wrongdoing will be a feature of enforcement activity in the future.

There is now a structured five-step penalty-setting framework, based on the three principles of disgorgement, discipline and deterrence, and consisting of the following steps:

- removing any profits made from misconduct (disgorgement)
- setting a figure to reflect the seriousness of the breach
- considering any aggravating and mitigating factors (discipline)
- achieving the appropriate deterrent effect (deterrence), and
- applying any settlement discount.

The regulator's shift from being a principles-based regulator to an outcomes-focused regulator has given firms a clear warning that the regulator is no longer looking at failures in tick-box compliance with individual rules; rather, it is looking at what firms and individuals did and the real impact of these outcomes to consumers, to the market and other firms.

Firms need to understand and realise that the regulator has changed its focus: now firms can be facing a significant penalty and demand for remedial action for a weak control framework, even without evidence of actual consumer detriment – as was the case for a number of fines. In most cases the fines levied on major organisations will not pose a problem to the firms paying them. Rather, the reputational damage is far more important, as this could lead to corporate and institutional clients taking their business to other firms.

Candidates should be aware of the consequences for non-compliance and the importance of why firms should ensure that they have robust and adequate systems and controls for the business activities that they undertake, plus senior management who take responsibility for ensuring the firm complies with the regulatory rules and requirements.

Candidates should read and be familiar with FCA fines published, in particular analysing the final notice where the FCA identifies the cause of the non-compliance with specific rules and/or principles, and where there was weaknesses in firms systems and controls. The final notices are a good source of 'informal guidance' from the FCA, that all regulated firms should assess their own systems and controls, against to identify and spot potential issues.

(Details on FCA fines can be found on its website).



19. Redress

The Redress section of the Handbook contains three sourcebooks:

- **Dispute Resolution: Complaints (DISP)** – which contains the detailed requirements for handling complaints and the FOS arrangements.
- **Consumer Redress Schemes Sourcebook (CONRED)** – which contains definitions, guidance and circumstances in which the FCA may impose a requirement to establish a consumer redress scheme. It also contains requirements for all firms that advised, arranged or managed investments in an Arch Cru fund.
- **Compensation (COMP)** – rules governing eligibility under, and levies for the FSCS.

19.1 Complaints

It is almost inevitable that customers will raise complaints against a firm. Sometimes these complaints will be valid and sometimes they will not. The FCA requires authorised firms to deal with complaints from eligible complainants (who are generally regarded as more vulnerable than some other potential complainants) promptly and fairly.

A complaint may only be dealt with under the FOS if it is brought by, or on behalf of, an eligible complainant. A complaint may be brought on behalf of an eligible complainant (or a deceased person who would have been an eligible complainant) by a person authorised by the eligible complainant or authorised by law. It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself an eligible complainant.

The FCA requires firms to have appropriate written procedures for handling expressions of dissatisfaction from eligible complainants. However, a firm is permitted to apply these procedures to other complainants as well, if it chooses. These procedures should be followed regardless of whether the complaint is oral or written, and whether the complaint is justified or not, as long as it relates to the firm's provision of (or failure to provide) a financial service.

These internal complaints handling procedures should provide for:

- receiving complaints
- responding to complaints
- appropriately investigating complaints, and
- notifying complainants of their right to go to the FOS where relevant.

Firms must have in place, and follow, internal complaints procedures for eligible complainants, which embrace the following:

- A consumer (a retail and a professional client – any natural person acting for purposes outside of their trade, business or profession).
- An enterprise with fewer than ten employees and turnover or annual balance sheet not exceeding €2 million (a micro-enterprise) at the time the complaint is raised.
- Charities with an annual income of less than £6.5 million at the time the complaint is raised.
- A trustee of a trust with a net asset value of less than £5 million at the time the complaint is raised.
- Small businesses, with an annual turnover of less than £6.5 million and below either the threshold of 50 employees or the balance sheet total

threshold of £5 million. The small business (or 'SME') must meet two of the criteria for the FOS to consider it as a 'small business'.

- A person acting for purposes which are outside their trade, business or professions or a borrower under a 'buy-to-let' credit agreement.

ECPs are not eligible complainants. An eligible complainant must be one of the above types of retail or professional client and must be a customer, have been a customer, or be a potential customer of the firm against whom they have a complaint.

As you might expect, firms' processes for complaints handling are a key area of focus for the regulator's Consumer Duty and 'FTOC' initiatives.

DISP 1 (Treating Complainants Fairly) contains rules and guidance on how respondents should deal promptly and fairly with complaints, in respect of business carried on from establishments in the UK, or by certain branches of firms in the EEA. It is also relevant to those who may wish to make a complaint or refer it to the FOS.

It is the firm's responsibility to ensure that it instils professional and ethical standards within its staff when dealing with customer complaints, so as to be seen to be complying with the spirit of fair treatment of consumers. It is down to individual firms as to how they ensure that the level of integrity is upheld for staff dealing with complaints. But, senior management within the firm, who are approved persons, are responsible for putting in place adequate systems and controls and assessing the appropriateness of those controls on an ongoing basis.

To aid consumer awareness of the protections offered by the provisions in DISP 1, firms must publish appropriate summary details of their internal process for dealing with complaints promptly and fairly; they must refer eligible complainants in writing to the availability of these summary details at, or immediately after, the point of sale, and provide such summary details in writing on request and when acknowledging a complaint.

Firms are required to have effective and transparent procedures for the reasonable and prompt handling of all complaints. In respect of complaints that do not relate to MiFID business, firms must put in place appropriate

management controls and take reasonable steps to ensure that when handling complaints, they identify and remedy any recurring of systemic problems, for example, by:

- analysing the causes of individual complaints so as to identify root causes common to different types of complaint
- considering whether such root causes may also affect other processes or products, including those not directly complained about, and
- correcting, where reasonable to do so, such root causes.

In October 2023, the FCA published a Feedback Statement on its findings of a review of its rules extending access to the Financial Ombudsman Service for SMEs.

Since 2019, more SMEs have been able to access the FOS. The FCA noted that they consider the changes that they made to the definition of a SME and a micro-enterprise (noted in the eligible complaints bullet points above), to be appropriate and do not think further changes need to be made.

19.2 Stages and Timings

The regulations provide minimum time periods and requirements which must be observed when a firm receives a complaint. These should be reflected in a firm's internal complaints-handling procedures.

Once a firm has received a complaint, it must investigate competently, diligently and impartially, obtaining additional information as necessary. It must assess the subject matter of the complaint fairly, consistently and promptly, and decide:

- whether the complaint should be upheld
- what remedial action or redress (or both) may be appropriate, and
- if appropriate, whether it has reasonable grounds to be satisfied that another firm may be solely or jointly responsible for the matter alleged in the complaint.

Taking into account all relevant factors, firms should offer redress or remedial action when they decide this is appropriate. They should explain to the complainant promptly, and in a way that is fair, clear and not misleading, their assessment of the complaint, their decision on it, and any offer of remedial action or redress. Firms should comply promptly with any offer of remedial action or redress accepted by the complainant.

Once a complaint has been received by the firm, they must send the complainant a prompt written acknowledgement providing early reassurance that they have received the complaint and are dealing with it. In addition, firms must keep the complainant informed thereafter of the progress of the measures being taken for the complaint's resolution.

A complaint is resolved where the complainant has indicated acceptance of a response from the respondent, with neither the response nor acceptance having to be in writing.

Factors that may be relevant in the assessment of a complaint include the following:

- all the evidence available and the particular circumstances of the complaint
- similarities with other complaints received by the respondent
- relevant guidance published by the FCA, other regulators, the FOS or former schemes, and
- appropriate analysis of decisions by the FOS concerning similar complaints received by the respondent.

By the end of eight weeks after their receipt of the complaint, firms must send a final response, which accepts the complaint, and, if appropriate, offers redress or remedial action, or offers redress or remedial action without accepting the complaint; or rejects the complaint and gives reasons for doing so. Where a firm rejects the complaint, they must enclose a copy of the FOS standard explanatory leaflet and inform the complainant that if they remain dissatisfied with the respondent's response they may refer the complaint to the FOS within six months.

Alternatively, they must provide a written response which explains why they are not in a position to make a final response and indicates when they expect to be able to provide one. They must inform the complainant that they may now refer the complaint to the FOS, enclosing a copy of the FOS standard explanatory leaflet.

The requirement placed on a firm regarding providing a final, or other, response within eight weeks does not apply if the complainant has already indicated, in writing, acceptance of a response by the firm, providing that the firm's response informs the complainant of the ultimate availability of the FOS, if they remain dissatisfied with the firm's response.

Firms are required to appoint a senior manager within the firm to consider the root causes of complaints and to review recent FOS decisions.

To aid consumer awareness of the protections offered by the provisions, firms are required to:

- publish appropriate information regarding their internal procedures for the reasonable and prompt handling of complaints
- refer eligible complainants to the availability of this information, and
- provide such information in writing and free of charge to eligible complainants, on request; and when acknowledging a complaint.

Records must be kept in relation to complaints, both for FCA monitoring purposes and to enable the firm to cooperate fully with the FOS, if necessary. These records should include:

- the name of the complainant
- the substance of the complaint, and
- details of any correspondence between the firm and the complainant, including details of any redress offered by the firm.

Firms must provide the FCA with twice-yearly reports on complaints, covering the following:

- The total number of complaints received by the firm.
- The total number of complaints closed by the firms.

- The total number of complaints:
    - upheld by the firm in the reporting period, and
    - outstanding at the beginning of the reporting period.
- The total number of redress paid in respect of complaints during the reporting period.

Complaints are considered closed when the firm has sent a final response, or when the complainant has indicated, in writing, that they accept an earlier response by the firm.

The FCA is in favour of using transparency as a regulatory tool to help achieve its objectives; it stated:

> *'disclosure meets the FCA's standards of economy, efficiency and effectiveness'.*

DISP 1.1A.10 provides requirements for firms to publish the details of the process to be followed when handling a complaint. Details would include information about the complaints management policy and the contact details of the complaints management function.

The information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

Firms that receive 500 or more complaints in a six-month period (reporting period) must provide the following information to the FCA twice a year:

- Information about the total number of complaints received by the firm and the cause of the complaint.
- Information about the number of complaints that were:
    - closed or upheld within different periods of time, and
    - the amount of redress paid by the firm in relation to complaints upheld and not upheld during the reporting period.
- Information providing context about the complaints received.

Firms will need to present this information by five product areas: banking, home finance, general insurance and pure protection, life and pensions, and investments.

The FCA will then use this information to publish a twice-yearly consolidated list of complaints data covering all affected firms.

With regards to firms record keeping obligations, they must make a record of each complaint received and the measures taken to resolve it and keep that record:

1. For at least five years when the complaint relates to MiFID business or collective portfolio management services for a UCITS scheme.
2. For three years for all other complaints.
3. From the date that the complaint was received by the firm.

19.2.1 Recent Developments – FCA Published Changes to Improve the Complaints Reporting Process

In December 2025, the FCA published a Policy Statement, with final rules on changes to the Complaints Reporting process. These changes come into effect from 1 December 2026.

The below is a summary of the changes made by the FCA:

Consolidated complaints return

- A single, unified complaints return to replace five of the existing complaints returns (DISP 1 Annex 1, for Consumer Credit Return (CCR), Funeral Plans (FP), Claims Management Companies (CMCs), and Electronic Money and Payment Services Return (PSR)) firms.
- This will reduce duplication, improve consistency and streamline reporting across the financial services sector.

Simplified way to complete a nil return

- Taking a proportionate approach and making it simpler for firms that have no complaints to report.

    - The option to report nil complaints will be provided upfront at the start of the new return.

Permission-based reporting

- Complaints reporting will be based on firms' permissions.
    - Targeted approach means firms will only need to complete the sections of the new return relevant to their regulated activities.

Fixed reporting periods

- All firms will now report their complaints data on a fixed six-monthly and calendar year basis (30 June, 31 December).
    - This replaces the use of each firm's Accounting Reference Date (ARD).

Improved guidance for firms

- The FCA will provide clearer and better guidance so firms can meet the new reporting requirements.
    - This includes clearer definitions and clarifying key terms to promote consistency in how firms interpret and then report complaints.

Removal of group reporting

- Firms will now be required to submit complaints data at the individual legal entity level, increasing transparency and more accurate regulatory oversight.

Identifying customers as vulnerable when firms report complaints

- Firms must have regard to the FCA's Vulnerability Guidance and the four drivers of vulnerability (health, life events, resilience and capability) when recording complaints data.

Publishing individual firms data for firms reporting 500 or more complaints

- The FCA have set a threshold of 500 complaints or more above which it will publish the relevant firms' data.
    - So, generally, only the complaints data of larger firms will be published individually.

19.3 The Role of the Financial Ombudsman Service (FOS)

Under the provisions of FSMA, the then UK regulator (the FSA) was given the power to make rules relating to the handling of complaints, and an independent body was established to administer and operate a dispute resolution scheme.

The dispute resolution scheme is the Financial Ombudsman Service (FOS). The FOS is designed to resolve complaints about financial services firms quickly and with minimum of formality. Importantly, it is free to complainants, which removes the deterrent effect of legal costs.

The FCA defines the term complaint as:

> *'the provision of or failure to provide a financial service which they have suffered (or may) financial loss, material distress or material inconvenience and relates to an activity which the respondent has some connection in marketing or providing financial services products'*

A complainant has:

- in the first instance, six years from the event being complained about, or
- three years from becoming aware that they could make a complaint.

19.3.1 Financial Ombudsman Service (FOS)

The FOS can require a firm to pay out money as a result of a complaint. Any monetary award made against the firm will be an amount which the FOS considers to be fair compensation. If the decision is made to make a monetary

award, the FOS can award compensation for financial loss, pain and suffering, damage to reputation and distress or inconvenience.

If the FOS finds in a complainant's favour, it can also award an amount that covers some, or all, of the costs which were reasonably incurred by the complainant in respect of the complaint.

The FOS can also provide a direction against the firm, requiring it to take such steps in relation to the complainant as it considers just and appropriate.

Firms must comply promptly with any award or direction made by the FOS, and with any settlement which it agrees at an earlier stage of the procedures.

The following are the complaints limits:

- £455,000 for complaints about acts or omissions by firms on or after 1 April 2019, and which are referred to the service on or after 1 April 2026.
- £445,000 for complaints about acts or omissions by firms on or after 1 April 2019, and which are referred to the service on or after 1 April 2025.
- £430,000 for complaints about acts or omissions by firms on or after 1 April 2019, and which are referred to the service on or after 1 April 2024.
- £205,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred to the service on or after 1 April 2026.
- £200,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred to the service on or after 1 April 2025.
- £195,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred to the service on or after 1 April 2024.

The key is that the limits refer to when the event being complained about actually happened as well as when it was brought before the FOS.

The FOS award limits are reviewed and increased annually, with effect from 1 April each year.

Source of information: https://www.financial-ombudsman.org.uk & FCA website (www.fca.org.uk)

The FOS comprises two jurisdictions:

1. **Compulsory jurisdiction** – this extends to complaints from eligible complainants against FCA- authorised firms, in relation to their regulated activities (and any ancillary activities) which the firm is unable to resolve to the satisfaction of the complainant within the timescales outlined.
2. **Voluntary jurisdiction** – this covers complaints which are not within the compulsory jurisdiction. Currently, the following can be considered under the voluntary jurisdiction:

    - lending on mortgages by non-FCA-authorised firms
    - other specified lending activity
    - providing payments on plastic cards (excluding store cards), and
    - accepting deposits and providing general insurance if the service was provided from elsewhere within the EEA but was directed at the UK.

It is important to appreciate that firms can choose to utilise the voluntary jurisdiction, but must accept the compulsory jurisdiction, if it applies, for eligible complainants. Those firms choosing to use the voluntary jurisdiction (VJ) are known as VJ participants. The FCA has stated that certain complaints which do not fall within the compulsory jurisdiction can be considered under the voluntary jurisdiction.

19.4 Super Complaints and Mass Detriment References

Certain consumer organisations are able to make what are known as super complaints, the aim is to provide consumer bodies with a way of raising competition and consumer issues with the FCA. Mass detriment is defined as a large-scale damage, harm or loss to consumers.

The FCA will look at the issues raised in the super complaint and publish a response within 90 days, setting out how they have dealt with the query and whether they have decided to take any action.

This requirement was brought about as part of the Financial Services Act 2012.

A consumer body when making a complaint, – the 'super-complainant' – should write to the FCA setting out the reasons why, in its view, a UK market for goods or

services has a feature or a combination of features that is, or appears to be, significantly harming the interests of consumers and should therefore be investigated.

FSMA provides that a feature of a market in the UK for goods or services is to be read as a reference to:

- the structure of the market concerned or any aspect of that structure
- any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, and
- any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

Therefore, this may cover complaints relating to issues arising from the characteristics of a certain financial product or service, or from the conduct of any authorised or exempt person or any recognised investment exchange.

19.5 Financial Services Compensation Scheme (FSCS)

The Financial Services Compensation Scheme (FSCS) is the UK's statutory compensation scheme for customers of UK authorised financial services firms, which can pay compensation if a firm is unable, or likely to be unable, to pay claims against it, to eligible claimants.

Therefore, it could be viewed that the FSCS is essentially an insurance policy that is paid for by authorised firms and provides protection to some clients in the event of a firm's collapse.

In order to receive compensation, the person making the claim must be an eligible claimant and must have a protected claim against an authorised firm that is in default. The precise amount of compensation that is payable depends upon the amount of money lost by the claimant and the type of protected claim. Included as an eligible complaint are corporate companies, who are not involved in financial services (ie, not regulated entities).

Eligible claimants are certain persons who have a protected claim against an authorised person who is in default.

This includes:

- natural persons (individuals)
- corporates (unless they fall under one of the exclusions)
- partnerships
- mutual associations/unincorporated associations
- pension schemes and retirement funds, but only the following: personal pension schemes
- stakeholder pension schemes, or
- occupational pension schemes of micro, small or medium enterprises.

Ineligible claimants include:

- other authorised firms (exclusions apply which include a sole trader, credit union, trustee of a stakeholder pension scheme and small businesses where the claim arises out of a regulated activity for which they do not have permission)
- collective investment schemes and firms who are acting as the operator or depository of a collective investment scheme
- alternative investment funds and anyone who is the AIFM of a depository or an alternative investment fund
- pension and retirement funds and anyone who is a trustee of such funds
- overseas financial institutions
- supranational institutions, governments and central administrative authorities
- provincial, regional, local and municipal authorities
- large companies
- persons whose claim arises from transactions in connection with which they have been convicted of an offence of money laundering, or
- large mutual associations.

A protected claim is a claim:

- for a protected deposit or a protected dormant account
- made under a protected contract of insurance
- made in connection with protected investment business
- made in connection with protected home finance mediation, or
- made in connection with protected non-investment insurance mediation.

Protected claims could relate to money on deposit with a bank (protected deposits), or contracts of insurance (protected contracts of insurance), or in connection with protected investment business. Protected investment business is designated investment business carried on from the UK, or any claims arising from the holder of CIS units against the manager or trustee of an authorised unit trust (AUT), or the authorised corporate director (ACD) or depository of an ICVC.

Therefore, in order to receive compensation, the person making the claim must be an eligible claimant and must have a protected claim against an authorised firm that is in default. The precise amount of compensation that is payable depends upon the amount of money lost by the claimant and the type of protected claim.

19.5.1 Compensation Payable

The precise amount of compensation that is payable depends upon the amount of money lost by the claimant and the type of protected claim.

There are limits to the amount of compensation which the FSCS will pay to eligible claimants (correct at the time of publication of the workbook):

- for protected insurance (long-term insurance contract) – 100% of the claim (with no maximum payment limit)
- for protected compulsory insurance (general insurance contract) – 100% of the claim (with no maximum payment limit)
- for protected non-compulsory insurance (ie, other general insurance) – 90% of the claim (with no maximum payment limit)
- for protected investment business and home finance advice – 100% up to £85,000, or

- for protected deposits – 100% up to £120,000 per individual per financial institution.

Corporate entities (companies – irrespective of size) are eligible depositors, they came into being covered by the 'FSCS' in 2015 following the PRA transposition of the revised EU Deposit Guarantee Directive into its rulebook.

The limit of £120,000 is for each customer, so joint accounts are guaranteed up to £240,000 per financial institution that has the deposit taking permission (banking licence).

There is an exemption to the £120,000 compensation limit due to temporary high balances. Large balances of up to £1.4 million would be covered for up to six months; this cover would start from the date the temporary high balance is credited to the individual's bank account.

The protected deposits limit was increased from 1 December 2025 to £120,000, the previous limit was £85,000 per individual.

19.6 Complaints against the FCA or PRA

FSMA requires the PRA, BoE and the FCA (the regulators) to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their functions under FSMA (other than legislative functions).

The regulators are required to appoint an independent person, subject to the approval of HM Treasury, as complaints commissioner, to be responsible for the conduct of investigations in accordance with the complaints scheme.

The complaints scheme provides that there may be two distinct stages for each complaint. In the first stage, the regulators will investigate any complaint that meets the requirements of the complaints scheme and take whatever action to resolve the matter as they think is appropriate.

A complaint will normally only proceed to the second stage if the complainant is dissatisfied with the regulators' determination of their complaint or how it has been handled. This second stage consists of investigation of the complaint by the

complaints commissioner by his recommendation to the regulators on the form of redress, if any, that is appropriate in the circumstances.

Anyone directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, may bring a complaint under the complaints scheme, providing that the complaint meets the scheme's requirements. This, therefore, includes firms and issuers of listed securities, and any customer or prospective customer, whether an individual or a body corporate, or eligible counterparty.

Groups, such as trade associations, may bring a complaint under the complaints scheme when they themselves have been directly affected by the regulators' actions or inactions. Groups may also bring complaints on behalf of one or more named members that have been directly affected by the regulators' actions or inactions, but cannot bring complaints on behalf of their members generally, if it is not apparent that all of the group's members have been directly affected.

The FCA must provide the complaints commissioner with sufficient financial and other resources to allow them to fulfil their role under the complaints scheme properly.

Each of the following is excluded from the complaints scheme:

- complaints about the regulators' relationship with their employees
- complaints connected with contractual or commercial disputes involving the regulators and not connected to their functions under FSMA
- complaints in relation to the performance of the regulators' legislative functions under the Act (including making rules and issuing codes and general guidance), and
- complaints about the actions, or inactions, of the FOS or the FSCS.

Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the complaints scheme only if the complainant can show reasonable grounds for the delay.



20. Regulatory Guides

In the regulatory guides block of the FCA Handbook, the Perimeter Guidance (PERG) Manual gives guidance about the circumstances in which authorisation is required, or where exempt person status is available, including guidance on the activities which are regulated under the Act, and the exclusions which are available. In addition, the FCA's EG, which is in the same block, sets out the FCA's approach to how it exercises the main enforcement powers it has, both under FSMA and under the Unfair Contract Terms regulations. It does this mainly through the activities of its Enforcement Division.

20.1 Perimeter Guidance Manual (PERG)

The purpose of the PERG Manual is to give guidance about the circumstances in which authorisation is required, or exempt person status is available, including guidance on the activities which are regulated under the Act, and the exclusions which are available.

PERG guidance is issued under Section 157 of FSMA. It represents the views of the FCA and/or the PRA and does not bind the courts. For example, it will not bind the courts in an action for damages brought by a private person for breach of a rule (see Section 150 of the Act, actions for damages), or in relation to the

enforceability of a contract where there has been a breach of Section 19, the General Prohibition) or Section 21, restrictions on financial promotion, of the Act (see Sections 26 to 30 of the Act, enforceability of agreements).

Although the guidance does not bind the courts, it may be of persuasive effect for a court considering whether it is just and equitable to allow a contract to be enforced. Anyone reading this guidance should refer to FSMA and to the relevant secondary legislation to find out the precise scope and effect of any particular provision referred to in the guidance. If a person acts in line with the guidance in the circumstances mentioned by it, the regulators will proceed on the basis that the person has complied with the aspects of the requirement to which the guidance relates.

PERG 2 is titled 'Authorisation and regulated activities', it is relevant and applies to firms who need to know what activities fall within scope of FSMA.

PERG 8 is titled 'Financial promotion and related activities', it applies to firms who need to know whether their communications to clients (or potential clients) are subject to FSMA.

In March 2026 the FCA published its latest *'perimeter report'*.

This report sets out the most significant issues at the edge of its remit, including areas where legislative change may be needed to:

- address emerging risks
- close gaps that could expose consumers or markets to harm, or
- unlock opportunities to support sustainable economic growth.

The report highlights the recent steps the FCA has taken to strengthen its permitter, its commitment to continue working with the government to update where necessary the perimeter.

The report also highlights what the FCA regulates and does not regulate.

Source of information: FCA website

In April 2026 the FCA published a consultation paper (CP26/13) titled 'C*ryptoasset Perimeter Guidance*'.

The FCA proposed adding a new chapter into PERG, containing guidance on how to determine whether an activity is within the perimeter and guidance on the new specified investments and new regulated cryptoasset activities.

Further details are contained in chapter 6.



Chapter Three
Other Regulatory Provisions

Section 1	Takeover Code
Section 2	FCA Listing Rules
Section 3	Market Abuse
Section 4	Money Laundering
Section 5	UK Bribery Act 2010 (the 'Bribery Act')
Section 6	Financial Benchmarks
Section 7	Data Protection
Section 8	Whistleblowing
Section 9	Climate Financial Risk Forum (CFRF)

Section 10 Cryptoassets



Overall Learning Objective

To demonstrate knowledge and understanding of a selection of regulatory provisions relevant to UK firms and individuals.

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1. Takeover Code

1.1 The Takeover Panel

The Takeover Panel is an independent body, whose main function is to issue and administer the Takeover Code and to supervise and regulate takeovers and other matters to which it applies.

Its statutory functions are set out in, and under Chapter 1 of Part 28 of the Companies Act 2006.

The scope of the Takeover Panel's jurisdiction is set out in section 3 of the '*Introduction to the Takeover Code*'. The Panel regulates takeover bids and merger transactions (however effected) of certain companies which have their registered offices in the UK, the Channel Islands or the Isle of Man, ie, companies which are 'UK registered'.

The Panel does not regulate takeover bids and merger transactions of companies that are registered in any jurisdiction other than the UK, the Channel Islands or the Isle of Man.

On 3 February 2025 ('**implementation date**'), changes were made to the scope of the Panel's jurisdiction. A summary of the application of the Code before the implementation date, during the two year '**transition period**' and following the end of the transition period is noted below, and is also available on the *Takeover Panel's website*.

<table>
<tr><th colspan="2">Immediately before implementation date ('ID') ie, before 3 February 2025</th><th>Transition period ('TP') ie, from 3 February 2025 to 2 February 2027</th><th colspan="2">Following transition period ie, from 3 February 2027</th></tr>
<tr><th>Status</th><th>Code company?</th><th>Code company?</th><th>Status</th><th>Code company?</th></tr>
<tr><td rowspan="2">UK quoted</td><td rowspan="2">Yes</td><td rowspan="2">Yes

If ceases to be UK quoted during TP, remains subject to Code for 2 years from ceasing to be UK quoted</td><td>Remains UK quoted</td><td>Yes</td></tr>
<tr><td>UK quoted < 2 years prior to relevant date*</td><td>Yes for 2 years from ceasing to be UK quoted</td></tr>
<tr><td rowspan="2">Plc/Ltd: Ceased to be UK quoted < 2 years prior to ID</td><td>Yes, if UK resident</td><td rowspan="2">Transition company

Code company if UK resident at time of transaction</td><td rowspan="2">Ceased to be UK quoted > 2 years prior to relevant date*</td><td rowspan="2">No

Not UK quoted currently or > 2 years prior to relevant date*</td></tr>
<tr><td>No, if not UK resident</td></tr>
</table>

		No a Code company if not UK resident at time of transaction		
a. **Plc/Ltd:** Ceased to be UK quoted 2-10 years prior to ID b. **Plc:** Never UK quoted c. **Ltd:** in 10 year run-off	Yes, if UK resident	**Transition company** Until earlier of end of (i) TP and (ii) 0 year run-off: Code company if UK resident at time of transaction No a Code company if not UK resident at time of transaction	**Ceased to be UK quoted > 2 years prior to relevant date*/Never UK quoted**	**No** Not UK quoted currently or > 2 years prior to relevant date*
	No, if not UK resident			

The Panel's function is to ensure that shareholders of an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover, and that offeree shareholders of the same class are afforded equivalent treatment by a bidder (referred to in these rules as an 'offeror'). The Takeover Code is not concerned with the financial or commercial advantages of a takeover, which it considers to be matters for the offeree company and its shareholders. Wider questions of public interest are dealt with by the Competition and Markets Authority (CMA) or the Department for Business, Innovation and Skills (BIS).

The Panel's role in takeovers is, therefore, threefold to:

- provide advice and guidance on the application and interpretation of the relevant rules to offerors, offerees, advisers and, where relevant, market participants
- monitor the progress of an actual or contemplated takeover bid, for breaches of compliance with the relevant rules, and
- enforce the Takeover Code, by reaching decisions on issues arising, or seeking enforcement through the courts.

1.1.1 Organisation of the Takeover Panel

The EU Takeovers Directive was implemented in the UK by means of the introduction of statutory provisions in the Companies Act 2006, as well as amendments to the existing Takeover Code. It aimed to create a level playing field throughout the EU to ensure fair and equal treatment for all shareholders during a takeover.

Following Brexit, the onshored 'Takeover Directive' was slightly amended to ensure it could operate effectively on a freestanding basis outside the EU framework.

The Panel assumes overall responsibility for the policy, financing, administration and the operation of the Takeover Code. The Panel operates through a number of Committees and is directly responsible for those matters which are not dealt with through one of its Committees.

The Panel comprises up to 35 members, representing a spread of expertise in takeovers, securities markets, industry and commerce.

The Chair, Deputy Chairs and up to 20 other Panel members are appointed by the Panel on the recommendation of the Nomination Committee.

In addition, 11 Panel members that are appointed by the following major financial and business institutions:

- The Association for Financial Markets in Europe
- The Association of British Insurers
- The Association of Investment Companies
- The Confederation of British Industry
- The Institute of Chartered Accountants in England and Wales
- The Investment Association

- The Pensions and Lifetime Savings Association
- The Personal Investment Management and Financial Advice Association
- The Quoted Companies Alliance, and
- UK Finance (with an additional appointee for its Corporate Finance Committee).

The Chair and at least one Deputy Chair are designated as members of the Hearings Committee. Of the other members appointed by the Panel, up to 12 Panel members are designated upon appointment as members of the Code Committee and up to eight Panel members are designated upon appointment as members of the Hearings Committee. The Panel members appointed by the bodies listed above become members of the Hearings Committee without further designation.

No person who is, or has been, a member of the Code Committee (the rule making function) may simultaneously or subsequently be a member (or an alternate of a member) of the Hearings Committee.

The Chairman and at least one Deputy Chairman are designated as members of the Hearings Committee. Each other Panel member appointed by the Panel is designated upon appointment to act as a member of either the Panel's Code Committee or its Hearings Committee. Appointments of members who are appointed by the Panel shall be for a period of up to three years extendable by no more than an additional two periods. In exceptional circumstances the Panel may grant further extensions at the request of the Nomination Committee.

The Executive

The 'Panel Executive' is responsible for undertaking day-to-day supervision of regulation in relation to 'takeovers'; it also operates independently of the Panel.

The Hearings Committee

The principal function of the Hearings Committee is to review rulings of the Executive. Its remit also includes hearing disciplinary proceedings initiated by the Executive when they consider there has been a breach of the Code or a ruling.

The Code Committee

The Code Committee carries out the rule-making functions of the Panel and is solely responsible for the Code, proposing changes to the code (ie, consultation) and issuing amendments to the Code.

1.1.2 Takeover Appeal Board

The 'board' is an independent body which hears appeals against rulings of the Hearings Committee. Members of the board (other than the Chairman and deputy Chairman) are appointed by the Chairman of the board based on their relevant knowledge and experience of takeovers and the Code.

1.1.3 The Competition and Markets Authority (CMA)

The CMA promotes competition for the benefit of consumers, both within and outside the UK. Its aim is to make markets work well for consumers, business and the economy.

The CMA's objective is to ensure that consumers get a good deal when buying goods and services, and businesses operate within the law. Although it covers financial services, it is not solely a financial services body.

They achieve this through various means:

- investigating mergers that could restrict competition
- conducting market studies and investigations in markets where there may be competition and consumer problems
- investigating where there may be breaches of UK prohibitions against anti-competitive agreements and abuses of dominant positions
- bringing criminal proceedings against individuals who commit the cartel offence
- enforcing consumer protection legislation to tackle practices and market conditions that make it difficult for consumers to exercise choice
- cooperating with sector regulators and encouraging them to use their competition powers and considering regulatory references and appeals

- providing information and advice to individuals and businesses about rights and obligations under competition and consumer law
- providing advice, reporting and monitoring in relation to government subsidies.

In December 2022, the CMA presented its 2023-24 annual plan, along with a consultation on 'shaping the future of the CMA'. The purpose of the consultation was to articulate the CMA's purpose, ambition and medium-term priorities over the next three years.

The CMA stated that it sees its purpose as being to:

> *'help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour'.*

With regards to ambition, this is around the outcomes that it is seeking to achieve for people, businesses and the UK economy over the medium to long term. In particular:

- people can be confident that they are getting great choices and fair deals
- competitive, fair-dealing businesses can innovate and thrive, and
- the UK economy can grow productively and sustainably.

When it published its 2024–25 annual plan in March 2024, the CMA noted that it will continue the strategy outlined in the previous year, as part of its three-year strategy, and look to build on this and deliver over the next 12 months. They also noted that they are preparing for enhanced powers and responsibilities that will be derived from the UK Government's Digital Markets, Competition and Consumers Bill.

In January 2025 the CMA published its draft annual plan for 2025–26. The draft plan explains the vital role of CMA in safeguarding the foundational conditions of effective competition and empowered consumers on which broad-based and sustained growth depends. The annual plan for 2025–26 was published in March 2025. The following is how the CMA will support growth, opportunity and prosperity for the UK by strong competition and consumer protection:

- Spur innovation, investment, productivity and dynamism across the whole economy.
- Create opportunities for UK businesses and investors to enter markets, scale and thrive, confident they will be competing on a level playing-field.
- Maximise the long-term impact of growth and investment and help ensure it is diffused across the whole economy.
- Build confidence for people to engage with markets, empowered to make informed choices without being misled or exploited.
- Shore up economic resilience and self-reliance, through greater diversity of supply and strengthened incentives for firms to build robust operations.

Source of information: www.gov.uk/cma (CMA Annual Plan 2025 to 2026)

Strategic Review of CMA Markets Remedies

In January 2026 the CMA launched a strategic review of the 33 markets remedies. For each remedy, the CMA considers that there is a realistic prospect of finding clear and straightforward changes of circumstances, meaning the remedy is no longer appropriate in dealing with the competition problem and/or adverse effects which it was designed to remedy and can be amended or removed.

Following the publication of this document, the CMA will:

a. publish an administrative timetable
b. review responses to the consultation
c. publish a Provisional Decision and a Notice of Intention to amend or remove any remedies which the CMA provisionally considers no longer remain appropriate
d. review responses to the Provisional Decision
e. publish a Final Decision and a Notice of amendment or removal in respect of remedies which the CMA considers no longer remain appropriate.

In terms of the 'market remedies' only two are applicable to the financial services, as noted below:

- Current Account Switch Service (CASS) Remedies Undertakings 2017.
- Retail Banking Market Investigation Order 2017 (Varied 2019) (excluding Part 2: Open Banking).

1.2 The Takeover Code

1.2.1 Purpose and Legal Nature

As noted above in section 1.1, the Takeover Code is designed to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover, and that all shareholders of the same class are afforded equivalent treatment by an offeror. It provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets. The Takeover Code is not concerned with the financial or commercial advantages, or disadvantages of a takeover, nor is it concerned with competition, which are the responsibility of the government (via the CMA).

The Takeover Code is based upon six General Principles, which are essentially statements of standards of acceptable behaviour. These General Principles mirror the general principles set out in Article 3 of the UK Takeover Directive. They are expressed in broad terms, and do not define the precise extent of, or the limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

In addition, the Takeover Code contains a series of 38 detailed Rules, which operate alongside the General Principles to ensure that the spirit of the Takeover Code is observed as well as the letter. The most important and relevant of these Rules are detailed below. Furthermore, Practice Statements are issued by the Panel Executive to provide informal guidance as to how the Code is interpreted and applied in certain circumstances.

The provisions of the Companies Act 2006 give the Takeover Panel the legal power to regulate takeovers, and the right to seek enforcement of Takeover Code rules and compensation for disadvantaged shareholders in the courts. Moreover, the Companies Act provides criminal sanctions for misleading or false statements in takeover documentation. Additionally, the FCA acts with the Panel to pursue cases of material breaches.

The key features of a transaction governed by the Takeover Code is that the form, structure and timetable associated with takeovers of companies to which it applies are all shaped by the Takeover Code. Despite the complexity and uniqueness of any transaction, the spirit of the principles underpinning the Takeover Code must always be adhered to; consequently, consultation with the Panel on individual cases always enables particular circumstances and takeovers to be dealt with appropriately. In certain situations, the Panel may derogate, or grant a waiver to a person from the application of a rule.

Consistent to all takeovers, secrecy before announcement is of vital importance, and the boards involved must always ensure that they are properly advised in accordance with the Takeover Code, and that the highest standards of care and accuracy are applied.

Furthermore, the parties involved in a takeover will be subject to other regulatory and statutory aspects. This will include the Companies Act 2006 (no unlawful financial assistance, a company's right to investigate who has an interest in its shares), the Criminal Justice Act (insider dealing), various aspects of FSMA (including the responsibilities associated with published information, financial promotion, and other financial regulation), the Market Abuse Regulation, the Financial Services Act 2012 (including aspects relating to misleading statements and market manipulation), and the Listing Rules, and **Disclosure Guidance and Transparency Rules (DTRs)**, together with the Prospectus Regulation Rules (PRR).

A takeover governed by the Takeover Code is likely to require careful planning in respect of the information required to make a bid and the timing factors, who the existing shareholders are and the likely price that they would accept if an offer was made, the need and use of irrevocable undertakings from the target shareholders, the response to competing bidders, how the bid will be structured and financed (cash, shares, other), whether clearance is required from relevant bodies, and what shareholder approval is required (including if the bidder is also quoted).

Section 945 of the Companies Act 2006 gives the Takeover Panel the power to give rulings on the interpretation, application or effect of rules and, subject to any review or appeal, a ruling has a binding effect.

Noted in the introduction to the Takeover Code, section 6 refers to 'interpreting the Code'. It states:

> *'when a person or its advisers are in any doubt whatsoever as to whether a proposed course of conduct is in accordance with the General Principles or the rules, or whenever a waiver or derogation from the application of the provisions of the Code is sought, that person or its advisers must consult the Executive in advance'.*

This means that the person or their advisers can obtain a ruling as to the basis on which they can properly proceed, minimising the risk of being in breach of the Takeover Code.

Legal or professional advice is not an appropriate alternative to consulting the Executive.

The nature of the Executive's rulings will depend on whether or not the Executive is able to hear the views of other parties involved. Therefore, if the Executive is not able to hear the views of other parties involved, it may give a conditional ruling (on an ex parte basis), which may be varied or set aside when any views of the other parties have been heard. If the Executive is able to hear the views of other parties involved, it may give an unconditional ruling.

In the following section the source of information was the '*Takeover Code*', which is found on *www.thetakeoverpanel.org.uk*.

1.2.2 Scope of the Takeover Code

The scope of the Takeover Code, including the company to which it applies, was discussed in section 1.1 of this chapter.

1.2.3 Recent Developments

The Takeover Code is continually being developed and amended. The following highlights some previous developments.

In 2023, the Code Committee published a consultation on proposals to amend Rule 21 (Restrictions on frustrating Action). Following the consultation, the Code Committee made the following amendments to the Takeover Code:

Rule 21.1

- Identifies that it would not, in general, restrict an offeree board from taking action that either is not material or is in the ordinary course of the offeree company's business.
- Provides further clarity on the circumstances in which the Panel will normally consider that a proposed action by an offeree board either is not material or is in the ordinary course of the offeree company's business.

Rule 21.1(a)

- Provides the restrictions that will apply during the 'relevant period'.
- The period from the earlier of 'an approach by a potential offeror to the offeree board' or 'the beginning of the offer period' until the end of the offer period, or 5pm on the seventh day following the date on which the latest approach is unequivocally rejected

Rule 21.1 (reverse takeover)

- Note 8 provides that, where an offer is, or a possible offer would be, a reverse takeover, Rule 21.1 will also apply during the relevant period to the board of the offeror as if the offeror were an offeree company and vice versa.

Rule 21.1 (where an offeree board seeks to sanction a scheme of arrangement in a competitive situation)

- Note 10 provides that, other than in exceptional circumstances, the Panel will consent to the restrictions in Rule 21.1(a) not being applied where the offeree board seeks to sanction a scheme of arrangement in a competitive situation.

Rule 21.3

- Delete Note 1, which provides that an offeror may not request information under Rule 21.3(a) in general terms, and amend Rule 21.3(a) so that it would require the offeree board to provide promptly to an offeror or bona fide potential offeror who makes a request for information under Rule 21.3(a) both:
    - all the information that has been provided to another offeror or potential offeror at the time of the request (regardless of whether the information was specifically requested), and

- any further information that the offeree board provides to another offeror or potential offeror in the seven days following the request.

Rule 21.4

- Update the Rule so that, in the case of a management buy-out or similar transaction, the offeror or potential offeror would be required, on request, promptly to provide the independent directors of the offeree company or its advisers with any information which has been provided, or is subsequently provided, by the offeror or potential offeror to external providers or potential providers of finance.

Rule 21.3

- Amendment the Notes in relation to:
    - the conditions to the passing of information under Rule 21.3, and
    - the application of Rule 21.3 to information provided after the beginning of the relevant period to a potential purchaser of all or substantially all of the offeree company's assets.

In 2025, the Takeover Panel issued two practice statement updates, as noted below.

- Practice Statement 35 (Profit forecasts, quantified financial benefits statements and investment research) describes the way in which the Executive normally interprets and applies certain aspects of Rule 28 of the Takeover Code in relation to a profit forecast or quantified financial benefits statement published by an offeree company or a securities exchange offeror.
    - It also describes the way in which the Executive normally interprets and applies Note 4 on Rule 20.1 in relation to investment research published by a connected firm.
- Practice Statement 36 (unlisted share alternatives) sets out guidance on how the Executive normally interprets and applies the relevant provisions of the Code in respect of an unlisted share alternative to a cash offer (sometimes also referred to as a 'stub equity' alternative).

1.3 The Six General Principles

There are six General Principles of the Takeover Code.

The existence of the General Principles recognises that it is impossible to devise rules that cover every situation. The General Principles assist companies and the Panel in interpreting and applying the spirit of the Takeover Code. Three key propositions sum up the spirit of the Takeover Code which aims to ensure equal treatment for all offeree company shareholders, adequate and timely advice and information, and no false markets.

The six General principles are set out below.

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.
2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions and the locations of the company's places of business.
3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.
4. False markets must not be created in the securities of the offeree company, of the offeror company, or of any other company concerned by the bid, in such a way that the rise, or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5. An offeror must announce a bid only after ensuring that it can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonably necessary by a bid for its securities.

If there is any doubt as to the application of a rule, then reference should always be made to the principles. A breach of a principle, even when in strict accordance with the rules, is deemed to be a breach of the Takeover Code itself. The Takeover Panel applies the general principles in accordance with their spirit to achieve their underlying purpose.

1.3.1 Definitions

The Takeover Code definitions are set out in full in the 'Definitions' section, available at *www.thetakeoverpanel.org.uk*. The following definitions are taken from this section, and are essential for an understanding of Takeover Code rules.

Acting in Concert

The definition of acting in concert for the purpose of the Takeover Code (section C – 'definitions') includes:

> *'Persons who, pursuant to an agreement or understanding (whether formal or informal), cooperate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company'.*

A person and each of its affiliated person will be deemed to be acting in concert with each other.

The following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:

1. company X and any company which controls, is controlled by or is under the same control as X, all with each other
2. a company Y and any other company Z where one of the companies is interested, directly or indirectly, in 30% or more of the equity share capital in the other, together with any company which would be presumed to be acting in concert with either Y or Z under presumption (1), all with each other
3. a company's pension schemes, and the pension schemes of any company with which the company is presumed to be acting in concert under presumption (1) or (2), with the company
4. the directors of a company (together with their close relatives and the related trusts of any of them) with the company
5. an investment manager of or investment adviser to: (a) an offeror; (b) an investor in a new company (or other vehicle) formed for the purpose of making an offer; or (c) the offeree company with the offeror or offeree company (as appropriate), together with any person controlling, controlled by or under the same control as that investment manager or investment adviser
6. a connected adviser with its client and, if its client is acting in concert with an offeror or the offeree company, with that offeror or offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader)
7. the directors of a company which is subject to an offer (together with their close relatives and the related trusts of any of them) from the beginning of the relevant period as defined in rule 21.1(b) or, where Note 9 on rule 21.1 applies, from the beginning of the offer period
8. a person, the person's close relatives, and the related trusts of any of them, all with each other
9. the close relatives of a founder of a company to which the Takeover Code applies, their close relatives, and the related trusts of any of them, all with each other, and
10. shareholders in a private company or members of a partnership who sell their shares in that company or interests in consideration for the issue of new shares in a company to which the Takeover Code applies, or who, following the re-registration of that company as a public company in connection with an initial public offering or otherwise, become shareholders in a company to which the Takeover Code applies.

Dealings and interests in securities held by members of concert parties are aggregated for the purposes of the Takeover Code. Therefore, an offeror's shareholding in an offeree company will be aggregated with that of its investment bank adviser, taking into account all interests held in all parts of that bank (ie, fund management arm, market making/principal trading arm). This would impose significant restrictions on the activities. If the Panel is satisfied that the bank has effective

policies and processes in place (ie, information barriers/Chinese walls or other appropriate arrangements) then it may grant the bank exempt status, which provides exemption from the obligation to aggregate interests in shares with those of the bank's corporate finance clients.

Not included in the above list is a 'market-maker', who would normally not be classed as acting in concert with either company in a takeover situation. Where the market-maker is part of an investment bank that undertakes other activities (fund manager, corporate finance, etc), then the presence of information barriers will be sufficient for it to be distanced from knowing about the actions or activities that this part of the firm is undertaking for either company.

The new definition in relation to control is:

> *'A company (or, where appropriate, a fund manager, a principal trader or an adviser) will be regarded as 'controlling' another company if it is interested in: (a) shares carrying 30% or more of the voting rights of that other company; or (b) a majority of the equity share capital in that other company, and references to a company being 'controlled by' or 'under the same control as' another company are to be construed accordingly. In this Note, a reference to a company includes any other undertaking (including a partnership or a trust) or any legal or natural person.'*

The two presumptions are noted below:

Companies	
New presumption (1)	New presumption (2)
Companies connected by: 1. ≥30% voting rights, or 2. >50% equity share capital (voting and non-voting)	1. Companies connected by ≥30% equity share capital (voting and non-voting), and 2. Companies presumed to be AIC with companies in para (1) under new presumption (1)
Rationale: 'control'	Rationale: 'shoulder to the wheel'
% interests do not dilute through a chain of ownership	% interests do dilute through a chain of ownership
Funds	
Interests in funds treated in same way as interests in a company's equity share capital	

Source: The Takeover Code (version dated 11 December 2023), from the Takeover Panel website: https://www.thetakeoverpanel.org.uk/

Dealing

Dealing includes the following activities:

- Acquisition or disposal of securities, or the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities.
- Taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option) in respect of any securities.
- Subscribing or agreeing to subscribe for securities.
- Exercise or conversion, whether in respect of new or existing securities, of any securities carrying conversion or subscription rights.
- Acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative referenced, directly or indirectly, to securities.
- Entering into, terminating or varying the terms of any agreement to purchase or sell securities.

- Any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested, or in respect of which they have a short position.

Interests in Securities

A person who has an economic exposure, whether absolute or conditional, to changes in the prices of securities is treated as being an 'interested party' in those securities. Whereas an individual who has a short position will not be treated in the same way – they will be deemed to not have an interest in those securities.

In particular, a person will be treated as having an interest in securities if:

- They own them.
- They have the right (whether absolute or conditional) to exercise or direct the exercise of the voting rights attaching to them or have general control of them.
- By virtue of any agreement to purchase an option or derivative they a) have the right, or option to acquire or call for the delivery, or b) are under an obligation to take delivery of them, whether the right, option or obligation is conditional or absolute and whether it is in-the-money or otherwise.
- They are party to any derivative a) whose value is determined by reference to their price and b) which results, or may result, in their having a long position in the security.
- In the case of Rule 5 only (see section 1.4.5), they have received an irrevocable commitment in respect of them.

Relevant Securities

Relevant securities include:

- Securities of the offeree company for which an offer has been received, or which carry voting rights.
- Equity share capital of the offeree company and an offeror.
- Securities of an offeror which carry substantially the same rights as any to be issued as consideration for the offer.
- Securities of the offeree company and an offeror carrying conversion, or subscription rights into any of the foregoing.

Find out more about The Six 'General' Principles of the Takeover Code...

1.4 Takeover Code Rules

Below is a summary of the relevant rules within the Takeover Code.

1.4.1 Rule 1 – the Approach

An offeror (or its advisers) must make a notification of its intention to make an offer in the first instance to the board of the offeree company (or its advisers).

If the offer, or an approach with regard to a possible offer, is not made by the offeror or potential offeror, the identity of that person must be disclosed to the board of the offeree company at the outset.

1.4.2 Rule 2 – Announcements (Secrecy Before Announcements; the Timing and Contents of Announceme

The most important rules governing the pre-bid environment relate to the secrecy of negotiations. The Takeover Code is concerned with preventing leaks about potential bids that could result in the development of a false market in the securities of both the offeror and offeree companies.

In order to prevent leakage of price-sensitive information, it is vital that absolute secrecy is maintained prior to an offer being announced (Rule 2.1). The advisers to the offeror and offeree should always warn their clients of the importance of this. They are required to draw their clients' attention to the Code and to highlight the rules restricting share dealings (these rules are dealt with below). This is to ensure a false market does not develop in offeree company shares.

Prior to the announcement of an offer, or possible offer, all persons in receipt of confidential information, especially price-sensitive information, concerning the offer or possible offer must treat that information as secret and may only pass it to another person, if it is necessary to do so, and if that person is made aware of the need for confidentially.

Financial advisers must at the very beginning of discussions warn clients of the importance of secrecy and security. Attention should be drawn to the Takeover Code, in particular to Rule 2.1 – Secrecy, and to restrictions on dealings.

Rule 2.2 sets out the circumstances when an announcement is required, as follows:

a. when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer
b. immediately upon an acquisition of any interest in shares which gives rise to an obligation to make an offer under Rule 9.1 ('mandatory offer' – see section 1.4.8). The announcement that an obligation has been incurred should not be delayed while full information is being obtained; additional information can be the subject of a later supplementary announcement
c. when, following an approach by, or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of 'rumour' and 'speculation', or there is an untoward movement in its share price
d. when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation, or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offerors' actions (whether through inadequate security or otherwise) which have led to the situation
e. when negotiations or discussions relating to a possible offer are about to be extended to include more than a very restricted number of people (outside those who need to know and their immediate advisers), or
f. when a purchaser is being sought for an interest, or interests, in shares carrying an aggregate 30% or more of the voting rights of a company or when the board of a company is seeking one, or more potential offerors, and:
    1. the company is the subject of rumour and speculation, or there is an untoward movement in its share price, or
    2. the number of potential purchasers, or offerors approached is about to be increased to include more than a very restricted number of people.

Until the board of the 'offeree' has been approached, it is the offeror or potential offeror's responsibility to monitor the offeree's share price and make announcements where necessary. Once the offeree board has been approached, then the responsibility for making further announcements passes to them.

Where announcements are required under the Takeover Code, they must be made to the market through a Regulatory Information Service (RIS) as well as to the other bid party (parties) and to the Takeover Panel.

An offer announcement may be:

- **A firm announcement (intention to make an offer)** – commits the offeror to making a formal offer in line with the timetable and other requirements of the Takeover Code. An offeror should announce a firm's intention to make an offer, only after the most careful and responsible consideration, and when the offeror has every reason to believe that it can and will continue to be able to implement the offer.
- **A 'talks' announcement (stating that there are talks in relation to a possible offer)** – must include the identity of the potential offeror, unless the approach has been unequivocally rejected. It does not, however, commit the potential offeror to making a formal offer. A talks announcement triggers the start of the offer period, during which certain provisions such as the Code share dealing disclosure requirements apply. A list of companies in an offer period is found on the disclosure table on the Takeover Panel's website.
- **A 'no intention to bid' announcement (confirmation that the potential offeror will not make a firm announcement for the next six months)** – is usually triggered by a 'put up or shut up' requirement. Under Rule 2.6, a potential offeror who has been identified must, by no later than 17.00 on the 28th calendar day following the start of the offer period, put up or shut up: that is, either announce a firm's intention to make an offer on that day, or confirm that they have no intention to make an offer or, together with the offeree company, seek an extension to the deadline. If a no-bid announcement has been made, that offeror (together with its concert parties) is generally prohibited from announcing a bid for that offeree for the next six months (Rule 2.8).

Under Rule 2.7 – The Announcement of a Firm Intention to Make an Offer, a company should make a firm announcement after careful and responsible consideration, as this announcement will commit the offeror to make its offer. The following details must be included in the announcement:

- the terms of the bid, including any conditions, or preconditions to which the offer is subject
- the identity of the offeror
- details of any relevant agreements entered into by the offeror, relating to circumstances in which it might seek to invoke a condition, or precondition of the offer
- details of any concert party arrangements
- details of any deal-related agreements which have been permitted by the Takeover Panel
- a summary of the provisions of Rule 8 (which requires holders of 1% or more of the offeree's or a cash offeror's securities to announce their positions and dealings in these securities during the offer period)
- confirmation from a financial adviser that any cash element of the cash offer can be fulfilled, and
- a list of required documents published on a website, with the address of that website.
- the intentions of the offeror with regard to the business, employees and pension scheme(s) of the offeree company
- details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or in respect of which it has a right to subscribe, in each case specifying the nature of the interests or rights concerned, together with any short positions (including under a derivative), or any agreement to sell
- details of any irrevocable commitment or letter of intent procured by the offeror or any person acting in concert with it, and
- A statement relating to the right to reduce the offer in relation to any dividend paid or that becomes payable by the offeree company (unless the offeree company shareholders will be entitled to a specified dividend in addition to the offer consideration).

Other Announcements

Once an offeree company has announced the fact of an approach from a potential offeror, it enters an offer period. At this time, it must (under Rule 2.9) announce, as soon as possible and in any event by
07.15 on the next business day, details and numbers of all classes of its relevant securities in issue. The same information must be disclosed by a named offeror by 07.15 on the day following its being named as a potential offeror, unless it has stated that its offer is likely to be solely in cash.

Certain dealings may give rise to an obligation to amend or increase an existing offer (eg, when the offeror or its concert parties acquire shares in the market above the offer price during the offer period). In this case, Rule 7.1 requires the offeror to announce an increased or amended offer without delay.

Rule 17.1 requires an offeror to announce the level of acceptance received for the offer. An announcement must be made by no later than 08.00 on the business day following:

- day 21 and every seventh day thereafter
- any day on which the offer is revised
- each day in the week leading up to, and including, the unconditional date or after the long-stop date
- any day on which an acceptance condition invocation notice expires
- any day on which the offer becomes, or is declared, unconditional or lapses, and
- any day on which, as of at 17.00 the total percentage of shares which the offeror may count towards satisfaction of the acceptance condition has increased or decreased to, or through, any of the following thresholds:
    - the percentage threshold to which the acceptance condition is currently subject
    - 75% of the voting shares, and
    - if the acceptance threshold can be reduced to a specified minimum threshold, that minimum.

An offeror must also include certain details if any announcement includes an acceptance condition invocation notice or an acceleration statement, being a statement in which an offeror brings forward the unconditional date.

1.4.3 Rule 3 – Independent Advice

Under Rule 3, the board of the offeree company must obtain independent advice on any offer, and the substance of such advice must be made known to all its shareholders. The requirement for competent independent advice is of particular importance where the offer is a management buy-out (MBO) or is being made by the existing controller or group of controllers.

Likewise, the board of the offeror must also obtain independent advice on any offer when the offer being made is a reverse takeover, or when the directors are faced with a conflict of interest. Again, the substance of such advice must be made known to all its shareholders.

The Takeover Panel will not regard, as an appropriate person to give independent advice, any person who is in the same group as the financial or other professional adviser (including a corporate broker) to an offeror, or who has a significant interest in or financial connection with either an offeror or the offeree company of such a kind as to create a conflict of interest.

If an adviser receives a fee dependent on the failure of a hostile bid, this may give rise to a conflict of interest which could disqualify it from acting as a Rule 3 adviser. In cases of doubt, the Panel should be consulted. The Rule 3 adviser to the offeree board should have a sufficient degree of independence from the offeror.

Independent advice provided by a person who is in the same group as the financial or other professional adviser (including a corporate broker) to an offeror, or who has a significant interest in or financial connection with either an offeror or the offeree company of such a kind as to create a conflict of interest, will not be regarded as appropriate by the Takeover Panel.

A reverse takeover is typically a situation where a listed company, using its shares as consideration, makes an acquisition of an unlisted company that results in the shareholders of the unlisted company owning more than 50% of the shares in the listed company. Effectively, the unlisted company has acquired control of the enlarged entity and obtained a listing via the transaction.

1.4.4 Rule 4 – Prohibited Dealings

Once a takeover has been formally announced, then certain restrictions (called 'prohibited dealings' will apply to the company subject to the takeover: the term 'dealing' includes the following:

- the acquisition or disposal of securities, or the right (whether conditional or absolute) to exercise or direct the exercise of the voting rights attaching to securities, or of general control of securities
- the taking, granting, acquisition, disposal, entering into, closing out, termination, exercise (by either party) or variation of an option (including a traded option) in respect of any securities
- subscribing, or agreeing to subscribe, for securities
- the exercise or conversion, whether in respect of new or existing securities, of any securities carrying conversion or subscription rights
- the acquisition of, disposal of, entering into, closing out, exercise (by either party) of any rights under, or variation of, a derivative referenced, directly or indirectly, to securities
- entering into, terminating or varying the terms of any agreement to purchase or sell securities
- the redemption, purchase of, taking or exercising an option over, any of its own relevant securities by the offeree company or an offeror, and
- any other action resulting, or which may result, in an increase or decrease in the number of securities in which a person is interested, or in respect of which they have a short position.

Interests in Securities

A person who has a long economic exposure, whether absolute or conditional, to changes in the prices of securities is treated as being interested in those securities. A short position in securities, will not be treated as an interest in those securities.

In particular, a person will be treated as having an interest in securities if:

- they own them
- they have the right (whether absolute or conditional) to exercise, or direct the exercise, of the voting rights attaching to them or have general control of them
- by virtue of any agreement to purchase, option or derivative they:
  a. have the right or option to acquire or call for the delivery, or
  b. are under an obligation to take delivery of them, whether the right, option or obligation is conditional or absolute and whether it is in-the-money or otherwise
- they are party to any derivative a) whose value is determined by reference to their price and b) which results, or may result, in their having a long position in the security, or
- in the case of Rule 5 only (see section 2.8), they have received an irrevocable commitment in respect of them.

Relevant securities include:

- securities of the offeree company for which an offer has been received, or which carries voting rights
- equity share capital of the offeree company and an offeror
- securities of an offeror which carry substantially the same rights as any to be issued as consideration for the offer, and
- securities of the offeree company and an offeror carrying conversion or subscription rights into any of the foregoing.

Following a talks announcement, an offeree company enters an offer period. Per the Takeover Code, an offer period:

> *'will commence when the first announcement is made of an offer or possible offer for a company, or when certain other announcements are made, such as an announcement that a purchaser is being sought for an interest in shares carrying 30% or more of the voting rights of the company or that the board of the company is seeking potential offerors.*

> *An offer period will end when an announcement is made that an offer has become or has been declared unconditional, that a scheme of arrangement has become effective, that all announced offers have been withdrawn or have lapsed or following certain other announcements having been made (such as all publicly identified potential offerors having made a statement to which Rule 2.8 applies).'*

During the offer period, the dealing disclosures in Rule 8 (noted in section 1.4.7) apply, as well as the following prohibitions on certain dealings. This also applies when a scheme of arrangements becomes effective.

Under Rule 4, the following dealing restrictions apply during an offer period:

- Dealings on the basis of inside information about a proposed offer are prohibited, except where securities are acquired by the offeror.
- The offeror and any persons acting in concert with it are not permitted to sell any securities in the offeree company, except with the prior consent of the Takeover Panel and following 24 hours' public notice that such sales might be made. The Takeover Panel will not give consent for sales if a mandatory offer under Rule 9 is being made.
- The offeror and its concert parties may not acquire shares in the offeree through an anonymous order book system, or otherwise, unless it can be shown that the purchase is not from an exempt principal trader connected with the offeror.
- No financial adviser, or corporate broker to the offeree, or any member of their group, may deal in offeree securities.
- The offeror and offeree and their concert parties must not enter into, or unwind any stock lending agreements in relation to offeree shares, without the Takeover Panel's approval.

1.4.5 Rule 5 – Timing Restrictions on Acquisitions

Rule 5 aims to prevent a person from obtaining control, or consolidating control, over a company, except in a number of acceptable circumstances. Rule 5.1(a) prevents a person (including any person in concert with that person) acquiring shares which takes their holding from going from below 30% level to above the 30% level of interests. Rule 5.1(b) states that if a person (in aggregate with its concert parties) is interested in shares carrying 30% or more of the voting rights, but they do not already hold 50% or more, they may not increase their holding without making an offer under Rule 9.

There are a number of exemptions to Rule 5, whereby it is permissible to acquire or consolidate control.

The exemptions are:

- Control arises as the result of an issue of new shares, and a vote of independent shareholders (ie, excluding the acquirer of shares) approves the acquisition of control (referred to as a 'Rule 9 Waiver').
- The acquisition of shares or interests in shares is from a single shareholder and it is the only purchase in a seven-day period:
    - when the acquisition is immediately before a firm announcement to make an offer, and either the offer or the acquisition itself will be recommended by the offeree board and the acquisition is conditional on the offer being made
    - when the acquisition is after a firm announcement to make an offer, and either the acquisition is made with offeree board approval, or the offer, or a competing offer has been recommended by the offeree board, or day 21 of that or a competing offer has passed, or the offer is unconditional in all respects, or
    - when the acquisition of shares has arisen through the acceptance of an offer.

However, even when an acquirer takes advantage of an exemption, this may in some cases still trigger a mandatory offer.

1.4.6 Rule 6 – Acquisitions Resulting in an Obligation to Offer a Minimum Level of Consideration

The offer for an offeree company may be in the form of cash, shares, or loan stock, or a mixture of cash and/or shares and/or loan stock. Shareholders may be offered a single structure, a choice of consideration options, or a mix and match alternative. In most cases, the offeror has discretion as to the form and amount of any payment consideration offered (subject to General Principle 1 which states that all holders of the securities of an offeree company of the same class must be afforded equivalent treatment).

However, in some circumstances the offeror may face restrictions which impose a minimum level of consideration, or require them to include a full cash alternative to all shareholders in their offer. These restrictions will arise when the offeror has acquired interests in offeree securities prior to making their offer, and are as follows:

- Under Rule 6, where the offeror (or its concert parties) have acquired any interests in the shares of the offeree company during the three months prior to the start of the offer period, or between the start of the offer period and a

firm announcement, then the minimum price to be offered by the offeror is the highest price that they have paid to acquire offeree shares during that period (ie, it shall be on no less favourable terms).

- If the offeror or their concert parties purchase shares in the offeree at a price higher than the offer price during the offer period, the offeror must increase their offer to the highest price paid for these shares, and offer a full cash alternative if this is not already provided.
- Under Rule 11, if the offeror or their concert parties have purchased 10% or more of the voting shares in the offeree for cash during the offer period, or in the 12 months beforehand, then the offer must be at least at the highest price paid by the offeror for offeree shares in that period, and must be in cash or with a full cash alternative available to all shareholders.

1.4.7 Rule 8 – Disclosure of Dealings and Positions

During the offer period, certain dealings must be disclosed under Rule 8. The definitions of dealings and relevant securities are shown in section 1.3.1.

The following disclosures must be made:

Public Disclosure

Public disclosure is a disclosure to the market through a Regulator Information Service (RIS), copied to the Takeover Panel and the bid parties. It must be made in respect of:

- dealings in relevant securities by the offeror, offeree, or their associates on their own account, or on behalf of discretionary clients
- dealings by persons with interests in securities representing 1% or more of the voting rights of offeror, or offeree
- dealings by an exempt fund manager connected to either of the bid parties, and
- a summary of total acquisitions and disposals by exempt principal traders (such as market makers), with highest and lowest prices.

Private Disclosure

Private disclosure is a disclosure made to the Panel and the bid parties only. It must be made in respect of:

- dealings in relevant securities on behalf of discretionary investment clients by an exempt fund manager connected with the offeror and/or offeree, and
- dealings by the bid parties, or their concert parties on behalf of non-discretionary clients.

All disclosures must be made without delay, and at the latest by 12:00 on the next business day following the dealing (T+1). (15:30 for disclosures by 1% shareholders not connected to the bid parties.)

Disclosure of Interests – Opening Position Disclosures

At the commencement of the offer period, Rule 8 provides that certain parties must provide opening position disclosures. These are announcements containing details of interests, or short positions in, or rights to subscribe for, any relevant securities of a party to the offer, if the person concerned has such a position. An opening position disclosure is required to be made after the commencement of the offer period and, if later, after the announcement that first identifies an offeror.

They must be made by:

- the offeree company
- the offeror (after its identity is first publicly disclosed), and
- any person that is interested in 1% or more of any class of relevant securities of any party to the offer.

Opening position disclosures must be made within ten business days of the start of the offer period.

If the offeror and/or its concert parties has dealt in the offeree securities during the period starting 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated.

Disclosures in the Offer Document

Under Rule 24.4, the offer document must disclose details of the offeror's interests and any concert parties in, or rights to subscribe to, relevant securities in the offeree company, specifying the nature of the interest or rights concerned. Similarly, it must also disclose details of any short positions, including any short positions under a derivative; any agreement to sell or any delivery obligation or right to require another person to purchase or take delivery must also be stated. If there are no interests or short positions to be disclosed, then this fact should be stated.

If the offeror (and/or its concert parties) has dealt in relevant offeree securities during the period starting 12 months prior to the offer period and ending with the latest practicable date prior to the publication of the offer document, the details, including dates, must be stated.

Disclosure of Interests – Disclosures in the Offeree Board Circular

Similarly, Rule 25.4 provides that the offeree's board circular must also include certain details of interests and dealings. It must include details of any relevant offeror securities in which the offeree company or any of its directors has an interest, or rights to subscribe, with details of these; also details of any short position, agreements to sell, or delivery obligations. It must also show details of any interests in, or rights, or short positions over offeree company securities held by the offeree company, its directors, or its concert parties.

This document must also show whether the offeree directors intend, in respect of their own beneficial shareholdings, to accept the offer or reject it.

Acting in Concert

The definition of acting in concert for the purpose of the Takeover Code includes persons who, pursuant to an agreement or understanding, cooperate to acquire shares in a company to obtain or consolidate control. Note that this is not the same as the legal concept of acting in concert, which merely refers to an agreement between two or more people to acquire interests in shares (Companies Act 2006, s818 and s824, although the term 'concert party' is only included in the guidance notes).

Contrast between Voluntary Offer and Mandatory Offer Acceptance Provision

In a mandatory offer, there is no option to have an acceptance level in excess of 50%.

A voluntary offer is any offer not subject to Rule 9, Mandatory Offers. There are several required conditions for a voluntary offer to which the offeror may choose to add others.

Note that the offeror in a voluntary offer will be required to control more than 50% of the shares themselves, excluding any people acting in concert. This is in contrast to Rule 9 where the requirement is that the offeror together with persons acting in concert control more than 50% of the shares. If there are reasons why a person acting in concert cannot or will not transfer the shares to the offeror, this will make it easier for the mandatory offer to succeed compared to the voluntary offer.

Summary of Differences Between Mandatory and Voluntary Offers

	Mandatory Offer	Voluntary Offer
Nature of Consideration	Cash or cash alternative required	No cash offer required except under Rule 11
Price to be Offered	Highest price paid by the offeror in the last 12 months	Highest price paid by the offeror in the last three months, unless Rule 11 applies
Competition and Markets Authority Referral Condition	Yes	Yes
Acceptances Condition	Offeror and concert parties own more than 50% of the voting rights in the offeree	Offeror sets acceptance condition, subject to it at least owning more than 50% of the voting rights in the offeree

Other Conditions	No	Yes, so long as not subjective and fulfilment does not lie in the hands of the offeror's directors

1.4.8 Rule 9 – The Mandatory Offer and its Terms

When a person (acting alone or in concert with others) takes their interest in the company to an aggregate level of 30% or more of the voting rights, or when they consolidate control (increasing their holding between 30% and 50%) then they are required under Rule 9 of the Code to make a mandatory offer to acquire the rest of the shares in the company to the company's shareholders.

Under the terms of a mandatory offer, much of the offeror's discretion to impose conditions is removed and the following rules apply:

- The minimum price of a mandatory offer is the highest price at which the offeror purchased shares in the offeree company within the last 12 months.
- The offer must be for cash, or have a full cash alternative available for all offeree shareholders.
- The offer must remain open after the offer has become, or has been declared unconditional as to acceptances for at least 14 days after it would otherwise have expired.
- The mandatory offer may only be subject to two conditions: regulatory clearances when required, and an acceptance threshold of a simple majority (over 50%). No other conditions are allowed.

It is possible for a mandatory offer to be triggered deliberately, or inadvertently. In the latter case, the Takeover Panel may consider granting a Rule 9 waiver from the obligation to make a mandatory offer.

Rule 37 specifically addresses the situation of a shareholder whose interest in the securities of a company is increased not through their own purchases, but by a share buy-back or other reduction in capital. Generally, the Takeover Panel will waive the obligation to make a mandatory offer in these circumstances, provided that a Rule 9 waiver procedure is carried out and independent shareholders agree to no mandatory offer being made. However, if the shareholder acquired interests in shares knowing of the proposed buy-back, the Takeover Panel will generally not grant a waiver.

1.4.9 Rule 10 – The Acceptance Condition
Rule 11 – Nature of Consideration to be Offered

It is normal for a voluntary offer to be made subject to conditions, such as:

- the reaching of an acceptance threshold (such as 90%, whereupon a squeeze-out is permitted, or 75%, which allows a scheme of arrangement to be approved)
- offeror shareholder approval
- regulatory clearance or official authorisation, and
- other bid-specific conditions.

Following the announcement of a firm intention to make an offer, an offeror must use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject (Rule 13.2).

Rule 10.1 states that a voluntary offer must be subject to an acceptance condition that cannot be satisfied unless the offeror has acquired, or agreed to acquire, shares carrying over 50% of the voting rights.

However, the offeror may select an alternative higher acceptance threshold while reserving the right to reduce the acceptance threshold to the Code minimum in due course.

An offeror may also announce a pre-condition for launching a formal takeover offer; for example, stating that a bid will be made once industry regulator approval has been granted.

Rule 13 states that an offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the directors of the offeror or offeree. The Takeover Panel may be willing to accept an element of subjectivity in certain circumstances if it is impractical to specify all the factors on which satisfaction of a particular condition or pre-condition may depend. This is especially relevant in cases involving official authorisations or regulatory clearances, and where the offeree company agrees to the pre-condition, or where the authorisation or regulatory clearance is a material official authorisation or regulatory clearance.

Where the offeror has acquired or agreed to acquire shares carrying over 50% of the voting rights, then the offer can be deemed to be unconditional. Where the level of acceptances is below 50%, the offeror cannot make a declaration that their offer has gone unconditional.

Except with the consent of the Takeover Panel in cases falling under (a) or (b), a cash offer is required when:

a. the shares of any class under offer in the offeree company in which interests are acquired for cash by an offeror and any person acting in concert with it during the offer period, and within 12 months prior to its commencement, carry 10% or more of the voting rights currently exercisable at a class meeting of that class, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement
b. subject to paragraph (a) above, any interest in shares of any class under offer in the offeree company is acquired for cash by an offeror, or any person acting in concert with it during the offer period, in which case the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it, for any interest in shares of that class acquired during the offer period, or
c. in the view of the Takeover Panel there are circumstances which render such a course necessary in order to give effect to General Principle 1.

1.4.10 Rule 13 – Preconditions in Firm Offer Announcements and Offer Conditions

Rule 13 states that an offer must not normally be subject to conditions, or preconditions which depend solely on subjective judgements by the directors of the offeror or offeree. The Takeover Panel may be prepared to accept an element of subjectivity in certain circumstances, if it is not practicable to specify all the factors on which satisfaction of a particular condition or precondition may depend, especially in cases involving official authorisations or regulatory clearances.

1.4.11 Rule 19 – Conduct During the Offer – Information
Rule 20 – Conduct During the Offer – Equality of Information

Rule 19 states that each document, announcement or piece of information published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy, and must be adequately and fairly presented. This is irrespective of whether it is published by the party directly, or by an adviser on its behalf.

Each document or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company, must state that the directors accept responsibility for the information contained in the document.

Directors must take care not to omit important information, or to give misleading impressions to the market to create uncertainty.

If an offeror, or an offeree company, or any person on its behalf:

- sends a document or information in relation to an offer to shareholders, persons with information rights or other relevant persons, or
- publishes an announcement (whether related to the offer or not) by sending it to an RIS, the offeror or offeree must, as soon as possible and in any event by no later than midday on the following business day, ensure that a copy is published on its website.

Any post-offer undertakings (see Rule 19.6) must be consulted with the Takeover Panel. These require specific disclosures including, but not limited to a need for undertakings to be specific and precise, readily understandable and capable of

objective assessment, and not depend on subjective judgments of the party to the offer or its directors.

A post-offer intention statement (see Rule 19.6), must be (i) an accurate statement of that party's intention at the time that it is made; and (ii) made on reasonable grounds. Any deviation from the course of action stated (or no action taken when it had stated action would occur) must be disclosed to the Panel.

Equality of Information

Under Rule 20, information and opinions relating to an offer, or a party to an offer, must be made equally available to all offeree company shareholders and persons with information rights, as nearly as possible, at the same time and in the same manner.

In particular, care must be taken when having discussions with institutional shareholders, giving analyst briefings, or making statements at shareholder meetings, to ensure that no 'new' information is disclosed which is not available to all shareholders.

A representative of the broker, or financial adviser to the relevant bid party, must attend all such meetings and confirm in writing to the PTM no later than 12.00 on the following business day that no material new information was forthcoming and no significant new opinions were expressed at the meeting.

Furthermore, any information provided to one offeror or potential offeror, whether named or unnamed, must, on request, be given equally and promptly to any other bona fide offeror or potential offeror, even if that other offeror is less welcome.

Independent Directors in a Management Buy-out

If the offer or potential offer is a management buy-out, the offeror is typically a private equity investment vehicle working in concert with the executive management of the offeree company, who is therefore not able to provide independent advice to their shareholders.

According to Rule 21.4 Information to Independent Directors in 'Management Buy-Outs':

> *'If the offer or possible offer is a management buy-out or similar transaction, the offeror or potential offeror must, on request, equally and promptly provide the independent directors of the offeree company or its advisers with all information which has been, or is subsequently, provided by the offeror or potential offeror to external providers or potential providers of finance (whether equity or debt) for the management buy-out or similar transaction.'*

1.4.12 Rule 21 – Conduct During the Offer – Restrictions on Frustrating Action

From the 'relevant period', except with approval from shareholders, or with the consent of the Panel, the board of the offeree company must not take or agree to take:

- any restricted action, and
- any other action which may result in the frustration of any offer or bona fide possible offer.

The relevant period is the period from the earlier of:

- an approach by a potential offeror to the board of the offeree company, and
- the beginning of the offer period, until the end of the offer period or, where no offer period has begun, 17.00 on the seventh day following the date on which the latest approach is unequivocally rejected.

A 'restricted action' means any of the following, to the extent that it is not in the ordinary course of the offeree company's business:

- issuing, or transferring out of treasury, shares, or securities carrying rights of conversion into or subscription for shares, in the offeree company
- redeeming or purchasing shares, or securities carrying rights of conversion into or subscription for shares, in the offeree company
- granting options over or awards in respect of shares in the offeree company
- disposing of or acquiring (in one or more transactions) assets of a material amount; or

- entering into, amending or terminating a material contract.

As noted above, in the first paragraph, under certain circumstances the Takeover Panel will agree to disapply Rule 21.1(a). This includes:

1. the taking of the proposed action is conditional on the offer being withdrawn or lapsing (see also Rule 21.1(e))
2. the offeror consents to the action proposed to be taken by the board of the offeree company
3. holders of shares carrying more than 50% of the voting rights of the offeree company state in writing that they approve the proposed action and would vote in favour of any resolution to that effect proposed at a general meeting
4. the proposed action is in pursuance of a contract entered into before the beginning of the period referred to in Rule 21.1(a) or another pre-existing obligation, or
5. a decision to take the proposed action had been taken before the beginning of the period.

Where shareholder approval is to be sought in a general meeting for the taking of a proposed action the board of the offeree company must:

- obtain competent independent advice as to whether the financial terms of the proposed action are fair and reasonable
- consult the Takeover Panel regarding the date of the general meeting, and
- send a circular to shareholders containing, soon as practicable after the announcement of the proposed action.

Where the Takeover Panel has given its consent to a proposed action because the taking of the proposed action is conditional on the offer being withdrawn or lapsing, the board of the offeree company must publish an announcement containing the details.

Defences Available to the Offeree Company

If the directors of the offeree company view the offer as hostile, the following courses of action are available to them as part of their defence:

- Publish a defence document, including profit forecasts and/or arguments as to why the bid itself, or the terms of it, are not in the best interest of the shareholders.
- Lobby for referral to the CMA, or if relevant, the European Commission.
- Seek an alternative purchaser on more favourable terms (a 'white knight').

1.4.13 Rule 28 – Profit Forecasts and Quantified Financial Benefits Statements

One particularly problematic area for regulators arises when the offeree company wishes to include profit forecasts in its defence document. Given the difficulties of verifying forecasts, there is considerable scope for misuse and, accordingly, the Code contains provisions on profit forecasts.

Rule 28 of the Takeover Code states that when a profit forecast is included in a code document, it must be reported on both by the auditors to the company making the statement, and by their financial advisers, and these reports must be included in the document concerned. There must be full disclosure of the assumptions underlying the profit forecast, and the reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication in the document.

Different requirements apply for forecasts depending on if they are:

- published during the offer period
- published before the offer period but after the approach
- published before the approach
- published in the ordinary course, and
- for management buy-outs (MBOs).

1.4.14 Schemes of Arrangements

A 'scheme of arrangement' is an alternative method of launching a takeover bid that is usually used for an agreed bid. The existing shareholders of the offeree company agree to have their shares replaced with some other securities, such as shares in the bidding company, or redeemed for cash.

The specific details of the procedures required are set out in the Companies Act 2006, was explained in more detail in chapter 1. The main contrast with a normal contractual offer is that shareholders are not asked to accept an offer, but to vote on proposals for a reconstruction of the company, which will have the effect of transferring it into new ownership.

The Takeover Panel requires that the same General Principles, and many of the same provisions of the Takeover Code, apply whether it is a contractual offer or a scheme of arrangement. There are, however, additional specific rules, which include:

- a scheme of arrangement cannot be used for a mandatory bid without the Takeover Panel's consent
- 21 days' notice is required for shareholder meetings to consider the scheme, and notice must be given of any revisions to the scheme at least 14 days before a meeting
- the results of the meeting(s) must be announced by 08:00 on the next business day, including full details of the votes for and against the scheme, and
- as soon as a scheme of arrangement is sanctioned, the Panel requires the bidder to confirm that all the conditions have been satisfied (or waived) and that the bidder must undertake all steps for the scheme to become effective.

If the offeror wants to switch from a contractual offer to a scheme of arrangement (or vice versa) then the Panel's consent is required. The Takeover Panel will determine any new timetable arrangements. If an offeror wishes to propose a scheme of arrangement without the offeree company's board consent, the Takeover Panel must be consulted first.

1.5 Rule 31 – Timing of the Offer; Rule 32 – Revision; Rule 33 – Alternative Offers; Rule 34 – Right of Withdrawal; Rule 35 – Restrictions Following Offers

Once a firm announcement of an offer has been made, the process becomes subject to a formal bid timetable, with a number of specific deadlines to be met. In outline, an offer must be open for a minimum of 21 days, and a maximum of 60 days. All deadlines shown are based on calendar days. Day 60 is the last day for all conditions to be satisfied or waived.

An offer must then remain open for a minimum of 14 days after becoming unconditional.

Announcement Day
Once a bid has been announced, the offeror has 28 days in which to post the offer document, giving full details of its offer, to offeree shareholders, and to make this available to offeree employees.

Day 0 – Posting Day/Publication Day
The posting day is the day on which the offer document is posted to the offeree's shareholders and must be no later than 28 days from the firm announcement date. This counts as Day 0 for the entire timetable.

Day 14 – First Defence Document (Offeree Board Circular to Shareholders)
In a recommended offer, the offer document includes a letter by the offeree chairman to the offeree shareholders, setting out a recommendation that shareholders accept the offer, and including the Rule 3 adviser's opinion.

In a hostile bid, however, the offeree board does not cooperate on the production of the offer document, but instead must post a defence document to all shareholders by the 14th day after the posting day, ie, Day 14. The defence document contains the directors' response to the offer document, recommending shareholders to reject the offer and explaining the reasons why.

Day 21 – First Closing Day (Minimum Acceptance Period)
An initial offer must be open for at least 21 days following the date on which the offer document is published.

On Day 21, the offeror counts the number of acceptances received from the offeree's shareholders, and determines whether the offer is unconditional with regard to acceptances (ie, the acceptance threshold has been met) and, if not, whether they will extend or amend the offer.

The introduction of 'acceptance condition invocation notices' (ACINs) means that offeree shareholders must be given 14 days' notice of any intention to invoke the acceptance condition and lapse the offer if insufficient acceptances have been received.

Business Day Following Day 21: Acceptance Announcements
Announce the level of acceptances by 08.00 on the business day following day 21 and every seven days thereafter (together with selected other key dates (Rule 17)).

Day 37 – Latest Date for Timetable Suspension Due to Outstanding Regulatory Clearance or Official Authorisation
This is the date on which the Takeover Panel, at the request of the bidder, or jointly both bidder and offeree, may suspend the offer timetable if an official authorisation or regulatory clearance remains outstanding.

Day 39 – Last Defence Documents (Offeree Board Announcements)
The offeree board is not permitted, unless with the consent of the Takeover Panel, to announce any new information or disclose any material new opinions, after Day 39 (being 21 days before the final deadline of Day 60).

Day 42 – Right of Withdrawal
If the offer has not been declared unconditional with regard to acceptances by Day 42 (21 days after the first closing day), then any shareholder who had accepted the original bid may now withdraw their acceptance.

Day 46 – Last Offer Amendment (Revision of Offers and Final Revision Date)
The offeror company may amend its offer up to Day 46, 14 days before the final deadline or Day 60, should they wish to do so. Following this date, the offeror must not buy shares in the market at above the offer price (as this would trigger a revised offer).

Day 60 – The Final Day and the Unconditional Date
A bid can remain open for up to 60 days. However, if by Day 60 the offer is not unconditional with regard to acceptances, then the bid must lapse, unless an exemption is provided by the Panel.

At Day 60 the offeror must state the total number of acceptances received, together with its own holdings and irrevocable commitments held. If a bid lapses, the offeror is generally not permitted to launch another offer for the offeree company for 12 months from that date.

If, however, the offer is referred to the CMA for a detailed investigation, then the bid will lapse (ie, end). If the bid is then cleared by the CMA, the offeror has 21 days to decide whether to launch a new offer. In a mandatory offer, the offeror would not have this flexibility but would be obliged to launch a new bid.

Day 74
Assuming the offer is unconditional on day 60, then day 74 is the earliest day on which the offer may close.

Extensions to Day 60
The Takeover Panel will normally only extend day 60 beyond the 60th day following the publication of the initial offer document:

- if a competing bidder has been announced
- if the board of the offeree company consents to an extension
- if suspension of the offer timetable has been requested in relation to clearance/official authorisation
- if the target board makes an announcement (material new information) after day 39, or
- if the bidder's receiving agent requests an extension with regard to the certificate stating the number of acceptances.

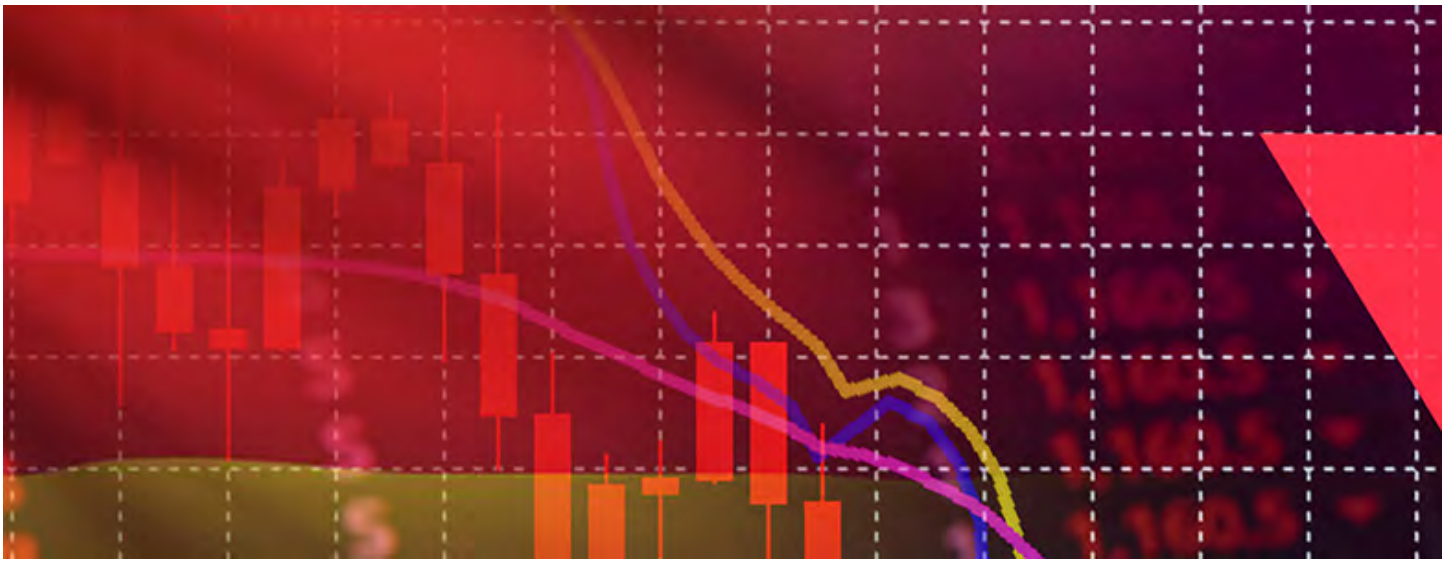
Consideration must be sent to shareholders within 14 days after the later of:

- day 21
- the date the offer becomes or is declared unconditional, and
- after the date of receipt of the shareholder acceptance.

Summary Bid Timetable



Any offer declared unconditional as to acceptances must remain open for acceptance by the remaining shareholders for at least a further 14 days after that date. The offeror then has a maximum of 21 days from the date the offer goes unconditional to accept to fulfil any other outstanding conditions



2. FCA Listing Rules

2.1 UK Primary Market Functions

Part 6 of the FSMA, as amended, provides that a designated body is named as the competent authority in respect of UK regulated markets, this is the FCA.

The FCA has phased out the term 'UK Listing Authority', rather it refers to the FCA's Primary Market Functions.

Despite the name change, the UK listing authority's role and responsibilities have not changed. Its duties and powers include maintaining the Official List (the list of companies whose securities are admitted to trading on the Main Market or Professional Securities Market of the London Stock Exchange (LSE)), approving prospectuses, admitting companies to the Official List, and regulating listed companies. As part of this, it is required to provide, maintain and enforce the rules that govern listed companies. These rules are found in the 'Listings, Prospectus and Disclosure' block of the FCA Handbook.

The LSE is a listed company whose objective is to run a marketplace in securities. It should be noted that it has no monopoly powers over the running of the marketplace, and other operators may, and do, compete against it. The FCA

regulates the LSE and has granted it the status of recognised investment exchange (RIE).

The LSE is made of the following markets:

- **Main** – this is the world's most international market for the admission and trading of equity, debt and other securities.
- **Professional Securities** – the Professional Securities Market is an innovative, specialised market designed to suit the specific needs of issuers. Companies raise capital through the issue of specialist debt securities or depositary receipts (DRs) to professional investors. Companies wishing to raise capital may do so without the additional cost of following a retail or equity regime.
- **AIM** – AIM is the London Stock Exchange's international market for smaller growing companies. A wide range of businesses including early stage, venture capital backed, as well as more established companies join AIM seeking access to growth capital.

The LSE's rules govern secondary market trading in the shares of both listed and AIM companies by shareholders and intermediaries.

The FCA determines which companies are eligible to join the Official List and writes and enforces the rules which apply to these companies. The format of these rules follows the FCA Handbook structure, with rules and guidance shown in a single text.

As stated above, the FCA regulates listed companies (those quoted on the main market or professional securities market). However, the LSE regulates companies quoted on the AIM Market, develops and enforces the AIM Market rules and regulates AIM Market advisers.

One of the desired aims of MiFID II was to facilitate access to capital for SMEs and the development of specialist markets catering for the needs of SMEs. Therefore, MiFID II established a regime for the registration of MTFs offering facilities to SMEs as 'SME growth markets' (SME-GM), where they meet certain criteria. MiFID II requires that at least 50% of the issuers whose financial instruments are admitted to trading on an MTF registered as an SME-GM are small- and medium-sized enterprises at the time the MTF is registered as an SME-GM, and in any

calendar year thereafter. The AIM Market is registered as a SME-GM, as is the Aquis Exchange Growth Market.

These requirements are divided into three sourcebooks:

- **The Listing Rules (UKLR)** comprise general rules for listed companies, including the provisions for listing, overarching listing principles and continuing obligations.
- **The Disclosure and Transparency Rules (DTR)** provide rules and guidance for the dissemination of information, notifications of interests in shares, and corporate governance provisions. As well as applying to premium listed companies, they also apply to issuers on prescribed markets, as well as regulated markets. These include AIM and ICAP securities & derivatives exchange markets.
- **The Prospectus Regulation Rules (PRR)** consolidate all rules on prospectuses, including the content and form of prospectuses, the procedures for their approval, and exemptions from the requirement for a prospectus. Certain requirements, such as those listing the required contents of prospectuses, are directly reproduced from the Prospectus Regulation.

The main Brexit statutory instruments (SIs) that amended relevant EU legislation are noted below.

Market Abuse Regime	The Market Abuse (Amendment) (EU Exit) Regulations 2019 (SI 2019/310) (Market Abuse Brexit SI)
Prospectus Regime	The Prospectus (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/1234) (Prospectus Brexit SI)

Regarding their application:

- the DTR applies in general to listed companies, with certain elements also applying to AIM and Aquis Growth Market quoted companies; several

elements that were previously within the DTRs now sit within MAR, and

- the PRR applies to all companies, both public and private, seeking to offer shares to the public or gain admission to trading on a UK-regulated market; chapter 5, section 1.5 provides more details on proposed changed to the prospectus rules.

As a reminder, a prescribed market is any market operated by an RIE.

2.2 Regulated Markets

It is important to understand the concepts of RIEs, regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs). In summary:

- Under MiFID II, entities that offer multilateral trading for financial instruments (such as an order book) must be organised as either a regulated market or an MTF, with slightly different standards applying to each.
- Regulated markets are those which comply with the requirements for regulated markets under MiFID II, MTFs and OTFs are trading venues which are not designated as regulated markets, but must comply with certain MiFID II requirements.
- OTFs came into effect following the implementation of MiFID II; only non-equity financial instruments can be traded on these venues.
- An RIE is a firm which operates one or more of these markets and meets the standards required by the FCA to be an RIE.

These three types of entity are discussed in more detail below.

The FCA Glossary defines a regulated market as:

> *'a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or*

> *systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID II'.*

The FCA is responsible for maintaining the list of regulated markets for which it is the home member state's regulator. A market may ask to be added to the list of regulated markets if it satisfies certain requirements set out in UK MiFID II.

Note that the Main Market of the LSE is a regulated market. As such, it must be regulated by the FCA in its role as competent authority for regulated markets. The AIM market is not a regulated market; it is an MTF, which is also designated as an 'exchange-regulated market'. It is regulated by its operator, the LSE, rather than the competent authority.

2.2.1 Recognised Investment Exchanges (RIEs)

An RIE is an investment exchange which is considered by the FCA to be fit and proper to act as such, and which, although it is subject to FCA supervision and oversight, is not required to be authorised.

The LSE is an RIE; as such it operates in both a regulated market (Main Market) and an MTF (the AIM Market).

2.2.2 Multilateral Trading Facilities (MTFs)

MTFs are defined by the FCA in their Glossary as:

> *'(in accordance with article 3(1) of the Regulated Activities Order):*
>
> *a. a UK multilateral trading facility (within the meaning of Article 2(1)(14A) of UK MiFIR) operated by an investment firm, a credit institution or a market operator, or*
>
> *b. a facility which:*

> *i. is operated by an investment firm, a qualifying credit institution or a market operator whose home State is not the United Kingdom, and*

> *ii. if its operator's home State was the United Kingdom, would be a UK multilateral trading facility within the meaning of Article 2(1)(14A) of UK MiFIR.'*

These systems can be operated by an investment firm or a market operator. Instruments may include shares, bonds and derivatives. This is done within the MTF operators' system, such as Turquoise (owned by the LSE) which is a pan-European trading platform for equity and equity like financial instruments.

Secondary market trading in AIM and Main Market shares may take place on both RIEs and MTFs.

2.2.3 Organised Trading Facilities (OTFs)

MiFID II introduced a new category for trading venues, called 'organised trading facilities (OTFs)'.

An OTF is a multilateral system that is not a regulated market or an MTF.

Within an OTF, multiple third-parties form contracts to buy and sell interests in bonds, structured finance products, emission allowances or derivatives. Equities are not permitted to be traded through an OTF. MTFs and OTFs are similar multilateral systems that bring together third-party buying and selling interests in financial instruments resulting in contracts.

The requirements that apply to OTFs and their transactions are generally the same as the requirements for MTFs. As with MTFs, OTFs are required to establish clear rules and processes around trading.

OTFs are also subject to the same transparency requirements as regulated markets and MTFs, and are required to establish and maintain effective arrangements and procedures to enable the regular monitoring of compliance by the members.

OTFs are permitted to exercise discretion in either or both of the following circumstances:

1. when deciding to place or retract an order on the OTF they operate, and/or

2. when deciding not to match a specific client order with other orders available in the systems at a given time.

By contrast, MTFs are not permitted to exercise discretion.

In addition, OTF operators are permitted to engage in matched principal trading in bonds, structured finance products, emission allowances and derivatives (unless they have been declared subject to mandatory clearing under UK EMIR (UK European Market Infrastructure Regulation), whereas an MTF operator cannot; and OTF operators will be required to comply with MiFID II investor protection obligations (information to clients, suitability, best execution and client order handling), whereas MTFs are not required to do so.

2.3 UK Listing Rules (UKLR)

The Listing Rules set out the standards expected of listed issuers, and specific procedures to be followed. Their content is as follows:

- details of the enforcement regime
- the requirements for listing for all securities
- the Listing Principles
- the procedures for application for admission to listing, including secondary offerings
- requirements for sponsors, including criteria for approval, when required, and obligations
- certain continuing obligations for companies and directors, including corporate governance requirements
- requirements for shareholder approval of significant and related party transactions
- contents of circulars to shareholders, and financial information in circulars
- requirements for share buy backs and further issuances, and
- specific requirements for closed-ended investment companies (CEICs), OEICs, and issuers of debt, Global Depositary Receipts (GDRs), and other non-equity securities.

2.3.1 Listing Principles

The Listing Rules Chapter 2 (UKLR2) contains high-level listing principles which underpin the Listing Rules and are enforceable by the FCA in the same way as the rules. The principles apply to all listed companies in respect of all their obligations arising from the Listing Rules and the DTR. The purpose of the principles is to ensure that issuers pay due regard to the fundamental role they play in maintaining market confidence and enabling fair and orderly markets, and to assist them in identifying their obligations and responsibilities under the Listing Rules and the DTR.

The Listing Principles

For all companies (standard and premium listed companies), the listing principles are:

- **Principle 1** – A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.
- **Principle 2** – A listed company must deal with the FCA in an open and cooperative manner.
- **Principle 3** – A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.
- **Principle 4** – A listed company must act with integrity towards the holders and potential holders of its listed securities.
- **Principle 5** – A listed company must ensure that it treats all holders of the same class of its listed equity shares that are in the same position equally in respect of the rights attaching to such listed equity shares.
- **Principle 6** – A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation or continuation of a false market in those listed securities.

Procedures, Systems and Controls

UKLR2 provides guidance on Listing Principle 1, which is intended to ensure that listed companies have adequate procedures, systems and controls to enable them to comply with their various obligations under the Listing Rules, disclosure requirements, Transparency Rules and corporate governance rules. Therefore,

listed companies must have robust processes for identifying significant and related party transactions, ensuring director understanding of obligations and confirming these controls are maintained.

Specifically, listed companies should have systems in place to:

- properly identify obligations concerning significant transactions and related party transactions, and the timely and accurate disclosure of information to the market
- properly identify information which requires disclosure under the Listing Rules, disclosure requirements, Transparency Rules or corporate governance rules in a timely manner, and
- ensure that information identified above is properly considered by the directors, and such a consideration encompasses whether the information should be disclosed.

To ensure that listed companies remain in compliance with their obligation under the UK Listing Rules, they will need to comply with the following:

- Identification of Information
    - procedures to recognise information that triggers disclosure obligations.
- Director Consideration
    - consider the identified information to determine if disclosure is necessary.
- Timely and Accurate Disclosure
    - information is disclosed to the market promptly and accurately, as required.
- Focus Areas for Controls
- Particular emphasis should be placed on controls for
    - **significant transactions** – identifying obligations arising from significant transactions.

    - **related party transactions** – manage and disclose related party transactions.
- Board Confirmation
    - for new listings, companies must provide written confirmation that they have taken reasonable steps to establish these adequate procedures, systems and controls.
- Ongoing Maintenance
    - companies must maintain these governance arrangements and controls at all times to comply with listing requirements (Listing Principle).

2.3.2 Listing Requirements: All Securities

The requirements for admission to the Official List are contained in the UK Listing Rules sourcebook (UKLR), which include:

- Applicants must be duly incorporated in accordance with the law of their place of incorporation, and operate in accordance with their constitution.
- Securities must be duly authorised, conform with the law of the country of incorporation, and have any necessary statutory or other consents.
- When any securities of a particular class are admitted to listing, all the existing securities and further issues of securities of that class must be admitted to listing.
- Securities must be admitted to trading on an RIE.
- Securities must be freely transferable.
- Shares must be fully paid up and free from liens and any other restrictions on the right of transfer.
- The expected market value of all securities issued by the company, and to be listed, must be at least £30 million for shares and £200,000 for debt securities. (There are exceptions where the amount of debt securities is not fixed, and also if the securities of the same class are already listed.)

- The expected market value of shares of a closed-ended investment fund or an open-ended investment fund must be £700,000.
- A prospectus for the sale or admission to listing of the securities must be approved by the FCA and published in accordance with the Prospectus Rules.
- Convertible securities may be admitted to listing only if the securities into which they are convertible are already, or will become at the time, listed securities or securities listed on a regulated, regularly operating, recognised open market.

The following is the Structure of the UK Listing Rules Sourcebook (UKLR):

Number	Title/Description
UKLR1	Preliminary: all securities
UKLR2	Listing Principles
UKLR3	Requirements for listing: all securities
UKLR4	Sponsors: responsibilities of issuers
UKLR5	Equity shares (commercial companies): requirements for admission to listing
UKLR6	Equity shares (commercial companies): continuing obligations
UKLR7	Equity shares (commercial companies): significant transactions and reverse takeovers
UKLR8	Equity shares (commercial companies): related party transactions
UKLR9	Equity shares (commercial companies): further issuances, dealing in own securities and treasury shares

UKLR10	Equity shares (commercial companies): contents of circulars
UKLR11	Closed-ended investment funds: requirements for listing and continuing obligations
UKLR12	Open-ended investment companies: requirements for listing and continuing obligations
UKLR13	Equity shares (shell companies): requirements for listing and continuing obligations
UKLR14	Equity shares (international commercial companies secondary listing): requirements for listing and continuing obligations
UKLR15	Certificates representing certain securities (depository receipts): requirements for listing and continuing obligations
UKLR16	Non-equity shares and non-voting equity shares: requirements for listing and continuing obligations
UKLR17	Debt and debt-like securities: continuing obligations
UKLR18	Securitised derivatives: requirements for listing and continuing obligations
UKLR19	Warrants, options and other miscellaneous securities: continuing obligations
UKLR20	Admission to listing: processes and procedures
UKLR21	Suspending, cancelling, restoring listing, and transfer between listing categories: all securities
UKLR22	Equity shares (transition): continuing obligations
UKLR23	Listing particulars for professional securities market and certain other securities

UKLR24	Sponsors

With the application of the FCA's UKLR Sourcebook in 2024, the eligibility requirements for the 'equities shares (commercial companies)' are largely based on the previous requirements for 'premium and standard' listed companies. However, those companies that used to have a standard listing have been moved to a transiting Category (ULLR22) which is not open to new applicants.

2.3.3 Climate Related Disclosures – Issuers (Listed Companies)

In 2020, the FCA published a consultation paper on promoting better disclosures about how companies with a UK premium listing (including sovereign-controlled companies) are managing climate-related risks and opportunities.

In December 2020, the FCA published its Policy Statement, along with final rules that would apply to premium-listed companies only; following the overhaul of the UK Listing Rules, this now applies to companies that have an equity share listing. These companies are required to include a statement in their annual financial report setting out whether they have made disclosures consistent with the Taskforce for Climate-related Financial Disclosures (TCFD).

Refer to Section 9.2.3 of this chapter for further updates on the UK's climate related disclosures announced in February 2026.

In the first half of 2021, the FCA published a consultation paper on plans to extend the disclosure requirements to a wider scope of listed companies, covering all issuers of standard listed shares – but excluding listed funds. In December 2021, the FCA published a Policy Statement with feedback and final rules.

Therefore, for accounting periods beginning on, or after, 1 January 2022, listed companies (this now refers to listings of equity shares (commercial companies) and certificates representing certain securities (depository receipts)) must provide a statement in their annual financial report setting out:

- whether they have made disclosures consistent with the TCFD's recommendations and recommended disclosures in their annual financial report
- where they have not made disclosures consistent with some, or all, of the TCFD's recommendations and/or recommended disclosures, an explanation of why, and a description of any steps they are taking or plan to take to be able to make consistent disclosures in the future, and the timeframe within which they expect to be able to make those disclosures
- where they have included some, or all, of their disclosures against the TCFD's recommendations and/or recommended disclosures in a document other than their annual financial report, an explanation of why, and
- where in their annual financial report (or other relevant document) the various disclosures can be found.

2.4 Disclosure and Transparency Rules (DTR)

The continuing obligations for issuers in the equity shares (commercial companies) category and closed-ended investment funds category are contained in part within the listing rules (UKLR 6, and UKLR 11 respectively) in part in the DTRs. They govern the conduct of directors of listed companies and the disclosure of information necessary to protect investors, maintain an orderly market and ensure that investors are treated fairly. In addition, the DTRs contain overarching requirements which relate to the timely and accurate dissemination of inside information.

Chapter 6 and 11 of the UKLR sets out a number of specific disclosures which an issuer must make. These relate, in particular, to new issues or redemptions or securities, to corporate actions, such as dividends, rights issues or bonus issues, and to changes to the company's name, registered office or directors.

The central requirement is set out in DTR 2.2 and UK MAR (Article 17 (1) – Public disclosure of inside information), which provides that an issuer must make a public disclosure, through a Regulatory Information Service (RIS), of any inside information which directly concerns it, and that this disclosure should be made as soon as possible.

The aim of the DTR is, in part, to implement those requirements of the Transparency Obligations Directive that apply to quoted companies in the UK, with a view to ensuring transparency for shareholders. In particular, they contain:

- provisions relating to the disclosure and control of inside information by issuers
- requirements to disclose transactions by persons discharging managerial responsibilities (PDMRs) and their related parties
- periodic financial reporting, including the timing and content of annual and interim accounts, and interim management statements vote-holder and issuer notifications (disclosure of substantial shareholdings)
- continuing obligations and access to information, and
- corporate governance requirements, including the requirement for an audit committee and corporate governance statements.

2.4.1 The Requirement to Disclose Inside Information

The Financial Services Act 2012 (FSA 2012) created criminal offences for the making of false or misleading statements and creating false impressions in connection with financial investments and benchmarks, aiming to protect market integrity by penalising those who manipulate pricing or provide false information.

In essence, Part 7 strengthens regulations against financial dishonesty, particularly in the context of benchmark setting, to build trust and stability in the financial markets. It makes it a crime to:

- make false or misleading statements in relation to relevant agreements or investments (Section 89)
- create false or misleading impressions in relation to relevant agreements or investments (Section 90), and
- make false or misleading statements or create false or misleading impressions in relation to the price or value of an investment, in the context of specified benchmarks (Section 91).

The misleading impressions offence, however, is wider in scope and covers recklessly created misleading impressions as well as those created intentionally.

Inside information is defined (UK MAR, Article 7) as information:

- of a precise nature
- which has not been made public
- relating, directly or indirectly, to one or more issuers, or to one or more financial instruments, and
- if it were made public, it would be likely to have a significant effect on the prices of those financial instruments, or on the price of related derivative financial instruments.

In determining whether the information is price-sensitive, the issuer should apply the 'reasonable investor' test, whereby they consider whether the information would be used by a reasonable investor as the basis of their investment decisions, and would thereby have a significant effect on the price of the issuer's securities.

Examples of inside information which could require disclosure include:

- changes in expectations of the company's profits, including major new contracts or losses
- material transactions, including acquisitions, disposals or joint ventures
- appointment or resignation of senior management, or
- changes to the financial stability of the company, such as the withdrawal of lending facilities.

A fundamental requirement of the inside information regime is the equal treatment of shareholders, who are entitled to receive inside information in the same way and at the same time. To achieve this, all regulatory disclosures required must be disclosed to the market through an RIS as soon as possible, prior to being disclosed to third parties.

An RIS is a firm that has been approved by the FCA to disseminate regulatory announcements to the market on behalf of listed companies. All listed companies must retain at least one RIS, and only regulatory announcements must be made through this mechanism. Once an announcement is sent to the

RIS, the company's disclosure obligation is met. The RIS is then required to release the announcement to the markets through its links with secondary information providers, such as data providers, newswires and the news media.

A company that provides inside information via an RIS must also make the information available on its own website by the close of the business day following the day of the RIS announcement. A company must ensure that such inside information is notified to an RIS before, or simultaneously with, the publication of such information on its own website; it must not post inside information on its website before announcing it to the market.

In addition, the company must take reasonable care, without prejudice to its obligations in the UK under the LRs, to ensure that the disclosure of inside information to the public is synchronised as closely as possible in all jurisdictions where it has securities listed on a regulated market.

Delaying Disclosure of Inside Information

DTR 2.5 (UK MAR Article 17 (4), (5) and (8)) provides that an issuer may, under its own responsibility, delay the public disclosure of inside information so as not to prejudice its legitimate interests, providing that:

- such omission will not be likely to mislead the public
- any person receiving the information owes the issuer a duty of confidentiality, regardless of whether
- such duty is based on law, regulations, articles of association or contract, and
- the issuer is able to ensure the confidentiality of that information.

Delaying disclosure of inside information will not always mislead the public, although a developing situation should be monitored so that, if circumstances change, an immediate disclosure can be made. Investors understand that some information – such as discussions regarding an acquisition – must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the company. Under UK MAR, an issuer has to inform the FCA on the reasons that there was a delay in disclosing inside information.

Secrecy and Confidentiality

Following on from this, the DTRs further provide a requirement for issuers to control undisclosed inside information in such a way as to prevent leaks. This particularly relates to developments or matters in the course of negotiation, when (apart from advisers) there must be no selective dissemination of information, and such matters that are in the course of negotiation must be kept confidential.

DTR guidance provides, however, that an issuer may disclose inside information selectively to persons owing it a duty of confidentiality, providing that they are validly involved in the matter, which is the subject of the inside information. As well as relevant employees of the issuer, this may include:

- advisers, and the advisers of any other party to the negotiations
- major shareholders
- bankers
- counterparties in negotiations
- potential underwriters
- employee representatives or trade unions
- government, statutory or regulatory authorities, or
- credit rating agencies.

It may not always be appropriate to disclose inside information to all, or any of, these parties.

In any other circumstance, where inside information has been inadvertently or intentionally selectively disclosed, it must be disclosed to the market, via an RIS, as soon as possible.

The Control of Inside Information

Companies must establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the company. A company must have measures in place that enable public disclosure to be made via an RIS as soon as possible, in case they are unable to ensure the confidentiality of the relevant inside information. This ties in with the requirements of General Principle 2, of the Listing Rules (UKLR 2.2).

If an issuer is relying on the rules on delaying disclosure of inside information, as noted above, it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence.

Insider Lists

As part of the control of inside information, issuers must ensure that it, and persons acting on its behalf or on its account, draw up a list of those persons working for them, whether under a contract of employment or otherwise, who have access to inside information relating directly or indirectly to the issuer, whether on a regular or occasional basis. This applies to all staff, irrespective of their seniority or employment status.

This must be readily available to provide to the FCA on request. Under UK MAR, this includes issuers on the AIM Market and the Aquis Exchange Growth Market, as well as those on a regulated market. Although MiFID II allows a more relaxed environment where they are now only required to produce lists of permanent insiders for SME Growth Markets and the AIM Market.

Every insider list must contain the following information:

- the identity of each person having access to inside information
- the reason why such persons are on the insider list
- the date and time at which that person obtained access to inside information, and
- the date on which the insider list was created and updated.

An insider list must be promptly updated:

- when there is a change in the reason why a person is already on the list
- when any person who is not already on the list is provided with access to inside information, and
- to indicate the date on which a person already on the list no longer has access to inside information.

Companies must also ensure that every insider list prepared by it, or by persons acting on its account or on its behalf, is kept for at least five years from the date on which it is drawn up or updated, whichever is the latest. The company, and

not its advisers or agents, is ultimately responsible for the maintenance of insider lists.

Further, the company must include on the list the names of its principal contacts at any other firm or company acting on its behalf or on its account with whom it has had direct contact, and who also has access to inside information about it. The issuer must contractually require such third parties to also maintain insider lists, detailing all those who both work on that issuer's business, and have access to inside information on that issuer.

Companies must take the necessary measures to ensure that their employees with access to inside information acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the issuer's financial instruments), and are aware of the sanctions attaching to the misuse or improper circulation of such information, with particular reference to market abuse and insider dealing.

2.4.2 Modifying or Dispensing with Rules

The FCA may dispense with, or modify, the transparency rules in such cases and by reference to such circumstances as it considers appropriate:

- A dispensation or modification may be either unconditional or subject to specified conditions.
- If an issuer, or other person has applied for, or been granted, a dispensation or modification, it must notify the FCA immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.
- The FCA has the right to revoke or modify a dispensation or modification.

2.4.3 Continuing Obligations

The continuing obligations for both standard and premium listed companies are contained in part within the LR, the DTR and UK Market Abuse Regulation (UK MAR). They govern the conduct of directors of listed companies and the

disclosure of information necessary to protect investors, maintain an orderly market and ensure that investors are treated fairly.

2.5 The Sponsor's Role

2.5.1 When a Sponsor must be Appointed

A company (issuer) with a listing of equity shares, or applying for an admission, to the equity shares (commercial companies) category, the closed-ended investment funds category or the equity shares (shell companies) category must appoint a sponsor. An issuer would also be required to appoint a sponsor when it is applying to transfer its category of listing.

An issuer with equity shares in the equity shares (commercial companies) category or the closed-ended investment funds category must appoint a sponsor in the following circumstances:

- where it requests the FCA for individual guidance in relation to the listing rules, the disclosure rules or the transparency rules
- where it will request the FCA for a modification, waiver or substitute operation of the rules in UKLR7 (significant transactions), UKLR 8 (related party transactions) and UKLR 11 (requirements for listing and continuing obligations), or
- where an issuer is proposing to enter into a transaction which could be considered as a reverse takeover or an initial transaction

2.5.2 Principles for Sponsors

Chapter 24 of UKLR sets out the requirements for sponsors, including high-level principles. The principles for sponsors are as follows:

- A sponsor must, in relation to a sponsor service, act with due care and skill and honesty and integrity.
- Where a sponsor provides guidance to a listed company, it must be satisfied that the directors of the listed company understand their

responsibilities and obligations under the UKLR and the DTR.

- It must deal with the FCA in an open and cooperative way, and deal with all enquiries raised by the FCA promptly at all times and whether acting on sponsor services or not.
- It must disclose to the FCA in a timely manner, when it has knowledge relating to the sponsor or the issuer which concerns non-compliance with the UKLRs and the DTR.
- It must take all reasonable steps to identify conflicts of interest that could adversely affect its ability to perform its function properly in accordance with its role as a sponsor.
- It must put in place and maintain effective organisational and administrative arrangements that ensure conflicts of interest do not adversely affect its ability to perform its function properly in accordance with its role as a sponsor. If the sponsor is not reasonably satisfied that its arrangements will ensure that a conflict of interest will not adversely affect its ability to perform its functions properly, then it must decline to provide sponsor services on the transaction.

If a company appoints more than one sponsor to provide sponsor services in relation to a transaction, then the appointment does not relieve either of the appointed sponsors of their obligations. Each sponsor will be responsible for complying with the duties and obligations in relation to the transaction.

2.5.3 The Role of a Sponsor on Transactions

In general, where a sponsor is appointed, it is required to liaise with the FCA, submit all documents required to the FCA, including the application for listing or circular to the FCA on behalf of its client.

In compliance with the principles noted above, the sponsor must also submit a conflicts declaration to the FCA. This confirms to the FCA that it has taken all steps to ensure that any conflicts of interest are being managed in such a way that it is not prevented from carrying out its responsibilities.

In addition, the sponsor has specific responsibilities depending on whether it is advising an issuer on an initial listing, a secondary offering of securities, or a

material transaction.

New Applications for Listing and Further Issues of Securities

In relation to an initial offering of shares, a sponsor must only submit to the FCA an application for admission to listing on behalf of an applicant when it has come to a reasonable opinion, after having made due and careful enquiry, that the:

- applicant has satisfied all requirements of UKLR relevant to an application for admission to listing
- applicant has satisfied all applicable requirements set out in the Prospectus Rules
- directors of the applicant have established procedures which enable the applicant to comply with the Listing Rules and the DTR on an ongoing basis
- directors of the applicant have established procedures which provide a reasonable basis for them to make proper judgements, on an ongoing basis, as to the financial position and prospects of the applicant and its group, and
- directors of the applicant have a reasonable basis on which to make the working capital statement required.

A sponsor must complete a sponsor's declaration, confirming the above, at the time of an application for listing, as well as a shareholder statement or pricing statement. These must be submitted to the FCA on the day that the FCA is to consider the application for approval of the prospectus.

2.6 Bringing Securities to the Market

2.6.1 Primary Offerings

An initial public offering (IPO) is also referred to as a flotation, and is the first time that a company offers shares to the public through a stock exchange.

There are five main methods for a new applicant to bring their securities to listing for the first time. They are referred to as primary offerings, and are:

- an offer for sale
- an offer for subscription
- an intermediaries offer
- a placing, and
- an introduction.

An introduction does not involve an offer of shares for sale; rather, it merely allows a company's existing shareholders to trade their shares on a stock exchange. The other four methods are known as marketing operations, as the company offers shares for sale and must take steps to market them effectively.

Offer for Sale

In an offer for sale, the company offers shares for sale to institutional investors and to the public (retail clients). These shares may have involved a new issue of shares by the company, for on-sale in the IPO, or they may be shares being sold by the company's existing shareholders, seeking a realisation of their investment. Either way, the offer itself is coordinated by the company's investment bank.

In most cases, the company will enter into agreements with underwriters (normally investment banks), whereby the underwriters undertake to acquire any unsold shares at the full offer price. Although this adds to the costs, it guarantees the issuer the full proceeds of the offer, and reduces the risk posed by volatile market conditions.

Offer for Subscription

An offer for subscription involves the company issuing new shares in response to applications for shares. The difference between this and an offer for sale is that the shares themselves are not physically in existence until applications have been received from investors, who become 'subscribers' for the shares.

Offers for subscriptions are commonly used in fundraisings by investment companies. In addition, there are tax benefits available for investors in unlisted companies (in particular, AIM Market quoted companies) which are only available on a subscription for shares. As with an offer for sale, offers for subscription are likely to be underwritten.

Intermediaries Offer

This is the method of issuing or selling shares to financial institutions such as stockbrokers. Clients of those intermediaries can then apply to buy shares from them, rather than offering the shares/issuing to the public at large.

Placing

This is the quickest, cheapest and most certain route open to a company to raise new funds. A company arranges for an investment bank to place blocks of new or existing securities with their investor client base and other institutional contacts. This is sometimes referred to as selective marketing, as the new securities are not offered to the wider community of institutional investors. This reduces the cost and time required for marketing the issue, as well as reducing costs.

A placing may be used in either a primary or a secondary offering, and may be used as a stand-alone route to an IPO or alongside an offer for sale, offer for subscription, and/or an intermediary's offer to widen the number of potential investors.

Introduction

This method does not involve an issue of new shares. Instead, shares which are already widely held are admitted to listing. An introduction is only available to an issuer when the shares are already of such amount and are so widely held that their marketability can be assured once they are listed. For example, it might be used by a company which has an overseas listing, and is seeking a secondary listing in the UK; or when a company is already admitted to the AIM Market and is now seeking a 'move up' to the Main Market.

2.6.2 Secondary Offerings

An existing issuer may seek to raise additional equity capital through one of the following methods, all of which are referred to as secondary offerings:

- rights issue
- secondary placing
- open offer, or
- vendor consideration placing.

When considering secondary offerings, pre-emption rights must be taken into account. Companies listed in the UK are required to have pre-emption rights in

their Articles of Association. These require a company which seeks to issue new shares in exchange for cash, to offer these shares in the first instance to its existing shareholders in proportion to their existing shareholdings.

Rights Issue

A rights issue is a transaction where a company offers all its existing shareholders the opportunity to buy further shares in that company in accordance with their pre-emption rights. In a rights issue, shareholders are offered shares pro-rata to their existing holding, at a discount to the existing market price. For example, in a one for five rights issue, shareholders are sent a transferable provisional allotment letter setting out their entitlement to buy one new share for every five that they currently hold. Shareholders may take up their entitlement and buy the shares; they may reject the offer; or they may sell their entitlement to third parties, at a price reflecting the level of the discount, by selling the provisional allotment letter.

In most cases, the company enters into underwriting agreements with its investment bank, which guarantees that it receives the money that it requires from the rights issue. If, however, the shares are offered at a 'deep' discount to the pre-offer share price, there may be no requirement for underwriting, or the fee will be relatively low.

Secondary Placing

This is where a large block of shares/securities is issued by the company, raising new capital. The company normally engages with an investment firm to handle the placing in the market, they do not have to be offered to existing shareholders.

Open Offer

An open offer is also a pre-emptive offer to existing shareholders to subscribe or purchase further shares in proportion to their existing shareholdings. However, unlike a rights issue, an open offer does not give shareholders a right to sell their entitlement to new shares, and the maximum price discount permissible (for listed companies) is 10%. As a result, it is seen to be less attractive to shareholders than a rights issue, and may have a lower chance of being successful. It is, therefore, common practice to combine an open offer with a placing, designed in effect to underwrite the open offer by ensuring that the

company has also identified institutional investors who are committed to taking up any unsold shares. An open offer also has a slightly shorter timescale, and is a quicker method of raising money for the issuer than a rights issue.

Vendor Consideration Placing

A vendor consideration placing (or vendor placing) is a way of raising a relatively small sum of money to finance an acquisition. It involves the issue of new shares to the vendor of the acquisition target as consideration for the acquisition, with a pre-arranged placing of these consideration shares in order to convert them into cash for the vendor. It is most easily explained using an illustration, as follows.

Example

Company A plc plans to acquire a small company, Company B ltd and wants to use its own shares as consideration. However, the shareholders of Company B ltd (the vendors) only wish to accept cash and refuse to take the shares in Company A plc as payment.

Company A plc is considering how to raise the cash. It has no cash and no debt capacity. The cost and time involved in a pre-emptive issue of shares to raise cash would be disproportionate to the size of the transaction. A placing to raise the cash will require shareholder approval for the disapplication of pre-emption rights, again, expensive and time-consuming. It decides on a vendor placing, and the acquisition will take the following form.

Company A plc issues new shares to the vendors of Company B ltd in consideration for the shares in B ltd. It has agreed in advance with its investment bank that these new shares will immediately be placed, on behalf of the vendors, with institutional and other investors. The placing realises cash that can be paid to the vendors, who are now effectively receiving cash consideration.

This issue of shares has been made in exchange for the Company B ltd shares, and not in exchange for cash, so that it does not breach the pre-emption right rules.

2.7 Notification Rules

2.7.1 Notification of the Acquisition or Disposal of Major Shareholdings

Under DTR Chapter 5, a person must notify an issuer when the percentage of its voting rights that it holds either as a shareholder or directly or indirectly through other financial instruments reaches certain thresholds. The requirement could arise either as a result of the person's acquisition or disposal of shares or financial instruments; or as a result of events changing the breakdown of voting rights (such as a new share issue or redemption of shares). Note that disclosure is required in respect of indirect holdings; this is discussed below.

The thresholds depend on the identity of the issuer, as follows:

- If the issuer is listed and incorporated in the UK, disclosure is needed if the percentage reaches, exceeds or falls below 3%, and each 1% thereafter up to 100%.
- In respect of a non-UK issuer, the thresholds requiring disclosure are 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. These thresholds also apply to a UK issuer where the shareholder is a regulated discretionary investment manager or regulated collective investment scheme (CIS).

The following exceptions to the disclosure requirements apply:

- Shares held by a custodian (or nominee) in its capacity, whether operating from an establishment in the UK or elsewhere, providing that such a person can only exercise voting rights attached to such shares under instructions given in writing or by electronic means by the ultimate underlying beneficial owners.
- Shares held by an authorised market maker acting only in that capacity, when the threshold for disclosure is 10% and each percentage point thereafter.
- Shares held by a credit institution or investment firm providing that they are held within the trading book, and that they do not use the voting

rights to intervene in the management of the underlying company. Here the threshold for disclosure is 5% and each percentage point thereafter.

- Shares held by a collateral taker under a collateral transaction which involves the outright transfer of securities, providing that the collateral taker does not declare any intention of exercising (and does not exercise) the voting rights attached to such shares.
- Shares provided by a borrower under a stock lending agreement providing that such shares (or equivalent) are on-lent or otherwise disposed of by the borrower by no later than close of business on the next trading day, or the borrower does not declare any intention of exercising (and does not exercise) the voting rights attached to the shares.

Indirect Shareholding

A person is an indirect holder of shares for the purpose of the applicable definition of shareholder to the extent that he is entitled to acquire, to dispose of or to exercise voting rights in any of the following cases or a combination of them:

a. Voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question.
b. Voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question.
c. Voting rights attaching to shares which are lodged as collateral with that person, providing that person controls the voting rights and declares their intention of exercising them.
d. Voting rights attaching to shares in which that person has the life interest.
e. Voting rights which are held, or may be exercised, within the meaning of points (a) to (d) or, in cases (f) and (h), by a person undertaking investment management, or by a management company, or by an undertaking controlled by that person.
f. Voting rights attaching to shares deposited with that person which the person can exercise at their discretion in the absence of specific

instructions from the shareholders.

g. Voting rights held by a third party in his own name on behalf of that person.

h. Voting rights which that person may exercise as a proxy when that person can exercise the voting rights at his discretion in the absence of specific instructions from the shareholders.

2.7.2 Qualifying Financial Instruments

The notifications in section 2.7.1 above apply to any qualifying financial instruments held by a person, directly or indirectly, unless the financial instruments are held by a person who is a client-serving intermediary acting in a client-serving capacity.

Qualifying financial instruments include:

- transferable securities (including shares and bonds) or
- options, futures, swaps, forward rate agreements, and any other derivative contracts, providing that they provide an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares of the issuer which are already issued, and to which voting rights are attached, and that the instrument holder will enjoy, on maturity, either the unconditional right, or the discretion to acquire the underlying shares, under a formal, legally binding agreement.

2.7.3 Disclosures by Issuers

Under DTR 5.6, in order to enable vote-holders to establish their percentage holding, the issuer must update the market with changes to its total voting rights (TVR). At the end of each calendar month during which it has increased or decreased its share capital, an issuer must disclose through an RIS:

- the total amount of voting rights and capital in respect of each class of share which it issues, and
- the total number of voting rights attaching to the issuer's shares which are held in treasury.

However, when during the calendar month there is an increase or decrease in total voting rights of 10% or more (for example, due to a rights issue or share buy-back), this must be announced immediately, and no later than the close of business on the business day following the change of TVR.

2.7.4 Aggregation of Holdings (Notification of Combined Holdings)

A person making the required notification must do so, under DTR 5.7, by reference to each of the following:

- The aggregate of all voting rights which the person holds as shareholder and as the direct or indirect holder of qualifying financial instruments, and financial instruments with similar economic effects.
- The aggregate of all voting rights held as direct or indirect shareholder (disregarding for this purpose holdings of financial instruments).
- The aggregate of all voting rights held as a result of direct, and indirect holdings of qualifying financial instruments.
- The aggregate of all voting rights deemed to be held as a result of direct, and indirect holdings of financial instruments, having similar economic effects to (but not including) qualifying financial instruments.

2.7.5 Procedures for Notification and Disclosure of Major Holdings

Under DTR 5.8, the disclosure of major holdings must be made to the issuer of the underlying shares (if they are traded on a Regulated Market) as well as to the FCA. It must be made as soon as possible, but no later than two trading days after the vote-holder becomes aware of their holding (extended to four trading days for holders in non-UK issuers).

Notifications in relation to voting rights held in an issuer admitted to trading on a UK-regulated market must be submitted to the FCA via the major shareholdings notification portal via the FCA's Electronic Submission System (ESS).

The notification must include:

- the resulting situation in terms of voting rights
- the chain of controlled undertakings through which voting rights are effectively held, if applicable
- the date on which the threshold was reached or crossed, and
- the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under certain specific conditions, and the identity of the person entitled to exercise voting rights on behalf of that shareholder.

A notification of voting rights arising from the holding of financial instruments must include the following information:

- the resulting situation in terms of voting rights
- if applicable, the chain of controlled undertakings through which financial instruments are effectively held
- the date on which the threshold was reached or crossed
- for instruments with an exercise period, an indication of the date or time period in which shares will, or can be acquired, if applicable
- date of maturity, or expiration of the instrument
- identity of the holder, and
- the name of the underlying issuer.

2.8 Classifying Transactions

If an issuer with a listing of equity shares in the equity shares (commercial companies) category enters into a transaction which is either a significant transaction or a reverse takeover, then it needs to assess whether it is required to establish whether shareholder approval or specific disclosure is required.

A transaction is classified by assessing its size relative to that of the listed company. The comparison of size is made using the percentage ratios resulting from applying the class test calculations to a transaction (see below).

The 'class tests' are set out in UKLR 7 Annex 1; they are applicable for the purposes of determining whether a transaction is a significant transaction or a

reverse takeover.

Notification of significant transactions

Listed companies must notify a Regulatory Information Service (RIS) as soon as possible after the terms of a significant transaction are agreed.
The notification must:

- state why the transaction is notifiable under UKLR 7
- contain an overview of the transaction and the company's reasons for entering into it
- include any further information the company considers relevant.

In addition, a listed company must notify a RIS as soon as possible after:

- the terms of a significant transaction are agreed
- the information required has been prepared or the listed company becomes, or ought reasonably to have become, aware of the information, and in any event by no later than the completion of the transaction.

The notification must include:

- for a disposal, the information required by UKLR 7 Annex 2 Part 2 (Disposals – financial information)
- for all transactions, the information required by UKLR 7 Annex 2 Part 3 (Non-financial information).

Where a significant transaction has taken place, the company must notify the RIS as soon as possible after its completion.
The full details of the information required to be published/disclosed are contained in UKLR 7 Annex 2 (Notification requirements).

2.8.1 The Class Tests

- **Gross assets test** – a division of the gross assets of the transaction target by the gross assets of the listed company, with gross assets defined as the total current assets plus the total non-current assets.

- **Consideration test** – a division of the total consideration paid or received for the target, by the market capitalisation of the listed company on the last business day before the announcement of the transaction.
- **Gross capital test** – a division of the gross capital of the transaction target by the gross capital of the listed company. Gross capital for the listed company is defined as its market capitalisation, plus its net debt. Gross capital for the target is defined as the sum of the consideration, the value of any shares, or debt not being acquired, any other non-current liabilities and the total of any excess of current liabilities over current assets.

2.9 AIM Market – Specific Rules

The AIM Market was first established by the LSE under the name of the Alternative Investment Market. It was originally intended to be a junior market providing light-touch regulation for smaller businesses. Over the years a wide range of businesses, including early stage and venture capital-backed, as well as more established companies from the UK and overseas, have joined the AIM Market seeking access to growth capital.

The AIM Market is classified as an exchange-regulated market, whereas the Main Market is classified as a regulated market. This means that the AIM Market does not meet the requirements to be a regulated market under UK MiFID II and is not regulated by the FCA.

Instead, it is regulated by its owner and operator, which is the LSE in its capacity as an RIE under Part XVIII of FSMA. The AIM Market, therefore, falls within the definition of a prescribed market under FSMA and is subject to the UK Market Abuse Regulation.

The AIM Market is not a regulated market but, instead, falls within the classification of an SME Growth Market MTF, as defined under MiFID II, and a prescribed and exchange-regulated market by the FCA.

Companies wishing to list on the AIM Market apply to the LSE.

2.9.1 AIM Market Rules and Other Regulatory Requirements

The AIM Market is renowned worldwide for its balanced approach to regulation, which is uniquely suited to smaller companies. The AIM Market rules are concise and principles based, they are divided into rules for:

- companies, and
- nominated advisers.

Because of the light-touch nature of the AIM Market regime, a significant emphasis is placed on the role of Nomads, who are responsible for advising AIM companies on the interpretation of, and compliance with, the rules on an ongoing basis.

Additionally, a company seeking admission to the AIM Market is subject to the requirements of the Prospectus Rules and, on an ongoing basis, to certain provisions of the DTR.

The rules on the disclosure of major interests in shares apply to those AIM companies which are incorporated under the Companies Act, or which are incorporated and have their principal place of business in the UK. They do not apply to non-UK companies quoted on the AIM Market, who are subject to their home state rules on vote-holder notifications.

2.9.2 Nominated Advisers (Nomads) and Brokers

An AIM Market company must retain the services of a nominated adviser (Nomad) at all times. The Nomad would be responsible to the LSE for assessing the appropriateness of an applicant for the AIM Market, and for advising and guiding companies on responsibilities under the AIM Market rules. The Nomad must be approved by the LSE and included on the current Nomad register maintained by the LSE.

In addition, the AIM Market company must at all times retain the services of a broker (which must be a securities house which is a member of the LSE) to support trading in the company's shares, and to assist in pricing and marketing a flotation. If the company does not have a market maker registered for its shares,

the broker must use its best endeavours to find a matching business in the company's shares.

The nomad and the broker can be the same firm, providing that procedures are in place to manage conflicts of interest arising in the course of fundraising. If an AIM Market company ceases to have a Nomad, the LSE will suspend trading in its securities. If within one month of that suspension the company has failed to appoint a replacement Nomad, its admission will be cancelled.

When a new Nomad is appointed, the company must notify the market of that fact, and the Nomad itself must submit a new Nomad's declaration to the LSE, pursuant to the AIM Market Rules for nominated advisers.

The Duties of the Nominated Adviser

The main duties of the nominated adviser are to confirm to the LSE that a company is appropriate for the AIM Market, and ensure it is able to comply with the AIM Market Rules on an ongoing basis.

These duties are broken down in the AIM Market rules for nominated advisers into a number of different areas.

Eligibility

A firm seeking approval as a Nomad must be, and continue to be, eligible to perform this function. In particular, it must:

- be a firm or company (individuals are not eligible)
- have practised corporate finance for at least the last two years
- have acted on at least three relevant transactions during that two-year period, and
- employ at least four qualified executives.

A qualified executive is a full-time employee of the applicant, who has acted in a:

- corporate finance advisory role, which may include the regulation of corporate finance, for at least the last three years, and
- lead corporate finance role on at least three relevant transactions in that three-year period.

A proposed qualified executive must be able to demonstrate a sound understanding of the UK corporate finance market and AIM Market in particular.

Once approved as a Nomad, the firm must continue to maintain its eligibility by maintaining sufficient qualified employees and continuing to act on relevant transactions.

Admission

On advising a company on seeking admission to the AIM Market, the Nomad must assess the appropriateness of that company for admission, using third-party resources as appropriate. As part of this obligation, it is required to carry out extensive due diligence on the company (with reference to a prescriptive list of measures set out in the rules). It must also assess the company's board of directors and the suitability of the directors, and confirm that these directors understand their obligations under the AIM Market rules. They are required to oversee and have an active involvement in the preparation of the admission document or prospectus, and confirm to the LSE in writing the information provided in relation to AIM Market applicants.

Ongoing Obligations

The Nomad must be available at all times to advise and guide the directors of its AIM Market clients about their obligations, and to ensure compliance with the AIM Market rules, and must ensure that at least two members of staff are allocated to that company, of whom at least one is a qualified executive. It must liaise with the LSE in any requests for information and inform the LSE as soon as practicable of any rule breach by its clients or itself.

It must regularly review the AIM Market company's financial trading performance and condition against any profit forecast, estimate or projection made by it, to evaluate whether an announcement is required. In this regard, it should review all announcements made by its clients in advance of their publication. There is a general obligation to act with due skill and care at all times, as well as remaining independent and managing any conflicts of interest.

There is a general obligation of the nominated adviser (nomad) to act with due skill and care at all times. They must also maintain independence and effectively manage any conflicts of interest that may arise. This ensures that the nomad can

provide unbiased and competent advice to their AIM Market clients, maintaining the integrity of the market.

2.9.3 Admission Procedure

For a company to be admitted to trading on the AIM Market, it must be incorporated as a public limited company. Its shares must be freely transferable. However, there is no minimum free float, no minimum trading history and no minimum market value of the shares. It must normally publish an admission document (or prospectus), which must be available publicly, free of charge, for at least one month from the admission of the applicant's securities to the AIM Market.

At least ten business days before its expected admission to the AIM Market, the applicant must provide the LSE with the following information in the form of a pre-admission announcement:

- Its name.
- Its country of incorporation.
- Its registered office address and, if different, its trading address.
- The website address at which the information required by AIM Market Rule 26 will be available.
- A brief description of its business (including its main country of operation) or, in the case of an investing company, details of its investing policy (if the admission is being sought as a result of a reverse takeover under AIM Market Rule 14, this should be stated).
- The number and type of securities in respect of which it seeks admission, and detailing the number and type of securities to be held as treasury shares, including details of any restrictions as to transfer of the securities.
- The capital to be raised on admission, if applicable, and its anticipated market capitalisation on admission.
- The percentage of AIM Market securities not in public hands at admission (insofar as it is aware) and details of any other exchange or trading platform on which the securities (or any other securities of the company)

are, or will, be admitted or traded as a result of an application or agreement of the applicant.

- The full names and functions of its directors and proposed directors (underlining the first name by which each is known or including any other name by which each is known).
- Insofar as is known to it, the full name of any significant shareholder before and after admission, together with the percentage of each such person's interest (underlining the first name by which each is known or including any other name by which each is known in the case of individuals).
- The names of any persons who will be disclosed in the admission document as receiving fees (other than in the ordinary course of business) totalling £10,000 or more in the 12 months prior to admission or in relation to admission.
- Its anticipated accounting reference date, the date to which it has prepared the main financial information in its admission document and the dates by which it must publish its first three reports.
- Its expected admission date.
- The name and address of its nominated adviser and broker.
- The corporate governance code that the board of directors of the applicant has decided to apply.
- Other than in the case of a quoted applicant, details of where any admission document will be made available with a statement that this will contain full details about the applicant and the admission of its securities.

At least three business days before the expected date of admission, an applicant must submit to the LSE a completed application form and an electronic version of its admission document. These must be accompanied by the Nomad's declaration confirming the applicant's suitability for admission to the AIM Market, as required by the AIM Market Rules for Nominated Advisers.

Admission becomes effective only when the LSE issues a dealing notice to that effect. The LSE may make the admission of an applicant subject to a special condition.

The Prospectus Regulation Rules (PRR)

Following the implementation on 16 January 2026 of the FCA's final rules of the new Public Offers and Admissions to Trading Regulations 2024 (POATRs), which are embedded in the 'Admission to Trading on a Regulated Market (PRM) sourcebook, one of the changes impacts admissions to MTFs (ie, the AIM Market).

Companies seek to list on an MTF will be required to produce an 'MTF admission prospectus' – which will include companies seeking to list on the AIM Market.

This means that an MTF operator, such as the London Stock Exchange (LSE) for the AIM Market, instead of the FCA will be responsible for setting the prospectus requirements. There will be certain specific exemptions available.

The main exceptions are:

- securities offered in connection with trading on a regulated market (like the LSE's Main Market)
- a primary multilateral trading facility (MTF) where retail investors can trade (like the LSE's AIM or AQSE Growth Market), and
- a public offer platform (POP).

These exemptions allow offers to be made without needing a full prospectus.

The objective of the POATRs framework is to make it easier for companies to raise capital in the UK and reduce costs for companies. These more proportionate rules will improve the relative competitiveness of UK regulation compared to other jurisdictions.

2.9.4 Disclosure Requirements Around Price-Sensitive Information

AIM Market companies have ongoing obligations to:

- publish price-sensitive information without delay regarding their financial condition, sphere of activity and actual or expected performance
- disclose details of significant transactions
- seek shareholder approval for any transaction which qualifies as a reverse takeover, and

- ensure directors and applicable employees do not trade during a closed period.

Within these requirements, the following specific rules apply. The main requirement is that under AIM Market Rule 11, an AIM Market company must issue notification without delay of any new developments which are not public knowledge concerning a change in:

- its financial condition
- its sphere of activity
- the performance of its business, and
- its expectation of its performance,

which, if made public, would be likely to lead to a substantial movement in the price of its AIM Market securities.

The requirements of Rule 11 are in addition to any requirements regarding notification contained elsewhere in the rules. An AIM Market company need not notify information about impending developments or matters in the course of negotiation and may give such information in confidence to:

- the AIM Market company's advisers and advisers of any other persons involved or who may be involved in the development or matter in question
- persons with whom the company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or places for its securities)
- representatives of its employees or trades unions acting on their behalf
- any government department, the Bank of England, the Competition Commission, or any other statutory, or regulatory body, or authority, and
- the AIM Market company's lenders

The AIM Market company must be satisfied that such recipients of information are aware that they must not trade in its AIM Market securities before the relevant information has been notified.

However, if the company has reason to believe that a breach of such confidence has occurred, or is likely to occur and, in either case, the matter is such that

knowledge of it would be likely to lead to substantial movement in the price of its securities on the AIM Market, it must, without delay, issue at least a warning notification to the effect that it expects shortly to release information regarding such a matter.

When such information has been made public, the AIM Market companies must notify that information without delay.

The information that is required by these rules must be notified by the company no later than it is published elsewhere. The company must retain a regulatory information service (RIS) provider to ensure that information can be notified as and when required. An AIM Market company must take reasonable care to ensure that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information. It will be presumed that information notified to an RIS is required by these rules, or other legal or regulatory requirement, unless otherwise designated.

It should be noted that there is a requirement for an AIM Market company to maintain an insider list under UK MAR, which was not previously the case, although this has been relaxed under UK MiFID II following the AIM Market being approved as a SME Growth Market. To comply with this exemption, AIM Market companies must take all reasonable steps to ensure that any person with inside information is aware of and acknowledges the legal and regulatory duties and the sanctions that apply.

2.10 Admission to Trading on a Regulated Market ('PRM')

The purpose of a prospectus is to give potential investors a complete, accurate and up-to-date understanding of the issuer, including its history, management, structure, finances, operations and prospects. The rules set out the form, contents and approval requirements for prospectuses.

On 16 January 2026, the following new requirements came into effect; they are referred to as the POATR (Public Offers and Admissions to Trading Regime). The FCA's Prospectus Regulation Rules (PRR) sourcebook was deleted from the

Handbook and replaced with the PRM (Admission to Trading on a Regulated Market) sourcebook.

In line with other measures by the UK government to revitalise UK capital markets, these new rules are aimed at increasing the attractiveness of the UK market by reducing the regulatory burden and simplifying the process to raise new capital, as well as reducing costs.

The New Prospectus Rules in the PRM have been prepared following a series of public consultations and consist of the Public Offers and Admissions to Trading Regulations 2024 as well as the Prospectus Rules: Admission to Trading on a Regulated Market (also known as the new FCA sourcebook).

The key changes to the Prospectus requirements include following:

- For secondary issuances, the threshold at which a prospectus is required is increased from 20% of existing share capital to 75%,
    - for closed-ended investment funds (CEIFs), to 100%.
- New MTF admission prospectus for admission to trading on a primary MTF,
    - which includes the AIM Market.
- Introduction of protected forward looking statement (PFLS) relating to prospectus disclosures with a higher liability standard to encourage more useful and accurate disclosures from issuer companies.
- Additional measures to increase retail participation, including reducing the period on an IPO during which the prospectus must be made available to the public from six working days to three working days.

When is a prospectus required?

- Under the previous UK prospectus rules, the requirements for a prospectus were
    - an offer to the public of securities, and/or
    - admission to trading on a UK-regulated market.

- The requirements under the 'New Prospectus Rules' (as noted in the PRM) requires a Prospectus to be produced where there is an admission to trading on a UK regulated market or a primary MTF.
    - Further, an offer of securities to the public is prohibited unless an exemption applies (ie, this is no longer a requirement to publish a prospectus)
    - therefore, there will no longer be an option to proceed with an offering of securities to the public that does not benefit from an exemption by simply publishing a prospectus.

The New Prospectus Rules – Offers to the Public

- The general rule is that offers to the public of securities are prohibited unless an exemption applies.
- The list of available exemptions has expanded while exemptions under the old prospectus rules have largely been retained
    - including the exemptions for offers made only to qualified investors and offers to fewer than 150 persons in the UK (excluding qualified investors)
- Significant new exemptions including:
    - offerings of securities that are admitted to trading on a UK-regulated market or primary MTF, effectively creating a much simpler regime in many cases where now only the admissions to trading rules apply (where previously the offers to the public rules also applied)
    - offerings in connection with a takeover offer (subject to certain conditions)
    - offerings to persons already connected to the issuer, such as existing shareholders, and
    - offerings made via a regulated public offer platform ('POP'), which is a new type of venue for raising capital that has been introduced by the FCA under separate rules to dovetail with the New Prospectus

- the threshold of the minimum offering size exemption has been reduced from €8 million – to £5 million:
    - offerings in excess of £5 million (that cannot rely on any other exemption) will have to be made via a POP
    - in addition, the minimum denomination threshold has been reduced from €100,000 to £50,000.

The New Prospectus Rules – Admission to Trading

- As is the case with offers to the public, prospectuses will be required in mainly the same situations under the New Prospectus Rules in the PRM when an issuer is seeking admission to trading on a UK-regulated market.
- The exemptions from article 1(5) of the UK Prospectus Regulation have been retained (including the exemptions for securities arising from conversion and securities offered to employees or directors). Three key areas of change include the following:

Secondary Issuances

- As highlighted above, for further issuance of securities already admitted to trading, the threshold at which a prospectus is required has been increased from 20% of existing share capital to 75%.
    - This brings the UK position closer to EU requirements; the EU Listing Act reformed the EU Prospectus rules.
- The position for CEIFs has been relaxed, where new funds are raised, they will be managed in line with the CEIF's investment policy, prospectuses would only be required for issuances of ordinary shares or C shares (shares that typically convert into ordinary shares after a specified period) greater than 100% of the existing capital of that class of share.
    - Where a prospectus is not required under the New Prospectus Rules in the PRM for a secondary issuance, the issuer (whether a company or a CEIF) may still decide to publish a voluntary prospectus. In this situation, the issuer will have discretion to publish a full or simplified prospectus and will not require FCA approval.

Takeovers

- The New Prospectus Rules in the PRM retain the existing exemption from the prospectus requirements if a takeover exemption document describing the transaction and its impact on the issuer is published.
    - The FCA provided further guidance with regards to the form and content of the document (in October 2025).
    - The FCA clarified that the use of 'takeover exemption' documents will be available to transactions structured as either contractual offers or schemes of arrangements.
    - The FCA guidance prescribes the form and content of the takeover exemption document in situations where the takeover is not subject to the Code.
    - FCA approval of the exemption document will only be required in respect of takeovers involving securities that are not fungible with those already admitted to trading, or where the takeover is a reverse acquisition takeover.

Admission to a Primary MTF (eg, AIM Market)

- For the first time, a prospectus will be required for initial admission to trading on primary MTFs.
    - This will include reverse takeovers where the acquisition leads to the cancellation of the company's admission to trading but will not extend to offers made to qualified investors only or to secondary issuances.
    - An MTF prospectus will not need to be approved by the FCA.
    - Content, format and authorisation processes will fall within the domain of the MTF primary operator (in the case of the AIM Market this will be the LSE)
        - but MTF prospectuses will be subject to the same 'necessary information test' as prospectuses for admission to trading on a UK-regulated market.

        - MTF operators will have significant discretion over how this operates in practice and they will also determine the sanctions that issuers may face if they fail to publish a prospectus.

What do the New Prospectus Rules (in the PRM) mean in Practice?

IPOs

- A prospectus will still be required for an IPO on a UK regulated market (including the LSE), and, for the first time, an MTF admission prospectus will be required for an IPO on a primary MTF (as noted above).
    - the aim is to encourage retail participation.
    - the new regime also reduces the amount of time a prospectus must be made available to the public from six working days to three working days.
        - this is aimed at mitigating the risks and assuaging concerns associated with market fluctuations in the lead-up to the IPO.
- The timelines for an MTF prospectus may be different due to the individual MTF operator's discretion as to the process for reviewing and approving prospectus documents.
    - the aim is that the MTF admission prospectus will lead to increased retail participation in IPOs on the AIM Market as opposed to issuers limiting their offering to a low number of participants or qualified investors.

Secondary Issuances

- The New Prospectus Rules in the PRM introduce a significant change to secondary issuances by allowing companies to issue up to 75% of their existing share capital without the need for a prospectus.
    - the removal of the prospectus requirement for most secondary issuances makes it simpler to raise capital in the UK markets and will facilitate takeover offers with share-for-share consideration.

- The New Prospectus Rules in the PRM, coupled with the changes to the UK Listing Rules, are intended to reduce red tape around the listing process for secondary issuances.
- In respect of secondary issuances on primary MTFs (such as the AIM Market), the operators of the relevant MTF will have discretion to decide whether an MTF admission prospectus will be required.

Takeovers

- Takeover exemption documents (in place of a prospectus) will only be required where the takeover involves a UK bidder offering over 75% of its share capital listed on UK-regulated markets as consideration.
- Where the consideration offered by a UK bidder is less than 75% of its share capital listed on UK-regulated markets, exemptions to the requirement to publish a prospectus are achieved through an (at times complex) interaction of the exemptions in the New Prospectus Rules in the PRM as follows:
    - A takeover through a scheme of arrangement will fall within:
        - a specific exemption to the prohibition on an offer to the public, and
        - an exemption to the admission to trading prospectus trigger provided the consideration shares have already been admitted to trading and the new secondary issuances exemption applies (ie, less than 75% of existing share capital).
    - A takeover through a contractual offer will fall within:
        - an exemption to the prohibition on an offer to the public provided it involves (even in part) consideration in the form of shares listed on a UK-regulated market or primary MTF, as it will be considered an admission to trading, and
        - an exemption to the admission to trading prospectus trigger provided the consideration shares are of a class

already admitted to trading and the new secondary issuances exemption applies (ie, less than 75% of existing share capital).

- Similarly to the previous rules, the New Prospectus Rules (in the PRM) only apply to 'transferrable securities'. Therefore, we expect market practice in respect of stub equity deals on public to private transactions to remain the same – being that no prospectus is required if the unlisted shares in the offeror vehicle contain sufficient transfer restrictions such that they would not be considered 'transferrable securities'.

Unlisted Companies and Prospectuses

- Private companies and unlisted public companies can no longer offer securities (worth over £5 million) to the public by simply publishing a prospectus (unless they fall within one of the exemptions).
- Such offerings will instead have to make use of a POP.

PFLS: Protected Forward-looking Statements

- PFLS introduces the concept of different liability standards for certain forward-looking statements, in particular in respect of future financial performance and sustainability objectives.
    - If a forward-looking statement meets the criteria of a PFLS, it will be subject to a fraud or recklessness liability standard (as opposed to the lower negligence standard).
    - This aims to reduce issuer concerns about the liability burden and encourage disclosure of information that investors will find useful in making informed investment decisions.
- Not every statement is considered to be a PFLS, and to qualify as such the statement must be:
    - clearly identified as forward-looking,
    - estimate when the events or circumstances mentioned are likely to occur
    - contain information a reasonable investor would use to decide investment decisions, and

    - contain financial or operational information about the issuer, with figures or information that is empirically verifiable.
- The FCA stated that PFLS should be prepared so that they are understandable, representative of the issuer's actual plans and strategies, and comparable.
- Examples of types of PFLS (provided that specific timeframes are referenced) would include financial forecasts, strategic plans, capital expenditure plans and sustainability goals.

Other Changes

- The permitted length of a prospectus summary will increase from seven to ten pages and allow cross-referencing to other sections.
    - The need for a financial annex will be removed, allowing cross-referencing to relevant financials instead.
- The requirement for a working capital statement for a prospectus is retained.
- Additional requirements in respect of climate-related disclosures have been introduced which apply to issuers of equity securities (and depositary receipts representing equity shares).
    - CEIFs, open-ended investments companies and shell companies have been explicitly excluded.

As noted above, some of the 'previous exemptions' are still applicable under the new regime.

A prospectus may not be required in certain circumstances, in particular:

- for units/shares issued by an open-ended investment company (OEIC)
- for a bonus or capitalisation issue
- for issues of money market instruments with maturities of less than 12 months
- for the exercise of conversion rights or warrants, when this represents less than 20% of the issued share capital in any 12-month period

- for shares issued in place of shares already listed, so long as the total nominal value does not increase as a result, eg, a share split or consolidation
- with small issues of already-listed securities, which will not increase the class of securities in issue by 20% or more over a year. (The 20% per 12-month period is a combined total of small issues of securities and the exercise of conversion rights and warrants with effect from July 2019)
- small issues of less than €1 million over a period of 12 months, and
- for securities already admitted to trading on one regulated market, which will not require a prospectus to seek admission to trading on additional markets, providing that they have a minimum trading history of more than 18 months.

While gilts are technically exempt from the prospectus requirements under the Financial Services and Markets Act 2000 (FSMA) due to being issued by a government body, the DMO produces a prospectus for every gilt auction to provide essential details of the stock. The gilt prospectus (often titled 'Offering Circular') provides full details on the terms under which a specific gilt is issued, including coupon rate, maturity date, and auction date and is typically published one week in advance of a gilt auction.

2.10.1 Qualified Investors

Qualified investors comprise:

- professional clients, and
- eligible counterparties.

Refer to chapter 2, section 14 for details on the MiFID client categorisations.

2.10.2 Interaction of the Prospectus Regulation Rules and the Financial Promotion Rules

Whenever a company is considering a primary or secondary offering of shares, it must consider whether a prospectus is required. As set out in the section above, there is a wide range of exemptions available, and, if the company can benefit

from one or more of these exemptions, then it need not produce a prospectus. In particular, if a company is seeking admission to the AIM Market, but does not market its shares widely, it may take advantage of the 'private placement' exemption, which is often considered to be a very significant advantage in terms of time, expense and complexity.

However, there are some advantages to producing a prospectus. A prospectus which has been approved by the FCA in accordance with the provisions of FSMA and the PRM Sourcebook rule may be distributed widely, without restriction in the UK. When a company has determined that no prospectus is required for its share offering, it must still consider whether it has any obligations under the Financial Promotions regime, and in particular, the requirements under Section 21 of FSMA and COBS 4 (refer to chapter 2, section 14). This is because a share offering constitutes a financial promotion.

The Financial Promotion Order (FPO) provides a number of exemptions from the requirement to comply with Section 21 and COBS 4. The exemption which is relevant to prospectuses is found in Article 70, which provides, inter alia, that the financial promotions restriction does not apply to any non-real-time communication which is included in a prospectus or supplementary prospectus approved in accordance with the Prospectus Regulation Rules, or any other document required, or permitted to be published, by the Listing Rules or Prospectus Regulation Rules. A further exemption is found in Article 19, whereby a communication which is only made to investment professionals, high net worth individuals (HNWIs), and sophisticated investors is also outside the scope of the regime.

In summary, a company which is offering transferable securities to the public may have to produce and have approved a prospectus. If exemptions are available from this requirement under the Prospectus Regulation Rules, then it must still consider whether exemptions are available under the FPO; otherwise, its offering document must comply with the restrictions of Section 21 of the FSMA. The FPO provides a wide number of exemptions to the requirements of Section 21 of the FSMA.

2.10.3 Responsibility for the Preparation of a Prospectus

One of the adviser's main obligations is coordinating the preparation of the prospectus in connection with an offering. However, the primary responsibility for the contents of a prospectus lies with the directors of the issuer. To this end, they are required to make a statement in the prospectus acknowledging their responsibility. In addition, they must also confirm to the FCA, by signed letter, that the prospectus contains all relevant information that they know, or should have been aware of, as the directors of the company.

2.10.4 Approval of the Prospectus

A prospectus must not be published, advertised or circulated until it has been approved by the FCA – acting in accordance with its powers under Part 6 of the FSMA.

The FCA is also responsible for the Prospectus Directive. To obtain approval, the sponsor must provide the FCA with certain stipulated information at least ten clear business days (excluding bank holidays) before the approval is granted (20 days for new issuers or in complicated cases). Where the FCA decides that the prospectus does not meet the requirements, it will advise the issuer, the offeror, or person asking for the admission to trading on a regulated market of the changes or supplementary information that is needed.

The information is known as the ten-day documents, and the main items include:

- draft prospectus and cover, and copies of all documents referred to within them
- request for authorisation to omit information normally required under the rules
- application forms to acquire or subscribe for shares
- copies of documents containing information to be incorporated by reference in the prospectus
- checklists cross-referencing the draft prospectus contents to the requirements of the Prospectus Requirements
- copies of the board resolution allotting the securities (or confirmation that this will be provided within three days of approval)

- the sponsor's declaration on an application for listing (for a premium listing only), and
- details of a contact available to answer questions, available from 07.00 to 18.00.

In order to obtain final approval, the sponsor must provide the FCA with the information listed above in final form, including the final version of the prospectus.

2.10.5 Contents of the Prospectus

The prospectus must contain all information necessary to enable investors to make an informed assessment of the company ('issuer') assets and liabilities, financial position, profits, and losses, and prospects, any guarantor and the rights attaching to the transferable securities.

This necessary information must be presented in a form which is comprehensible and easy to analyse, and must be prepared having regard to the particular nature of the transferable securities and their issuer. There are three parts to the prospectus:

1. Summary

    - Contains key information that investors need in order to understand the nature and risk of the issuer (risk factors):

        - briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.

    This must be accurate, fair and clear and shall not be misleading.

    - Although no summary is required where such securities are to be traded on a regulated market to which only qualified investors can trade in the securities or the denomination per unit will be £50,000.
    - Be made up of four parts:

        - an introduction containing warnings

- key information on the issuer
- key information on the securities
- key information on the offer of securities to the public and/or the admission to trading on a regulated market.

2. Registration document

   - Contains general information about the issue and the issuer.

3. Securities note

   - Contains detailed information about the equity or non-equity securities being offered.
   - Each part may be produced and approved by the FCA separately as a tripartite prospectus. More commonly, it may be prepared and approved as a single document. The full contents of the registration document and securities note are specified in detail in the Prospectus Regulation Rules and vary according to the type of securities being issued (eg, debt or equity), and the nature of the issuing company (eg, bank or investment company).

Supplementary Prospectus

It may be the case that, subsequent to approval of the prospectus, there is a significant change in the company's state of affairs. If this is the case, then a supplementary prospectus should be published giving details of the change, or new matter that has arisen. This must be submitted to the FCA for approval as soon as practicable.

2.10.6 Publishing the Prospectus

After a prospectus is approved by the FCA, it must be filed with the FCA and made available to the public, as soon as practicable, and in any case at a reasonable time in advance of, and at the latest at the beginning of, the offer, or the admission to trading of the transferable securities involved. In the case of an offer of a class of shares not already admitted to trading that is to be admitted to trading for the first time, the prospectus must be made available to the public at least six working days before the end of the offer.

A prospectus is deemed to be made available to the public for the purposes of PR 3.2.2 (publication of the prospectus) when published in electronic form on any of the following websites:

- the website of the issuer, the offeror or the person asking for the admission to trading on a regulated market
- the website of the financial intermediaries placing or selling the securities, including paying agents, and
- the website of the regulated market where the admission to trading is sought, or where no admission to trading on a regulated market is sought, the website of the operator of the MTF.

The text and the format of the prospectus made available to the public must, at all times, be identical to the original version approved by the FCA. All prospectuses must be publicly available in electronic format for at least ten years after their publication on the website referred to above.

2.11 Model Code

Prior to the implementation of MAR (now UK MAR), the UK's Model Code contained the requirements and restrictions placed on directors of listed companies in respect of dealings in the company. However, the FCA deleted the Model Code as this was not compatible with the requirements set out in MAR.

MAR introduced the concept of persons discharging managerial responsibilities (PDMRs) and closely associated persons (CAPs), whereas the Model Code only applied to directors of listed companies. The scope of PDMRs includes directors, but will also capture senior management who are not directors but have roles which direct and manage the company on a daily basis and can have a big impact on the company's success.

UK MAR contains a de minimis threshold below which transactions will not require disclosure. This is set at €5,000 per calendar year (note that this should be calculated without netting of transactions). There is flexibility under UK MAR for competent authorities to increase this threshold (up to €20,000); however, the FCA has indicated that it does not intend to do this.

Changes to UK MAR came into force in 2021, provide a longer timeline for listed companies to announce details of dealings by persons discharging managerial responsibilities (PDMRs) and their closely associated persons (CAPS).

Previously there was a three-business-day window during which PDMRs and their CAPs had to notify their dealings to the FCA, upon which the issuer had to announce details of the transaction to the market before the end of that same three-business-day window.

Now, there is a separate period for the PDMR or CAP to notify the issuer and the FCA – three working days from the transaction and the issuer then has two working days from being notified to report to the market.

The changes made to UK MAR were introduced under the Financial Services Act 2021.

Disclosure must be made using a specific template and be submitted to the FCA as the same time as to the company ('issuer').

The period for the company/issuer to make notification to the market is also calculated by reference to the date of the transaction, rather than the date of notification by the PDMR/CAP. As a result, these two periods (both of three business days) run concurrently rather than consecutively.

Disclosure is required in respect of 'own account transactions' relating to shares or debt instruments of the company/issuer or derivatives or other financial instruments linked thereto.

The types of transactions required to be disclosed are also wide-ranging. A non-exhaustive list of types of transaction is set out in Article 19 of UK MAR and Article 10 of the Level 2 text. This includes transactions executed by a third party under an individual portfolio or asset management mandate on behalf of or for the benefit of a PDMR/CAP, gifts and inheritances, lending/borrowing transactions, entering into or exercise of equity swaps, entering into contracts for differences (CFDs) and the conversion (including automatic conversion) of a financial instrument into another financial instrument (including the exchange of convertible bonds to shares).

Notification will not be required where, at the time of the transaction, the financial instrument:

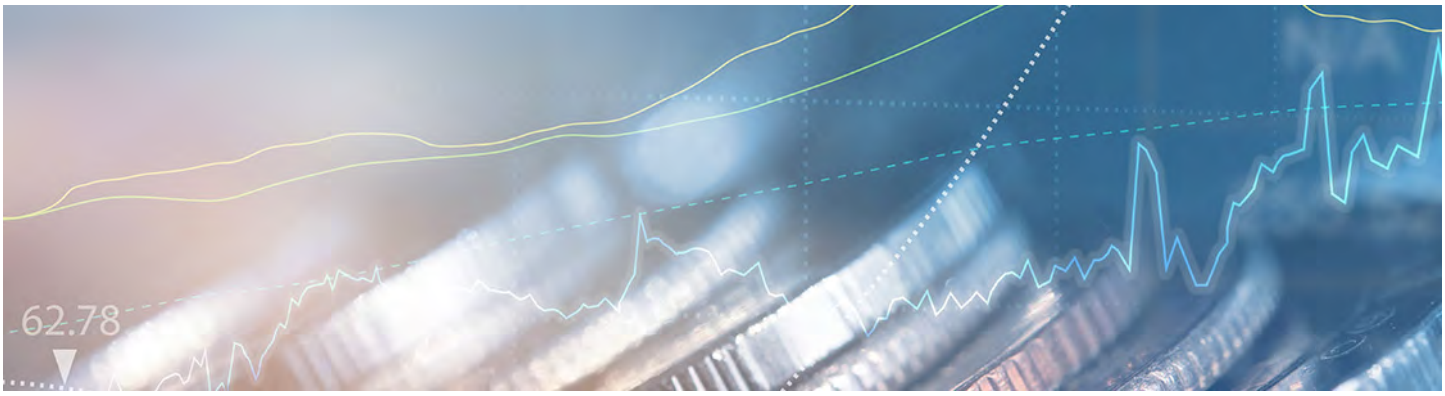
- is a unit/share in a collective investment undertaking in which exposure to the issuer's shares or debt instruments does not exceed 20% of the assets held by the collective investment undertaking
- provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20% of the portfolio's assets, or
- is a unit/share in a collective investment undertaking or provides exposure to a portfolio of assets and the PDMR/CAP does not know (and could not know) the investment composition or exposure in relation to the issuer's shares/debt instruments and there is no reason for them to believe the 20% threshold is exceeded.

Closed Periods

UK MAR includes a prohibition (subject to limited exceptions) – on just PDMRs – conducting any transactions on their own account, or for the account of a third party, during a 'closed period'. This closed period covers 30 calendar days before the announcement of an interim financial report, or year-end report, which the company is obliged to make public under the rules of the trading venue where its shares are admitted to trading, or under national law.

MAR does envisage that certain transactions should be permitted during a closed period, due to certain specific circumstances either:

- on a case-by-case basis as a result of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares, or
- due to the characteristics of the trading involved for transactions made under, or related to, an employee share or saving scheme, qualification or entitlement of shares, or transactions where the beneficial interest in the relevant security does not change.



3. Market Abuse

3.1 The Market Abuse Regulation (MAR)

Brexit and the Impact on EU Legislation

Following Brexit, the UK government (HM Treasury) onshored relevant EU legislation under the European Union (Withdrawal) Act 2018. Therefore, 'MAR' in the UK is referred to as 'UK MAR'.

3.1.1 Scope and Application

The Market Abuse Regulation (MAR) came into effect in 2016, replacing the previous Market Abuse Directive (MAD).

The scope and application of UK MAR applies in the following conditions:

a. financial instruments admitted to trading on an UK or EEA-regulated market, or for which a request for admission to trading on a regulated market has been made
b. financial instruments traded on an MTF, admitted to trading on an MTF, or for which a request for admission to trading on an MTF has been made
c. financial instruments traded on an OTF, or
d. financial instruments not covered by point (a), (b) or (c), the price, or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference (CFDs).

The extended reach of scope means that UK MAR applies to OTC (bilaterally agreed) transactions where the underlying financial instrument could impact the price of a financial instrument that is listed on, admitted to trade on, or for which a request has been made to trade on a regulated trading venue (regulated market, MTF or OTF).

The definition of a financial instrument is derived from MiFID II (refer to chapter 1, section 3.6.2).

Therefore, operators of Regulated Markets, MTFs, or OTFs have an obligation to notify the FCA for financial instruments for which a request for admission to trading on their venue is made.

Captured by the provisions in UK MAR are financial instruments dual-listed in the UK and a third country market (ie, shares with a primary listing on a third country exchange/trading venue, but with a secondary listing or can be traded on an EEA UK trading venue) – therefore, UK MAR is considered 'extraterritorial' in its application.

The difference between the UK and EU regimes is that EU MAR only applies to EEA trading venues (Regulated Markets, MTFs or OTFs) –whereas UK MAR applies to UK and EEA trading venues (Regulated Markets, MTFs or OTFs).

While the retained EU law relating to MAR (Market Abuse (Amendment) (EU Exit) Regulations 2019 ensures that the EU requirements applied in the UK from 1 January 2021, three key amendments were made by HM Treasury:

- There is no obligation to share information with EU authorities without guarantee of reciprocity.
- The FCA takes over the regulatory responsibilities, previously held by ESMA and the European Commission.
- The creation of supplementary legislation is the responsibility of HM Treasury.

3.1.2 Market Manipulation and Prevention and Detection of Market Abuse

UK MAR confirms that a person shall not engage in or attempt to engage in market manipulation. Market manipulation is defined as the following activity:

- Entering into a transaction, placing an order to carry out an execution or any other behaviour which:
    - gives, or is likely to give, a false or misleading signal as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract.
    - secures, or is likely to secure, the price of one or several financial instruments, or a related spot commodity contract at an artificial level unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, and conforms with an accepted established market practice.
- Entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments or a related spot commodity contract which employs a fictitious device or any other form of deception or contrivance.
- Disseminating information through the media, including rumours where the person who made the dissemination knew or ought to have known that the information was false and/or misleading, with the intent of securing a financial instrument at an artificial level.
- Transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

The following behaviour is considered market manipulation:

- A person or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument.
- Buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed.
- The placing of orders to a trading venue, including cancellation and/or modification, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies having the effects referred to above or by:
- Making it more difficult for other persons to identify genuine orders on the trading system of a trading venue.
- Creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument.
- Taking advantage of occasional or regular access to electronic media by voicing an opinion about a financial instrument (while having a position in that financial instrument) and profiting from the impact of the price of that instrument without having disclosed the conflict of interest to the public in a proper and effective way.

Source of information: UK MAR legislation

3.1.3 Prevention and Detection of Market Abuse and Market Manipulation

UK MAR does not just apply executed transactions; it also applies to unexecuted orders and requests for quotes (RFQs). Therefore, firms must also consider the impact of unexecuted orders and RFQs on their ability to undertake appropriate surveillance and monitoring.

Market operators and investment firms that operate a trading venue must establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.

They are required to report orders and transactions, including cancellation or modifications, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to their competent authority without delay.

Firms arranging or executing transactions must establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. These must be proportionate to the scale and complexity of the business activity undertaken by the firm. Therefore, arrangements and required systems and controls would be different for large investment banks when compared to smaller firms, such as UK branches of third-party banks, asset managers and wealth managers.

Where firms have a reasonable suspicion that an order or transaction in a financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, then must report this to the FCA without delay.

The requirements around 'establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions' include the following obligations on firms – whose systems and procedures should:

- be appropriate and proportionate in relation to the scale, size and nature of their business activity
- be regularly assessed, at least annually (audit/internal review), and updated where necessary
- be clearly documented in writing, including any changes/update, and documented information must be maintained for a period of five years
- allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of a trading venue as well as transactions executed outside a trading venue in order to:
    - produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation
    - cover the full range of trading activities undertaken.

In order to ensure adherence with the requirements, firms should have in place:

- procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation
- processes to provide the FCA with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of business activity undertaken, including the information on the level of automation in their systems
- effective and comprehensive training to staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, in particular the provision of training on a regular basis and ensuring this is appropriate and proportionate in relation to the scale, size and nature of the business.

Source of information: UK MAR legislation

3.1.4 Safe Harbours

UK MAR contains a number of exemptions from its requirements called 'safe harbours'.

UK MAR will not apply to transactions, orders or behaviours that are carried on in the pursuit of monetary, exchange rate or public debt management policy by agencies of the UK (Bank of England and the Debt Management Office).

The prohibitions in UK MAR Articles 14 (prohibition of insider dealing and of unlawful disclosure of insider information) and Article 15 (Prohibition of market manipulation) do not apply to trading in own shares in buy-back programmes where:

- the full details of the programme are disclosed prior to the start of trading
- trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public
- adequate limits with regard to price and volume are complied with, and
- it is carried out in accordance with the objectives referred to below.

In order to benefit from the exemption provided for (as noted above), a buy-back programme must have as its sole purpose:

- to reduce the capital of an issuer
- to meet obligations arising from debt financial instruments that are exchangeable into equity instruments, or
- to meet obligations arising from share option programmes, or other allocations of shares, to employees.

Source of information: UK MAR legislation

3.1.5 Market Soundings

A 'sounding' is where an investment firm is engaged by an issuer that wishes to raise new capital, wishes to identify investor appetite for its issue, including the potential interest rate that it would have to offer/ pay investors and the term (or duration) of the bond. The firm engages with potential investors/existing investors about their appetite for investing in a forthcoming capital raising.

A sounding can include the disclosure of 'non-public' information which is sensitive and considered to be 'insider information' – therefore, for this reason, the disclosing firm has to comply with the following obligations:

- Obtain the consent of the person receiving the market sounding to receive the inside information.
- Inform the person receiving the market sounding that they are prohibited from using that information, or attempting to use that information, by acquiring or disposing of financial instruments relating to that information, as well as cancelling or amending an existing order that is in the market.
- Inform the person receiving the market sounding that by agreeing to receive the information they are obliged to keep the information confidential.
- Maintain a record of all information given.
- Maintain a record of recipients who did not consent to being provided with the sounding.
- Advise the recipients of the sounding when the information provided ceases to be considered as inside information.

The market soundings provisions also place an obligation on the recipient of a market sounding – they are required to assess for themselves whether the information they receive (provided by the other firm) is in their opinion inside information – as they may have additional information that would mean that this information is not deemed to be inside information.

Source of information: UK MAR legislation

3.1.6 Investment Recommendations

Prior to the implementation of MAR, an exemption existed for short-term sales trading ideas not being in scope of the Market Abuse Directive. However, this changed under MAR. The UK MAR Investment Recommendation provisions dictate that persons (which includes individuals and firms) producing or distributing investment recommendations or suggesting investment strategies must ensure that such information is objectively presented and disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

An investment recommendation does not fall under the UK MiFID definition of investment advice or investment research. An 'investment recommendation' is a proposal or strategy provided by a firm to individuals or other firms (in particular fund managers, wealth mangers) on financial instruments or a range of financial instruments (ie, not distributed) as is in relation to short-term trading ideas and scenarios.

The provisions apply where the investment recommendation/strategy is provided to more than one person. Therefore, this excludes where a firm makes investment recommendations to individuals/firms based on an individual's profile and they are specifically made to that one individual/firm and the firm can be confident that these will not be shared with other individuals or other firms.

Where an investment recommendation is captured by UK MAR, there is a lengthy disclosure requirement needed, not just a one-off requirement at the point of distribution; rather there are ongoing obligations. The following would need to be provided at the time that the investment recommendation is distributed to clients:

1. Facts are clearly distinguished from interpretations, estimates, opinions and other types of non- factual information.
2. All substantially material sources of information are clearly and prominently indicated.
3. All projections, forecasts and price targets are clearly labelled as such, and the material assumptions made in coming to the 'price target' are clearly stated.
4. Individuals who produce recommendations shall make this available to their local regulator on request.
5. Whether the recommendation has been disclosed to the issuer to which the recommendation either directly or indirectly refers and where it has been amended as statement of that fact.
6. The date and time when the recommendation is completed is clearly indicated.
7. A summary of the basis of valuation or methodology, underlying assumptions used to either evaluate a financial instrument or an issuer, or to set a price target for a financial instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions is clearly stated.
8. Indication of the place where material information about the proprietary models used is directly and easily accessible.
9. The meaning of any recommendation made, such as 'buy', 'sell' or 'hold', and the length of time of the investment to which the recommendation relates, are clearly and adequately explained and any appropriate risk warning is indicated.
10. A reference to the planned frequency of updates to the recommendation.
11. An indication of the relevant date and time for any price of financial instruments mentioned in the recommendation.
12. Where a recommendation differs from previous recommendations for the same financial instrument or issue that has been provided during the preceding 12-month period, the change(s) and the date of that previous recommendation are indicated.
13. A list of all recommendations on any financial instrument or issuer that were provided during the preceding 12-month period, containing for each recommendation: the date of dissemination, the identity of the natural person(s), the price target and the relevant market price at the time of dissemination, the direction of the recommendation and the validity time period of the price target or of the recommendation.

Points 12 and 13 above are the ongoing disclosure requirements placed on firms when making an in-scope investment recommendation that is subject to disclosure requirements.

Where the disclosure of the information (noted above in points six and ten) is considered disproportionate in relation to the length or form of the recommendation, then the recommendation must state where the required information can be directly and easily accessed by the persons receiving the investment recommendation.

Source of information: UK MAR legislation

3.1.7 Conflicts of Interest

Persons (both individuals and firms) who produce investment recommendations must disclose in their recommendations, all relationships and circumstances that could reasonably be expected to impair the objectivity of the recommendation, including interests or conflicts of interest, on their part or on the part of any natural or legal person working for them under a contract, including a contract of employment, or otherwise, who was involved in producing the recommendation, concerning any financial instrument or the issuer to which the recommendation directly or indirectly relates.

The investment recommendation, therefore, must contain the information on their (the individual or firm) interests and conflicts of interest concerning the issuer to which the recommendation, directly or indirectly, relates:

- if they own a net long or short position exceeding the threshold of 0.5% of the total issued share capital of the issuer, a statement to that effect specifying whether the net position is long or short
- if holdings exceeding 5% of its total issued share capital are held by the issuer, a statement to that effect
- if the person producing the recommendation or any other person belonging to the same group with that person:
    - is a market maker or liquidity provider in the financial instruments of the issuer, a statement to that effect
    - has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of financial instruments of the issuer, a statement to that effect
    - is party to an agreement with the issuer relating to the provision of services of investment firms (as defined by MiFID), a statement to that effect, providing that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the obligation to pay or receive compensation, and
    - is party to an agreement with the issuer relating to the production of the recommendation, a statement to that effect.

3.2 Market Abuse

3.2.1 Difference between Offences under Market Abuse, Insider Dealing (CJA) and under FSA 2012 s.89–95 Misleading Statements and Practices

The UK's primary legislation is the Criminal Justice Act (CJA) 1993.

Under the CJA, insider dealing is a criminal offence. However, under UK MAR, insider dealing is a civil offence.

When a director of, or someone otherwise linked to, a listed company buys or sells shares in that company, there is a possibility that they are committing a criminal act – insider dealing.

This would be the case, for example, if that director or other linked person bought shares with the knowledge that the company's last six months of trade were better than the market expected (and that information had not yet been

made publicly available). The person buying the shares has the benefit of this information because they are an insider to the company.

Some people consider insider dealing a victimless crime (a 'white collar' crime). However, an individual dealing on/advising others to deal on inside information to make a profit/avoid a loss is a detriment to other shareholders and investors.

Insider dealing can be defined as the deliberate exploitation of information by dealing in financial instruments, having obtained this information by virtue of some privileged relationship or position. The legislation setting out the current criminal law is Part V of CJA 1993, which came into force in May 1994. This was recently updated and amended by the Insider Dealing (Securities and Regulated Markets) Order 2023, which came into effect on 15 June 2023 and updated the list of Regulated Markets for the purpose of Part V of the CJA 1993.

Section 52 of the CJA outlines three ways of committing insider trading:

- dealing in the security
- encouraging another to do so, and
- disclosing inside information to another.

To be found guilty of insider dealing, a person must first be an insider who is in possession of inside information and, secondly, must commit one of three specific offences (see above). The CJA defines both of these terms, as well as the offences that may be carried out.

Inside information is often referred to as unpublished price-sensitive information, and the securities which may be affected by it are referred to as price-affected securities.

Inside information, as defined in s.56 of the CJA, is information which:

a. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made, on a UK/EEA or Gibraltar Regulated Market, MTF or OTF
b. relates to securities traded on, admitted to trade on or a request to admit to trading, has been made on NASDAQ, SIX Swiss Exchange and the New York Stock Exchange (NYSE)
c. relates to securities not covered by point (a) or (b), the price of which depends on, or has effect on the price or value of a security referred to in those points
d. is specific or precise
e. has not been made public, and
f. is price-sensitive (ie, if it were made public, would be likely to have a significant effect on the price of any security).

The CJA uses the term 'security' is rather than financial instrument. This covers the following: (this list is from the definition of a financial instrument in UK MiFID).

1. Transferable securities.
2. Money-market instruments.
3. Units in collective investment undertakings.
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.
5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event).
6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided they are traded on a UK regulated market, a UK MTF or a UK OTF, except for wholesale energy products traded on a UK OTF that must be physically settled.

7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 and not being for commercial purposes or wholesale energy products traded on an EU OTF that must be physically settled, which have the characteristics of other derivative financial instruments.
8. Derivative instruments for the transfer of credit risk.
9. Financial contracts for differences.
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this schedule, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a UK regulated market, a UK OTF, or a UK MTF.
11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) or allowances created under article 18 of the Greenhouse Gas Emissions Trading Scheme Order 2020.

The CJA does give some assistance in interpretation. For example, it includes a (non-exhaustive) list of what made public means (from which we can work out when information has not been made public). For example, information becomes public when it is:

- published in accordance with the rules of a regulated market, MTF or OTF to inform investors (eg, a UK-listed company making an announcement through a regulated information service (RIS)
- contained within records open to the public (eg, a new shareholding that is reflected in the company's Register of Shareholders)
- can be readily acquired by those likely to deal in securities to which the information relates, or
- about securities of an issuer to which it relates.

This tells us that the information need not be actually published – it just needs to be available to someone who exercises diligence or expertise in finding it (ie, you might have to look quite hard for it). Information that has to be paid for (including available via subscription) is also considered as made public.

A person in possession of price-sensitive information is an insider if they know that it is inside information and that it has been knowingly acquired from an inside source. They have obtained it from an inside source if:

- they are an inside source themselves (by being a director, employee or shareholder of an issuer of securities; and this need not necessarily be the company whose securities are the subject of the insider dealing)
- they have access to the information by virtue of their employment, office or profession (and, again, this need not necessarily be in relation to the company to which the information relates); an example might be the auditor, legal adviser or corporate finance adviser to a company, or
- they have obtained information directly or indirectly from a person who obtained it in one of these two ways, for example, a director's husband or wife will have information from an inside source if they see confidential information at home about a takeover bid and then buy shares in the listed company which is the takeover target.

Someone commits the offence of insider dealing if they:

- deal in price-affected financial instruments when in possession of inside information
- encourage someone else to deal in price-affected financial instruments when in possession of inside information (including recommending that someone else deals), or
- disclose inside information, other than in the proper performance of their employment, office or profession.

For a deal (ie, purchase or a sale of price-affected financial instruments) to be caught under the insider dealing legislation, it must take place on a regulated market, or through a professional intermediary – otherwise, the

legislation does not apply to it. In the UK, regulated markets, MTFs and OTFs are defined by secondary legislation – but include UK RIEs and major exchanges in the EEA.

These offences can only be committed by an individual (and, of course, only then by someone holding inside information as an insider); a company cannot commit the offence. However, by arranging for a company to deal, an individual could commit the offence of encouraging it to do so. The offence of encouraging someone to deal need not result in an actual deal for the offence to have been committed (though it may be unlikely that the offence will come to light if no deal results).

Example – Using Price-Sensitive Information

Your new finance director seems to provide the firm with a vital commercial edge. The firm wins a greater proportion of competitive bids than before they joined. During the finance director's absence from the office, it was revealed that they are in possession of valuable proprietary information on a competitor. You also discover that they have 'shorted' (sold shares that they did not hold) the competitor's shares, using contracts for difference. The finance director admits that they were given the information by their brother, who has since died.

Because this situation will not recur, your first reaction may be that no external action is necessary. Advising the competitor that you have used their information may result in serious financial and reputational damage. Saying nothing may seem an attractive option, but this will result in a regulatory investigation and also leave you wrestling with your conscience.

3.2.2 Misleading Statements and Impressions

The Financial Services Act 2012 introduced three offences relating to the making or carrying on of misleading statements and practices – replacing s3.97 of FSMA with:

- making misleading statements (s89)
- creating false or misleading impressions (s90), and
- making misleading statements in relation to benchmarks (s91).

Sections 89 and 90 of the Financial Services Act 2012 include offences very similar to those that were set out in s3.97 of FSMA, with a few differences:

- A distinction is drawn between 'misleading statements' (s89) and 'misleading impressions' (s90).
- Section 89 (misleading statements) only refers to a 'false or misleading statement', whereas the previous offence referred to a 'promise or forecast'. Also, the new offence does not refer to 'deceptive statements'.
- Section 90 contains an additional offence of knowingly or recklessly creating a false impression for the purpose of (or with the knowledge that it is likely to lead to) personal gain, or the purpose of causing (or with the knowledge that it is likely to lead to) a loss to another person (or exposing that person to risk of loss).

The Financial Services Act 2012 also introduced an offence in respect of misleading statements and impressions in relation to benchmarks. Under Section 91, a person will commit an offence if they either:

1. Make to another person a false or misleading statement if they:
   - make the statement in the course of arrangements for setting of a relevant benchmark
   - intend that the statement should be used for the purpose of the setting of a relevant benchmark, or
   - know that the statement is false or misleading or is reckless.
2. Carry out an act or engage in any course of conduct which creates a false or misleading impression as to the price of value of any investment or as to the interest rate appropriate to any transaction if:
   - they intend to create the impression
   - the impression may affect the setting of a relevant benchmark

- they know that the impression is false or misleading or is reckless, or
- they know that the impression may affect the setting of a relevant benchmark.

Example

A stockbroker might tell a potential investor that the shares in XYZ plc (a property developer) are very cheap and attractive at the moment because XYZ has just won a major contract to build a shopping centre in central London and, once this is known to the market, the share price will increase substantially.

If the news of the award of the contract to XYZ was false (in this instance the stockbroker did make up this exciting information), Sections 89–91 could be used to punish the stockbroker for making a false and misleading statement to persuade their client to purchase shares.

This relates not only to false, misleading or deceptive statements, but also to dishonest concealment of any material facts; and to reckless statements, promises or forecasts that are materially misleading, false or deceptive. As long as the statement or concealment has the aim of getting another person to enter into, or refraining from entering into, an investment agreement, an offence has been committed.

It also applies to a person who creates a false or misleading impression of the market for, or the price of, an investment. An offence is committed if this is done in order to induce another person to acquire, dispose of, underwrite, subscribe for or exercise rights in relation to those investments, or to refrain from doing any of these things.

Example

A firm of fund managers might let the market know that it is very keen to buy substantial quantities of shares in ABC plc, when actually it holds a small quantity of shares in ABC that it plans to sell.

The fund managers' expressions of interest in buying ABC shares might mislead participants in the market to pay more money for the shares in ABC that the fund managers anonymously sells at a higher price. The fund managers are guilty of misleading the market under Sections 89–91.

The purpose of Sections 89–91 is to prevent the actions of investors being driven by reckless, misleading, deceptive or false actions of others. The overall aim is, therefore, to protect the integrity of the market.

The penalty for breaching any of the requirements under Section 89–95 of the Financial Services Act 2012 is:

- On summary conviction, a fine not exceeding the statutory amount or a jail sentence not exceeding 12 months, or both.
- On conviction on inducement, a jail sentence not exceeding ten years or a fine, or both for offences committed after 1 November 2021.
- Offences committed up to 31 October 2021 will be subject to a jail sentence not exceeding seven years.

3.2.3 Defences

There are three potential defences to a charge under Sections 89–91:

- The person reasonably believed that their act or conduct would not create an impression that was false or misleading.
- Actions, statements or forecasts were made in conformity with the price stabilisation rules of the FCA. These allow market participants, such as investment banks, to support the price of a new issue of securities for their clients, with the aim of preventing the market from being excessively volatile. The rules themselves require certain disclosures to investors considering investing in the stabilised securities and restrict the support operation to a particular period.

- Actions, statements or forecasts were made in conformity with the control of information rules of the FCA. These rules relate to statements, actions or forecasts being made on the basis of limited information. The remainder of the information may be known to the firm, but it sits behind information barriers (Chinese walls) and is not known to the relevant individual.

An example enforcement action taken by the FCA under the offences noted above is that in March 2026 the FCA levied a fine against a UK corporate company of just over £12 million pursuant to Section 91 of the Financial Services and Markets Act 2012. The FCA noted that between 2023 and the end of 2024 the company did not comply with its obligation to ensure that misleading information is not published and to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligation.

3.2.4 Suspicious Transactions and Order Reports (STORs)

Firms must report activities that they would consider to be suspicious rather than second-guess whether the FCA would consider the event to be suspicious.

Firms must undertake reporting directly to the FCA, in a timely manner, once a full internal investigation has been undertaken to assess whether an event is considered to be 'suspicious' and required to be reported.

The content of a suspicious transactions and order report (STOR) is prescribed in UK MAR, and includes the following information:

- identification of the person submitting the STOR and their capacity
- a description of the order or transaction, (in particular when dealing on own account or executing orders on behalf of third parties) including:
    - the type of order and the type of trading, in particular block trades, and where the activity occurred
    - price and volume
- reasons for which the order or transaction is suspected to constitute insider dealing, market manipulation or attempted insider dealing or market manipulation
- means of identifying any person involved in the order or transaction that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, including the person who placed or executed the order and the person on whose behalf the order has been placed or executed, and
- any other information and supporting documents which may be deemed relevant for the competent authority for the purposes of detecting, investigating and enforcing insider dealing, market manipulation and attempted insider dealing and market manipulation.

Source of information: UK MAR legislation

3.2.5 Ethical Considerations and Consequences of Market Abuse

One of the overarching objectives of the FCA is to maintain efficient, orderly and clean financial markets. In addition, the FCA seeks to ensure that the UK interest is represented and taken into account in global regulatory reforms. The FCA remains focused on maintaining and developing the UK's listing regime and enforcing the market abuse regime. The FCA approach is that it sees 'preventative action' as a deterrent to the activity of market abuse.

The FCA and the regulated community, therefore, need to work in partnership to achieve clean, efficient financial markets in the UK. The FCA believes that tackling market abuse should not be seen as a job for the regulator alone – it has to be a collaborative effort with the market.

What the FCA sees as tackling market abuse, by both themselves and firms, includes:

- strengthening systems and controls at firms to mitigate market abuse

- high focus on training and awareness and learning from good practices – identified by the industry or by FCA thematic work
- reporting wrongdoing, and
- taking tough action when abuse is identified.

What the FCA Expects from Firms

The FCA expects senior management within firms to take responsibility for ensuring that they identify risks, having due regard to the operation of financial markets as a whole, and for ensuring that they develop the appropriate systems and controls to manage the risks. In particular, there is the need to manage conflicts of interest properly and the need for self-reporting, if senior management suspects that their own staff have engaged in misconduct.

Key to this is the recognition by the FCA of firms' efforts. The FCA's commitment is that, if firms can demonstrate that they have good systems and controls and are complying with them, and an individual within the firm commits market abuse, they will not pursue the firm in an enforcement action, just the individual.

Market Cleanliness

The prevalence of insider dealing puts two of the FCA's statutory objectives at risk:

- **market confidence** – maintaining confidence in the financial system, and
- **the reduction of financial crime** – reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

Why Market Abuse Could Cost You Money

There is a wide range of issues that can affect market confidence, in particular market abuse and insider dealing. The focus of the FCA's approach to enforcement action has shifted to taking a harsher stance, following the global financial crisis of 2007–08. The FCA is committed to continuing its focus on firms and individuals, noting that it will also use criminal prosecution when appropriate to reinforce the change in the control regime. In the area of consumer protection, the FCA will continue to use enforcement to achieve significant penalties that will change behaviour and obtain the right outcomes for consumers.

The FCA's approach to enforcement is clear for market participants who commit or are involved with insider dealing or other market misconduct; it will take tough action and hold them accountable for their behaviour – this is demonstrated by the number or enforcement cases and convictions in which the FCA has been successful over recent years.

Alongside enforcement action, thematic work is also undertaken to review anti-market abuse systems and controls in certain key areas, with a view to publishing good practice points and championing industry improvements. An example of this was the fine levied to a stockbroker in 2016 for having inadequate systems and controls to detect market abuse. Of greater importance than the £1.2 million fine was that the FCA used one of the powers granted by the Financial Services Act 2012; the firm was prevented from taking on new clients in its broking division for 72 days.

In 2021, the FCA's Executive Director of Enforcement and Market Oversight made a speech titled 'locking down market abuse'. The below is a summary of the speech which highlights the FCA's updated approach to market abuse enforcement:

- Surveillance and investigation work reduced trading by certain 'actors' whose trading prompted high numbers of suspicious transaction and order reports.
- Increase in the FCA's proactive market monitoring and the introduction of some new initiatives such as a new approach to short selling reporting.
- Introduction of a new market cleanliness measure, the 'Potentially Anomalous Trading Ratio'.
- Enforcement action taken in key market abuse cases against individuals and firms.

An example of the FCA focus on market abuse was a fine handed to the Chairman of a listed company for calling key shareholders ahead of a market announcement. The company had not classified the information about revised financial guidance and the retirement of its CEO as inside information – but that did not stop the FCA finding the

Chairman in breach of UK MAR (Article 10 and Article 14 (c)). The FCA considered that the information discussed by the Chairman with the key shareholders was inside information, its announcement resulted in a 33% drop in the company share price when made public.

Despite the executives within the firm responsible for compliance and one of the company's brokers being aware of the proposed conversations and did not advise the Chairman not to make the calls to the key shareholders, the FCA were of the opinion that the Chairman failed to apply his own mind to the questions and that amounted to negligence.

The FCA final notice highlighted that firms need to properly assess whether the information being disclosed is 'precise' and whether there is a realistic prospect of something happening following this information being made public.

Source of information: FCA website

3.3 Insider Dealing

3.3.1 Inside Information and Insider Dealing

For the purposes of UK MAR, inside information comprises the following types of information:

- information which is of a precise nature, which has not been made public, relating, directly or indirectly, to a financial instrument, and which, if it were made public, would be likely to have a significant effect on the price of the financial instrument or on the price of related derivative financial instruments
- in relation to commodity derivatives, information which is of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions in the UK, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets, and
- for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may occur, or an event which has occurred or which may reasonably be expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments.

Under UK MAR, insider dealing is defined as occurring in the following circumstances:

- where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates
- cancelling or amending an order concerning a financial instrument to which inside information relates, where the order was placed before the person came into possession of the inside information
- recommending another person to engage in insider dealing, or inducing another person to engage in insider dealing, where the person possesses inside information and:
    - recommends, on the basis of that information, that another person acquires or disposes of financial instruments to which that information relates, or induces that person to make such an acquisition or

disposal, or

- recommends, on the basis of inside information, that another person cancels or amends an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment of an existing order.

Source of information: UK MAR legislation

3.3.2 Public Disclosure of Inside Information

Issuers have obligations to inform the public as soon as possible of inside information which directly concerns the issuer. The information must be made public in a manner which enables fast access and complete, correct and timely assessment. This ensures that all investors are able to base their investment decision-making and investment opportunities on information in the public domain – helping to keep clean markets.

3.3.3 Insider Lists

Issuers and persons acting on their behalf are required to draw up a list of all persons who have access to inside information, including where they are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list). The list must be promptly updated where there is a change (ie, in the reason for including a person already on the list, where there is a new person who has access to inside information and needs to be added to the list or where a person ceases to have access to inside information).

The format and information required to be maintained by such firms is dictated in the legislation (UK MAR). Firms are required to maintain separate insider lists for each transaction and one for permanent 'insiders'.

Following the Financial Services Act 2021 coming into law, a person (individual and/or an entity) that is acting on behalf of an issuer is required to maintain an insider list – rather than it being the obligation of the issuer.

3.4 UK Regime

3.4.1 The Instruments

The list of securities in the UK regime (CJA) is synchronised with the list of financial instruments as defined in UK MiFID, which was listed in section 3.2.1 of this chapter.

3.4.2 The Defences

General Defences

Broadly, there are four general defences available to the defendant in an insider dealing case:

1. **No advantage was expected** – ie, the defendant did not expect the dealing to result in a profit (or the avoidance of a loss) due to information they possessed.
2. **The defendant believed the information had been widely disclosed and/or was widely known** – having believed this on reasonable grounds.
3. **They would have dealt anyway** – regardless of the information (for example, because they were in financial difficulties and would have had to sell their shares to meet their obligations).
4. **They did not expect any person to deal because of the disclosure** – for the offence of disclosing only.

Special Defences

There are further defences available to defendants in particular circumstances (special defences). These are for market makers, in relation to market information, and in relation to price stabilisation activities.

Market Makers

As long as a market maker can show that they acted in good faith in the course of their business as a market maker, they will not be deemed guilty of insider dealing. So, a market maker (or their employee) could have unpublished price-sensitive information as an insider and continue to make a market in that security due to contractual and regulatory obligations of acting as a market maker.

Market Information

An insider is not guilty of dealing or encouraging others to deal if they can prove that the information they held was market information, and it was reasonable for them to act as they did, despite having the information at the time. Market information includes information such as the fact that the sale of a block of securities is under consideration, or the price at which such a transaction is likely to be done.

Example

A client had been discussing the possibility of purchasing a block of 10,000 shares in XYZ plc with their broker. The client instructs the broker to buy; however, the broker is in possession of unpublished price-sensitive information due to its position and activity. Provided that they did not disclose this 'price-sensitive information', they would have a specific defence against a charge of insider dealing.

The defence would apply equally if it was market information relating to a client's planned disposal of securities.

The FCA's Prosecution Powers

The FCA has powers under s.401 and 402 of FSMA to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FCA's general policy is to pursue through the criminal justice system all cases where criminal prosecution is appropriate. In particular, it is able to institute proceedings for an offence, under the CJA, for insider dealing. In addition to the FCA's powers to prosecute, the Secretary of State for Business, Enterprise and Regulatory Reform; and the Crown Prosecution Service (CPS) also have the powers to prosecute insider dealing offences in England and Wales.

FCA Handbook

The FCA had (has) limited scope to provide guidance in respect of the UK MAR, it has added 'signposts' to the legislation in its Handbook. The following guidance has been retained and updated in the FCA's Market Conduct Sourcebook:

Section 1 of the FCA's MAR Sourcebook has been renamed 'Market Abuse'.

MAR 1.3 (Insider Dealing)

The following are FCA-provided examples of behaviours that may amount to insider dealing under UK MAR, but are not intended to form an exhaustive list:

- front-running/pre-positioning – entering into a transaction prior to the execution of a client order, but being in receipt and knowledge of that client order – thereby taking advantage of the anticipated impact of the order on the market
- in the context of a takeover, an offeror or potential offeror entering into a transaction in a financial instrument, using inside information concerning the proposed bid, and
- in the context of a takeover, a person who acts for the offeror or potential offeror, dealing for their own benefit in a financial instrument using information concerning the proposed bid.

Source of information: FCA Handbook MAR Sourcebook (UKMAR 1)

3.4.3 Relevant Factors

Legitimate Business of Market Makers

Market makers may lawfully deal in financial instruments on their own account; pursuing their legitimate business of such dealing (including entering into an agreement for the underwriting of an issue of financial instruments) which will not in itself amount to market abuse. The FCA would take the following into account in determining whether or not a person's behaviour is in pursuit of market making:

- the extent to which the relevant trading by the person is carried out in order to hedge a risk, the extent to which it neutralises and responds to a risk arising out of the legitimate business activities
- whether the relevant trading activity is connected with a transaction entered into or to be entered into with a client (including a potential client) and has no impact on the price of that financial instrument, and there has been adequate disclosure to that client that trading will take place and they have not objected to it, or
- the extent to which the behaviour was reasonable in the context of proper standards of conduct of the market concerned, and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate in a fair and efficient manner.

Firms should also use these when determining themselves on the legitimacy of the behaviour undertaken.

Execution of Client Orders

The FCA will take in account the following factors in determining whether or not a person's behaviour in executing an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties:

- Whether the person has complied with the applicable provisions of COBS, or their equivalents in the relevant jurisdiction
- Whether the person has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order
- Whether the person's behaviour was with a view to facilitating or ensuring the effective carrying out of the order
- The extent to which the person's behaviour was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him, or
- Whether the relevant trading or bidding (including the withdrawal of a bid) by that person is connected with a transaction entered into or to be entered into with a client (including a potential client), that their action has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and they have not objected to it.

Firms should also use these when determining themselves on the legitimacy of the behaviour undertaken.

Source of information: FCA Handbook MAR Sourcebook (UKMAR 1)

Example – Insider Dealing

X, a director at Beta plc has lunch with a friend ('Y'). X tells Y that their company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread-bet, valued by reference to the share price of Beta plc based on their expectation that the price in Beta plc will increase once the takeover offer is announced.

An employee at Benefit plc obtains the information that the company has just lost a significant contract with its main customer. Before the information is announced over the regulatory information service, the employee, while being under no obligation to do so, sells their shares in Benefit plc based on this information about the loss of the contract. In doing so, they avoid losing money on the shares that they held in Benefit plc.

Source of information: FCA Handbook (UKMAR sourcebook)

Example – Commodity Derivatives and Other Financial Instruments

A person deals, on a trading venue in the equities of XYZ plc, a commodity producer, based on inside information concerning that company. A person deals, in a commodity futures contract traded on a trading venue, based on the same information, providing that the information is required to be disclosed under the rules of the relevant commodity futures market.

Source of information: FCA Handbook (UKMAR sourcebook)

3.4.4 MAR 1.4 – Unlawful Disclosure

The following behaviours are considered indications of unlawful disclosure:

- Disclosure of inside information by the director of an issuer to another person in a social context.
- Selective briefing of analysts by directors of issuers or others who are persons discharging managerial responsibilities.

3.4.5 MAR 1.6 – Manipulating Transactions

The FCA provides guidance for firms when considering whether behaviour is for legitimate reasons:

- if the person has a purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a financial instrument
- if the person has another, illegitimate, reason behind the transactions, bid or order to trade, and
- if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.

It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

3.4.6 Factors to be Taken into Account: Abusive Squeezes

The following factors will be taken into account when determining whether a person has engaged in behaviour commonly known as an 'abusive squeeze'.

Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not, of itself, likely to be abusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself likely to be abusive.

The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

An Example of an Abusive Squeeze

A trader with a long position in bond futures buys or borrows a large amount of the cheapest to deliver bonds and either refuses to relend these bonds or will only lend them to parties they believe will not 'relend' (or reuse) to the market. The purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making her a profit from her original position.

Examples of Manipulating Transactions

The following are examples of behaviour that the FCA considers may amount to manipulating transactions:

- A trader holds a short position that will show a profit if a particular financial instrument, which is currently a component of an index, falls out of that index. The question of whether the financial instrument will fall out of the index depends on the closing price of the financial instrument. They place a large sell order in this financial instrument just before the close of trading. Their purpose is to position the price of the financial instrument at a false, misleading, abnormal or artificial level so that the financial instrument will drop out of the index so as to make a profit.
- A fund manager's quarterly performance will improve if the valuation of their portfolio at the end of the quarter in question is higher rather than lower. They place a large order to buy relatively illiquid shares, which are also components of his portfolio, to be executed at or just before the close. Their purpose is to position the price of the shares at a false, misleading, abnormal or artificial level.

3.4.7 Price Stabilisation and Buy-Backs

Price stabilisation may be carried out by relevant firms (market makers) if securities have been admitted to trading on a regulated market, or a request for their admission to trading on such a market has been made. Price stabilisation is normally only carried out for short periods of time.

Price-support activities carried out in accordance with the price stabilisation rules do not amount to market abuse. (This is also the case with insider dealing.)

3.5 Accepted Market Practices

The prohibition of market manipulation shall not apply, providing that the person (firm) entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that the transaction, order or behaviour was undertaken for legitimate reasons and conforms to an accepted market practice.

3.6 Penalties for Engaging in Market Abuse

With regards to breaching of the CJA (insider dealing) and the Financial Services Act 2012 (misleading statement and impressions) legislation, under criminal conviction the maximum penalty is ten years in jail.

Before deciding to take action, the FCA will consider the full circumstances. DEPP 6.2.1 provides guidance on the factors that the FCA will take into account; they include:

- the nature and seriousness and impact of the 'suspected' breach
- the conduct of the person after the breach
- the previous disciplinary record and compliance history of the person
- the degree of sophistication of the users of the market in question, the size of the market and the susceptibility of the market to market abuse, and
- the impact, having regard to the nature of the behaviour, that any financial penalty or public censure may have on the financial markets or the interest of consumers.

DEPP 6.5 identifies the appropriate level of penalty that the FCA can apply when making its determination.

The FCA's penalty-setting regime is based on the following principles:

1. **Disgorgement** – a firm or individual should not benefit from any breach.
2. **Discipline** – a firm or individual should be penalised for wrongdoing.

3. **Deterrence** – any penalty imposed should deter the firm or individual who committed the breach, and others, from committing further or similar breaches.

The total amount payable by a person subject to enforcement action may be made up of two elements; they are:

- disgorgement of the benefit received as a result of the breach, and
- a financial penalty reflecting the seriousness of the breach.

These elements are incorporated in a five-step framework, which can be summarised as follows:

- **Step 1** – the removal of any financial benefit derived directly from the breach.
- **Step 2** – the determination of a figure which reflects the seriousness of the breach.
    - The FCA will decide on the percentage of the income which will form the basis of the penalty – between 0% and 40%.
    - These levels will apply for penalties imposed on firms and individuals in non-market abuse cases:
        - Level 1 – 0% (profit multiple of 0)
        - Level 2 – 10% (profit multiple of 1)
        - Level 3 – 20% (profit multiple of 2)
        - Level 4 – 30% (profit multiple of 3)
        - Level 5 – 40% (profit multiple of 4).
    - In respect of individuals imposed on individuals in market abuse cases.
    - Where the market abuse was referable to the individual's employment, the figure for Step 2 will be the greater of:
        - based on a percentage of the individual's relevant income
        - a multiple of the profit or loss avoided by the individual for their own benefit, or
        - for market abuse cases which the FCA assesses to be seriousness level 4 or 5, £100,000.
    - Where the case was not referable to the individual's employment, the figure for Step 2 will be the greater of:
        - a multiple of the profit or loss avoided, or
        - where the seriousness level is determined to be level 4 or 5, £100,000.
- **Step 3** – an adjustment made to the Step 2 figure to take account of any aggravating and mitigating circumstances.
- **Step 4** – an upwards adjustment made to the amount arrived at after Steps 2 and 3, where appropriate, to ensure that the penalty has an appropriate deterrent effect.
- **Step 5** – if applicable, a settlement discount will be applied. This discount does not apply to disgorgement of any financial benefit derived directly from the breach.

The steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms and individuals.

The FCA recognises that a penalty must be proportionate to the breach, therefore, they may adjust the level of the penalty after applying Step 2 where it considers if it is disproportionately high for the breach concerned.

In respect of cases against firms, the FCA will have regard to whether the firm is also an individual (for example, a sole trader) in determining whether the figure arrived at after applying Step 2 is disproportionate.

Full details on the factors that the FCA will take into account in respect of fines for market abuse can be found in the following chapters in the DEPP sourcebook:

- DEPP 6.2 – deciding whether to take action.
- DEPP 6.3 – penalties for market abuse.
- DEPP 6.4 – financial penalty of public censure.
- DEPP 6.5 – determining the appropriate level of financial penalty:

- 6.5A – the 5 steps for penalties imposed on firms
- 6.5B – the 5 steps for penalties imposed on individuals in non-market abuse cases
- 6.5C – the 5 steps for penalties imposed on individuals in market abuse cases.



4. Money Laundering

This section will cover UK (including onshored EU legislation) requirements concerned with money laundering (ML) and terrorist financing (TF).

Money laundering (ML) is the process of turning money derived from criminal activities (ie, classed as 'dirty money') into money which appears to be from legitimate origins. Dirty money is difficult to invest or spend and carries the risk of being used as evidence of the initial crime. Laundered money can more easily be invested and spent without risk of incrimination.

Increasingly, anti-money laundering provisions are being seen as the front line against drug dealing, organised crime and the financing of terrorism. Much police activity is directed towards making the disposal of criminal assets more difficult and monitoring the movement of money.

The current rules and regulations in relation to money laundering come from a variety of sources:

- the **Proceeds of Crime Act (POCA) 2002**
- the Serious Organised Crime and Police Act (SOCPA) 2005
- the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)
- the FCA's Senior Management Arrangements, Systems and Controls (SYSC) Sourcebook, and
- industry guidance in the form of the Joint Money Laundering Steering Group (JMLSG) guidance.

POCA 2002 specifies that money laundering relates to criminal property, that is, any benefit (money or otherwise) that has arisen from criminal conduct. Property is only criminal property if the alleged offender knows or suspects it is criminal property. The broad requirement is for firms to report suspicions of money laundering to the authorities.

SOCPA 2005 amended certain sections of POCA. In particular, one feature of POCA was that criminal conduct was deemed to include anything which would have been an offence had it been done in the UK, regardless of where it actually happened. This resulted in the often-cited Spanish bullfighter problem, bullfighting is illegal in the UK but not in Spain, meaning that, arguably, a financial institution should have regarded deposits made by a Spanish bullfighter as the proceeds of crime, even if they represented his legitimate earnings in Spain. SOCPA addresses this difficulty, in part at least, in that there is a defence for alleged offenders if they can show that they know, or believe on reasonable grounds, that the conduct was not criminal in the country where it happened. However, the Secretary of State has reserved the right to prescribe certain offences as relevant criminal conduct that are legal where they occurred, but are illegal in the UK and still need to be reported. For example, the government may specify serious tax evasion or drug cultivation as types of criminal conduct which do need to be reported, despite occurring overseas.

The Money Laundering Regulations are relatively detailed regulations, which deal predominantly with the administrative provisions and requirements that firms need to have to combat money laundering. For example, they deal with firms' requirements for systems and training to prevent money laundering and their obligations to check the identity of new customers.

The FCA's Senior Management Arrangements, Systems and Controls sourcebook (SYSC) provides rules and guidance on the way anti-money laundering provisions are implemented in the UK.

The JMLSG is made up of the leading UK trade associations. The JMLSG guidance is provided to firms on how they should interpret and implement the anti-money laundering provisions. They are not mandatory, nor are they regulatory rules or law; rather they highlight industry best practice. They are approved by the HM Treasury, which means that if a firm can show that it adhered to them, the courts will take this into account as evidence of compliance with the legislation.

The preface of the JMLSG Guidance states that:

> *'The FCA Handbook confirms that the FCA will have regard to whether a firm has followed relevant provisions of this guidance when considering whether to take action against a regulated firm (SYSC 3.2, SYSC 5.3, and DEPP (Decision Procedures and Penalties Manual) 6.2.3); and when considering whether to prosecute a breach of the Money Laundering Regulations (see EG (Enforcement Guide) 12.1–2)'.*

The guidance, therefore, provides a sound basis for firms to meet their legislative and regulatory obligations when tailored by firms to their particular business risk profile. Departures from this guidance, and the rationale, should be documented, and firms will have to stand prepared to justify departures, for example to the FCA.

The aim of the syllabus and this workbook is not to expand beyond the remit to look at UK legislation in relation to money laundering and terrorist financing (TF), but it is worth pointing out that financial crime is global in nature.

Financial markets have become increasingly globalised. Technological advances have facilitated the movement of capital across borders and increased investment opportunities for investors. The last financial crisis demonstrated undeniable, strong interconnectedness of markets and the resulting contagion effects around the world.

In a global marketplace, the development of global solutions and the development and enforcement of international regulatory and supervisory standards are only possible through international cooperation and coordination. The problems faced by globalised markets require globally coordinated solutions.

4.1 The Three Stages of Money Laundering

There are three stages to a successful money laundering operation:

1. **Placement** – introduction of the money into the financial system. Typically, this involves placing the criminally derived cash into a bank or building society account, a bureau de change or any other type of enterprise which can accept cash (ie, a casino).
2. **Layering** – this involves moving the money around the financial system in order to make it difficult for the authorities to link the placed funds with the ultimate beneficiary of the money. This might involve buying and selling foreign currencies, shares or bonds in rapid succession, investing in CISs, insurance-based investment products, or moving the money from one country to another.
3. **Integration** – at this final stage, the layering has been successful and the ultimate beneficiary appears to be holding legitimate funds (clean money rather than dirty money). The money is regarded as integrated into the legitimate financial system.

Broadly, the anti-money laundering provisions are aimed at identifying customers and reporting suspicions at the placement and layering stages, and keeping adequate records which should prevent the integration stage being reached.

4.2 The Proceeds of Crime At 2002 (POCA)

The Proceeds of Crime Act 2002 (POCA) establishes five offences:

1. **Concealing** – it is an offence for a person to conceal or disguise criminal property.
2. **Arrangements** – that is, being concerned in an arrangement which the person knows, or suspects, facilitates the acquisition, retention, use or control of criminal property for another person. Being concerned in an arrangement may

be widely interpreted, it could include advising on a transaction, for example.

3. **Acquisition, use and possession** – acquiring, using or having possession of criminal property.
   These three offences are punishable by a fine and a jail term of up to 14 years.
4. **Failure to disclose** – three conditions need to be satisfied for this offence:

   - The person knows or suspects (or has reasonable grounds to know or suspect) that another person is laundering money.
   - The information giving rise to the knowledge or suspicion came to him during the course of business in a regulated sector (such as the financial services sector).
   - The person does not make the required disclosure as soon as it is practicable.

This offence is punishable by a fine and a jail term of up to five years.

5. **Tipping off** – giving another person information, knowing or suspecting that a money laundering report has been made to the authorities, when that information is likely to prejudice the investigation.

This offence is punishable by a fine and a jail term of up to two years, and is only applicable to the regulated (financial) sector.

Prejudicing an investigation carries a jail term of up to five years. This applies differently within and outside the regulated sector.

A person has a valid defence against the first three offences (concealing, arrangements, acquisition, use and possession) if they make the required disclosure to a firm's money laundering reporting officer (MLRO) (see section 4.5 of this chapter) or, if the person was the MLRO, to the **National Crime Agency (NCA)**.

The offence of failure to disclose suspicions of money laundering may be committed not only when the person knows or suspects money laundering, but also when there are reasonable grounds to know or suspect money laundering (even if the person did not know or suspect it). The test as to whether there are reasonable grounds is called the objective test: whether a 'reasonable person' would have known or been suspicious, even though the offender protests their innocence.

4.2.1 The Criminal Finances Act 2017

This act introduced two corporate offences, making it easier for companies and partnerships to be held criminally liable for the actions of their employees and associated persons acting on their behalf.

The offence is committed where a company and/or a partnership, but not a natural person (individual), fails to prevent the facilitation of tax evasion by a person associated with it no matter where that occurs – either in the UK or globally.

The objective of the offence is to ensure that it is easier for law enforcement agencies to recover the proceeds of crime, tackle ML, tax evasion, corruption and combat the financing of terrorism.

4.3 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)

The Money Laundering Regulations 2017 (MLR 2017) introduced the following enhanced requirements:

- **Risk assessments**
  - At the regulator and firm level.
  - Firms will need to be able to link their risk assessment to the specifics within the national risk assessment. A firm's risk assessment must be up to date and made available to regulators/ supervisors on request.
  - The national risk assessment is the review of the UK's AML and counter-terrorist financing regime, completed by an independent body, the Financial Action Task Force (FATF).
- **Policies, controls and procedures to mitigate and manage risk**

- Policies, controls and procedures can be proportionate to the nature and size of the firm; they must include (at a minimum) the firm's: risk management practices; internal controls; customer due diligence (CDD); reporting and record–keeping; monitoring; and internal communication.
- Firms must appoint an individual, who is a member of the board of directors, as the officer responsible for compliance with these Regulations.

- **Customer due diligence (CDD)**
  - For corporates, firms must obtain certain information – such as the memorandum of association or other governing documents, regardless of whether the customer is listed on a regulated market. Where the firm is unable to identify the beneficial owner (when all possible means of identifying them have been exhausted), then it must keep records of all the actions it has taken to arrive at this position.
  - For persons acting on behalf of a customer, firms must identify and verify the individual, including verifying their authority to act on behalf of the customer.

- **Enhanced due diligence (EDD)**
  - Any situation identified as one where there is a high risk of money laundering or terrorist financing; where a transaction or business relationship is established in a high-risk third country; or any other circumstances where complex/large/unusual transactions are involved with no apparent economic or legal purpose, will be subject to EDD.
  - As part of EDD measures, firms must, as far as reasonably possible, examine the background or purpose of the transaction and increase the degree of monitoring applied.

- **Politically exposed persons (PEPs)**
  - PEPs are subject to EDD, but a proportionate approach to EDD is considered to be acceptable.
  - Firms must assess the level of risk associated with the PEP on a case by-case basis, and then look to apply EDD accordingly.
  - The UK government recognises that domestic PEPs would generally be treated as a lower risk (compared to certain foreign PEPs) following this approach.

- **Simplified due diligence (SDD)**
  - Eligibility for SDD must be assessed on a case-by-case basis, ie, where the firm determines that the business relationship or transaction presents a lower money laundering or terrorist financing risk.

- **Reliance**
  - Reliance on entities in 'high-risk' countries remains prohibited and identity information must be supplied by the 'relied upon' party at the start of the arrangement.

A criminal offence, where any individual who recklessly makes a statement in the context of money laundering which is false or misleading commits an offence punishable by a fine and/ or up to two years' imprisonment.

In 2020, while the UK was still subject to EU laws and regulations, the legislation was amended to reflect the implementation of 5MLD. The following was implemented into UK law:

- **High-risk factors** – firms must include new additional high-risk factors when assessing the need for enhanced due diligence and seek additional information and monitoring in certain cases. These occur when:
  - any business relationship with a party established in a high-risk third country or in relation to any relevant transaction where either of the parties is established in a high-risk third country. The UK Government will now be responsible for publishing a list/lists of countries that are considered high-risk in which these measures will apply
  - transactions related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or archaeological, historical, cultural and religious significance, or of rare scientific value.

- **Customer due diligence** – firms must update their records relating to the beneficial ownership of corporate clients, they must also understand the ownership and control structure of their corporate customers, and record any difficulties encountered in identifying beneficial ownership. Firms take reasonable measures to verify the identity of senior managing officials when the beneficial owner of a body corporate cannot be identified.
- **Reporting discrepancies to Companies House** – firms check beneficial ownership registers of legal entities in scope of the People with Significant Control (PSC) requirements before establishing a business relationship. In addition, firms report to Companies House discrepancies between the information the firm holds on their customers compared with the information held in the Companies House Register.
- **Cryptoassets activities** – businesses carrying out certain cryptoasset activities will need to comply with the regulations in relation to those activities and register with the FCA 2020.

4.3.1 Training of Individuals on Money Laundering

Section 24 of MLR 2017 states that firms must take appropriate measures to ensure that relevant employees are:

- made aware of the law relating to money laundering and terrorist financing and the requirements of protection which are relevant to the implementation of MLR 2017, and
- provided with regular training on how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing.

Firms must maintain records of the measures taken, as noted above, and in particular the training provided to employees. Relevant employees are defined as an employee whose role is capable of contributing to the identification or mitigation of the risk of money laundering and terrorist financing to which the firm is subject or to the prevention or detection of money laundering and terrorist financing in relation to the firm's business.

The appropriate measures that firms should consider and seek to implement would take into account the nature of the firm's business, its size and the nature and extent of the risk of money laundering and terrorist financing to which the firm is subject.

In addition, firms must take into account any guidance issued by the FCA, or any other supervisory authority/appropriate body approved by HM Treasury.

4.4 Joint Money Laundering Steering Group (JMLSG)

The JMLSG provides guidance for firms, setting out how authorised firms should manage their risk in terms of money laundering and terrorist financing.

The guidance sets out what is expected of firms and their staff in relation to the prevention of money laundering and terrorist financing, allowing some discretion as to how they apply the requirements of the UK AML/CTF regime given the particular circumstances of the firm, and its products, services, transactions and customers. It relates solely to how firms should fulfil their obligations under the AML/ CTF law and regulations.

Firms must encourage their staff to 'think risk' as they carry out their duties within the legal and regulatory framework governing AML/CTF.

The FCA has made clear its expectation that firms address the management of risk in a thoughtful and considered way, establish and maintain systems and procedures that are appropriate and proportionate to the risks identified and based on the type of business activity that they undertake.

The aim of the Guidance is to assist firms to do this.

The JMLSG Guidance Notes:

- requires that firms take a risk-based and proportionate approach to ML prevention, adopting a formal policy:
    - that must be documented

    - kept up to date
    - made available to the FCA on request
- simplify the identity verification requirements for many customer types
- allow for greater reliance on identification verification carried out by other firms, set out the CDD measures to be applied in various circumstances and state that CDD should be applied using a risk- based approach
- introduce new or revised definitions, including beneficial owners and PEPs
- set out the extent to which reliance may be placed on the CDD work of other regulated firms
- set out situations when simplified CDD measures may be applied, and
- set out the specific circumstances when enhanced due diligence must be applied.

Senior management of FCA-regulated firms must appoint an appropriately qualified senior member of staff who will have overall responsibility for the maintenance of the firm's AML systems and controls.

Firms must also have an AML policy statement in place; this provides a framework to the firm and its staff, and identifies named individuals and functions responsible for implementing particular aspects of the policy. The policy must also set out how senior management undertakes its assessment of the ML and TF risks the firm faces, and how these risks are to be managed.

The policy statement should include such matters as the following:

Guiding principles:

1. Customers' identities need to be satisfactorily verified before the firm accepts them.
2. A commitment to the firm knowing its customers appropriately – both at acceptance and throughout the business relationship by taking appropriate steps to verify a customer's identity and business.
3. Staff need adequate training and need to be made aware of the law and their obligations.
4. Recognition of the importance of staff promptly reporting their suspicions internally.

Risk mitigation approach:

1. A summary of the firm's approach to assessing and managing its ML and TF risk.
2. Allocation of responsibilities to specific persons and functions.
3. A summary of the firm's procedures for carrying out appropriate identification and monitoring checks on the basis of their risk-based approach.
4. A summary of the appropriate monitoring arrangements in place to ensure that the firm's policies and procedures are being carried out.

Firms are also required to assess the risks inherent in their business, taking into account risk factors including those relating to their clients, countries they operate in, products, services they offer/provide, transactions undertaken and delivery channels.

How Should the Guidance be Used?

The guidance gives firms a degree of discretion in how they comply with AML/CTF legislation and regulation, and over the procedures that they put in place for this purpose. It is not intended that the guidance be applied unthinkingly, as a checklist of steps to take.

When provisions of the statutory requirements and of regulatory requirements are directly described in the text of the guidance, it uses the term 'must', indicating that these provisions are mandatory. In other cases, the guidance uses the term 'should' to indicate ways in which the statutory and regulatory requirements may be satisfied, but allowing for alternative means of meeting the requirements. References to 'must' and 'should' in the text should therefore be construed accordingly.

Content of the Guidance

The JMLSG guidance emphasises the responsibility of senior management to manage the firm's money laundering and terrorist financing risks, and how this should be carried out on a risk-based approach. It sets out a standard approach to the identification and verification of customers, separating out basic identity from other aspects of customer due diligence measures, as well as giving guidance on the obligation to monitor customer activity.

The guidance provided by the JMLSG is in a number of parts. The main text in Part I contains generic guidance that applies across the UK financial sector. Part II provides guidance for a number of specific industry sectors, supplementing the generic guidance contained in Part I. (Part III provides additional guidance on a number of specific areas of activity.)

Part I sets out industry guidance on:

- the importance of senior management taking responsibility for effectively managing the money laundering and terrorist financing risks faced by the firm's businesses (Chapter 1)
- appropriate controls in the context of financial crime (Chapter 2)
- the role and responsibilities of the **nominated officer (NO)** and the MLRO (Chapter 3)
- adopting a risk-based approach to the application of customer due diligence (CDD) measures (Chapter 4)
- helping a firm have confidence that it has properly carried out its CDD obligations, including monitoring customer transactions and activity (Chapter 5)
- the identification and reporting of suspicious activity (Chapter 6)
- staff awareness, training and alertness (Chapter 7), and
- record-keeping (Chapter 8).

Parts II and III of the guidance comprise sector-specific additional material, which has been principally prepared by practitioners in the relevant sectors.

Status of the Guidance

POCA requires a court to take account of industry guidance that has been approved by HM Treasury when considering whether a person within the regulated sector has committed the offence of failing to report what that person knows, suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

Similarly, the Terrorism Act requires a court to take account of such approved industry guidance when considering whether a person within the financial sector has failed to report under that Act. MLR 2017 Regulations also provide that a court must take account of similar industry guidance in determining whether a person or institution within the regulated sector has complied with any of the requirements of the ML Regulations.

The FCA Handbook also confirms that the FCA will have regard to whether a firm has followed relevant provisions of this guidance when:

- considering whether to take action against a regulated firm in respect of a breach of the relevant provisions in SYSC (see SYSC 3.2, SYSC 5.3, and DEPP 6.2.3), and
- considering whether to prosecute a breach of the ML Regulations (see EG 12.1).

The guidance therefore provides a sound basis for firms to meet their legislative and regulatory obligations when tailored by firms to their particular business risk profile. Departures from this guidance, and the rationale for so doing, should be documented, and firms will have to be prepared to justify departures, for example to the FCA (and a court of law).

Chapter 1 – The importance of senior management taking responsibility for effectively managing the money laundering and terrorist financing risks faced by the firm's businesses

This chapter gives an overview of the context of AML/CTF in the UK and more widely, and the place of guidance in assisting the implementation of UK legal and regulatory obligations in practice. It outlines the responsibilities and obligations that rest on senior management as part of their general responsibility for running the firm, and stresses the importance of senior management taking responsibility for effectively managing the money laundering and terrorist financing risks faced by the firm's businesses. This would entail senior management adopting a formal policy in relation to financial crime prevention. It also refers to the requirement that they must appoint a director or senior manager to take responsibility for AML/CTF across the firm.

Chapter 2 – Appropriate controls in the context of financial crime

This chapter outlines the obligations on firms under the ML Regulations to establish and maintain appropriate controls against the risk of financial crime. The controls should take account of the firm's business model and business activities undertaken.

Chapter 3 – The role and responsibilities of the nominated officer and the MLRO
This chapter identifies the requirement that the MLRO must be of sufficient seniority within the firm, and should have adequate resources available to carry out the role. It notes the responsibilities of the nominated officer in relation to internal suspicion reports and whether a suspicious activity report (SAR) should be made. In addition, it states that the MLRO should make regular reports to senior management on the operation of the firm's AML/CTF procedures, and on any improvements that are required.

Chapter 4 – Adopting a risk-based approach to the application of CDD measures
This summarises how a risk-based approach might be established, through identifying and assessing the risks faced by the firm (giving some suggested questions that senior management may ask themselves), designing and implementing controls to manage and mitigate the risks, monitoring and improving the effectiveness of the firm's controls and recording appropriately what has been done and why. It notes that risk management is dynamic, and is generally a continuous process rather than a one-time exercise.

4.4.1 The Joint Money Laundering Steering Group's (JMLSG) Guidance on Know Your Customer (K

Chapter 5 of Part I of the JMLSG Guidance explains that the requirement to conduct customer due diligence (CDD) is derived from MLR 2017. The requirements are there for two broad reasons, which are to:

- help the firm to be satisfied that the customers are who they say they are and that there are no legal reasons preventing the relationship, and
- assist law enforcement.

The CDD requirements should be applied by firms, having regard to the risks associated with different types of business relationship. There are three aspects to CDD at the outset of a new business relationship, which are:

- identify the customer, obtain the customer's name, address and date of birth; for non-personal customers the beneficial owners must be identified
- obtain verification of the customer's identity, conduct additional checks to verify the information, and
- obtain information about the intended nature of the business relationship.

This is standard due diligence (SDD), and Chapter 5 (Part I) of the JMLSG Guidance Notes gives practical guidance on the due diligence required for different types of customer. For personal customers, standard verification requirements may be satisfied by the production of a valid passport or photocard driving licence. For non-personal customers, such as companies, partnerships and clubs, it will be necessary to conduct checks on public registers such as Companies House.

SDD means undertaking a reduced number of checks in respect of a business relationship or transaction, where it is determined that the relationship or transactions represent a low degree of risk. Examples of types of customers who may be considered low risk and subject to SDD are as follows:

- Certain other regulated financial services firms.
- Listed companies.
- Beneficial owners of pooled accounts held by notaries or legal professionals.
- UK public authorities.
- Community institutions.
- Certain products or arrangements if the risk of them being used for ML is inherently low: life assurance, e-money products, pension funds and child trust funds.

If SDD does not apply, then satisfactory identification evidence for the customer should be obtained, and verified, as soon as is reasonably practicable after first contact between the firm and the customer. If there is a delay between the forming of the business relationship and the verification of the customer's identity (eg, in the case of non-face-to-face business), firms' risk management procedures should limit the extent of the relationship. They could do this, for example, by placing restrictions on the transactions the customer can enter into, or on the transfer of funds, until verification is complete.

If a firm cannot satisfactorily verify a customer's identity, it should not proceed with the business relationship, and should consider whether this should cause it to make a report to the National Crime Agency (NCA). If it is simply the case that the

customer cannot produce the correct documents or information, the firm may consider whether there is any other way it can satisfy itself as to their identity.

Enhanced due diligence (EDD) is when the firm conducts additional checks and measures on a risk- sensitive basis to manage and mitigate exposure in situations which presents a higher risk of money laundering or terrorist financing. As part of this, a firm may conclude, under its risk-based approach, that the information it has collected as part of the CDD process is insufficient in relation to the money laundering or terrorist financing risk, and that it must obtain additional information about a particular customer; the customer's beneficial owner, where applicable; and the purpose and intended nature of the business relationship.

Therefore, firms should hold sufficient information about the circumstances and business of their customers and, where applicable, their customers' beneficial owners, for two principal reasons:

- to inform their risk assessment processes, and thus manage their money laundering/terrorist financing risks effectively, and
- to provide a basis for monitoring customer activity and transactions, thus increasing the likelihood that they will detect the use of their products and services for money laundering and terrorist financing.

Firms' information demands need to be proportionate, appropriate and discriminating, and to be justifiable to customers; therefore, firms would need to maintain greater information on clients they assess as carrying a higher money laundering or terrorist financing risk, or where the client is seeking a product or service that carries a higher risk of being used for money laundering or terrorist financing.

MLR 2017 brought in new specific circumstances in which EDD measures apply, these are:

- any case identified by the firm under its risk assessment (or in information provided by the supervisory authorities) where there is a high-risk of money laundering and terrorist financing
- any transaction with a person established in a high risk third country
- where the client has not been physically present for identification purposes
- in respect of correspondent banking relationships
- in respect of a business relationship or occasional transaction with a PEP, if the firm has determined that a customer or potential customer is a PEP, or a family member or known close associate of a PEP
- in any case where a customer has provided false or stolen identification documents or information on establishing a relationship, and
- in any case where a transaction is complex and unusually large or there is an unusual pattern of transactions.

A PEP is defined as:

> *'an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function, other than as a middle-ranking or more junior official. Under the definition of a PEP, firms' obligation to apply EDD measures to an individual ceases after they have left office for one year, or a longer period if the firm considers that it might be appropriate – in order to address risks of ML/TF in relation to that person'.*

Family members of a PEP include:

- a spouse or partner of that person
- a partner (including a person who is considered by their national law as equivalent to a spouse)
- children of that person and their spouses or partners, and
- parents of that person.

Firms are no longer required to apply EDD measures to family members or close associates of a PEP when the PEP is no longer entrusted with a prominent public function, whether or not the period noted above has expired.

Firms are expected, on a risk-sensitive basis, to:

- have in place appropriate risk-management systems and procedures to determine whether a client or the beneficial owner of a client is a PEP, or a family member or known close associate of a PEP

- obtain appropriate senior management approval for establishing, or continuing, a business relationship with such a client
- take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction, and
- conduct enhanced ongoing monitoring of the business relationship.

Therefore, firms should take a proportional, risk-based approach to conducting transactions or business relationships with PEPs, depending on where they are assessed on the scale of high risk. However, establishing whether individuals qualify as PEPs is not always straightforward. The legal definition is quite explicit, but there is some confusion over middle-ranking or junior officials who have significant or even absolute control. A firm's analysis should employ an appropriate risk-based approach to assess where the PEP sits on the risk scale.

Regardless of the type of due diligence conducted at the outset, in all cases the firm must conduct ongoing monitoring of the business relationship.

The FCA noted that whilst all firms reviewed as part of a thematic review had implemented systems and controls to ensure compliance with the rules, all of the firms needed to make improvements. The issues in the FCA's findings included:

- wider definitions than those in the regulations and their Guidance
- ineffective arrangements to assess if the PEP classification was still appropriate after the PEP had left public office
- no assessment and consideration on the customer's actual risk in their assessment and rating, and did not give a clear rationale for their risk rating
- firms need to improve clarity and detail of their communications with PEPs
- firms need to improve their staff training, and
- firms need to maintain updated policies to reflect recent legislative amendments to treat UK PEPs.

4.4.2 FCA Report – 'Firms' Customer Due Diligence Processes and Controls'

In 2025, the FCA concluded a multi-firm review of CDD, EDD and ongoing due diligence controls.

Firms involved in the review came from the following sectors, however the findings would apply to all firms undertaking CDD (including EDD):

- asset management
- crowdfunding
- wholesale banking
- contracts for difference
- non-bank lenders.

The FCA assessed CDD systems and controls through a questionnaire, a desk-based review of policies and procedures, customer file reviews and interviews with staff at firms.

The below findings centre around firms' approaches to:

1. policies and procedures
2. CDD and EDD processes
3. compliance monitoring and audit.

Policies and Procedures

- The FCA noted that several firms distinguished between standard CDD and EDD, specifying when the latter is required for higher-risk customers, such as PEPs.
    - these same firms had incorporated the changes introduced on 10 January 2024 regarding domestic PEPs.
- Most firms had documented procedures for verifying customer identity, but few had enough detail or practical guidance for staff.

- Some firms' policies and procedures did not explain what alternative evidence can be used and should be obtained when customers lack standard forms of identification.
- The FCA observed that some firms didn't have enough detail on how often periodic reviews should take place, and a lack of clarity over what they should do if an event-driven review happens.
- Some firms have approval matrices and governance tools to help with CDD, but others lacked detail on when senior management sign-off was needed or failed to maintain document version control.

Good practice evidenced	Poor practice evidenced
Clear distinction between CDD and EDD • Policies clearly distinguish between EDD and standard CDD and outline what measures should be taken for each of these, under a risk-based approach.	*Insufficient detail in firm's policies and procedures* • Policies and procedures didn't explain what additional measures should be taken for the purposes of EDD.
Frameworks for identifying PEPs • Firms had comprehensive and detailed control frameworks for identifying PEPs.	*Undefined cycle for customer reviews* • Not enough detail on how often periodic reviews should take place and what firms were expected to do in the case of event driven reviews.
	Lack of alternative ways to check customer identity and verify this • Policies and procedures lacked information for staff on how they could identify and verify a customer if the latter couldn't provide the usual forms of identification.
	Firms not following their own policies • Firms failed to follow their own policies and procedures such as when to conduct periodic reviews of customers.

CDD and EDD Processes

- Most firms tailored their CDD approach to the risk profile of each customer, ensuring that higher-risk customers were subject to enhanced checks and more frequent reviews.
- Stronger performing firms documented each stage of the EDD process, including clear requirements for senior management approval and strong oversight, such as through compliance committees.
- FCA had concerns that some firms did not gather or record relevant information, such as the purpose and intended nature of the business relationship.
- Other firms failed to evidence and document EDD measures taken for high-risk customers. In some cases, there was limited evidence indicating how the approach differed between low and high-risk customers, and firms weren't always conducting periodic reviews as required.

Good practice evidenced	Poor practice evidenced
Clear guidance for EDD requirements • Firms had clearly documented steps for EDD measures.	*No documentation of EDD measures taken* • Firms failed to produce any evidence of what EDD measures had been taken and recorded.

CDD processes tailored to each customer • CDD information collected was determined by the financial crime risks posed by each customer	*Key information not recorded* • No details on purpose and intended nature of the business relationship to assist with ongoing monitoring.
	Requirements for senior management approval not specified • No examples of scenarios or types of customers that require senior management approval, to demonstrate effective governance and oversight.

Compliance Monitoring and Audit

- Most firms had some form of compliance monitoring and audit in place, but the level and depth of reviews and independence of these arrangements differed.
- Several firms reviewed their CDD framework regularly, including thematic reviews by external parties or internal audit functions, and they maintained clear cycles for ongoing assessment.
- Some firms used sample-based compliance monitoring and maintained proportionate review cycles, ensuring that CDD processes remained effective and up to date.
- Stronger performing firms operated independent third line testing that assessed controls across customer onboarding and due diligence, these were documented and findings acted upon.
- In some instances, there was no independent second line assurance, with the same staff responsible for both onboarding and reviewing customers:
    - this raises questions about impartiality and effectiveness of testing.

Good practice evidenced	Poor practice evidenced
External CDD audit • A firm conducted a thematic review of its CDD processes using external audit.	*No detail on compliance monitoring* • Some firms lacked detail on how they were checking for quality control.
CDD in regular audit review • A firm operated a regular audit review cycle of its CDD systems and controls.	*No independent review of CDD/EDD* • One firm's staff onboarded customers as well as performed second line assurance work on those customers.
	Lack of version control • Firms had no version control of their documentation, so could not demonstrate an audit trail of reviews or changes made.

4.4.3 International Standards for Anti-Money Laundering and Countering the Financing of Terrorism

The Financial Action Task Force (FATF) leads the global action to tackle money laundering, terrorist and proliferation financing.

FATF continuously monitors how criminals and terrorists raise, use and move funds. As countries put in place effective measures to disrupt illicit financial flows, criminals find alternative ways to launder their dirty money. The FATF regularly publishes reports that raise awareness about the latest money laundering, terrorist financing and proliferation financing techniques so that countries and the private sector can take the necessary steps to mitigate these risks.

The FATF Recommendations, noted below, ensure a coordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes.

The FATF continuously strengthens its global standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity.

The FATF monitors countries to ensure they implement the FATF Standards fully and effectively. In total, more than 200 countries and jurisdictions have committed to implement the FATF's Standards and they are assessed with the help of nine FATF Associate Member organisations and other global partners, the IMF and World Bank.

The FATF holds countries to account that do not comply with its Standards. If a country repeatedly fails to implement the FATF Standards then it can be named a Jurisdiction under Increased Monitoring or a High Risk Jurisdiction.

FATF Recommendations
(The recommendations were last updated in November 2023)

The FATF Recommendations set out the essential measures that countries should have in place to:

- identify the risks, and develop policies and domestic coordination
- pursue money laundering, terrorist financing and the financing of proliferation
- apply preventive measures for the financial sector and other designated sectors
- establish powers and responsibilities for the competent authorities (eg, investigative, law enforcement and supervisory authorities) and other institutional measures
- enhance the transparency and availability of beneficial ownership information of legal persons and arrangements, and
- facilitate international cooperation.

AML/CFT Policies and Coordination

- Assessing risks and applying a risk-based approach
    - Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively.
- National cooperation and coordination
    - Countries should have national AML/CFT/CPF policies, informed by the risks identified, which should be reviewed regularly, and should designate an authority or have a coordination or other mechanism that is responsible for such policies.

Money Laundering and Confiscation

- Money laundering offence
    - Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention.
    - Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.
- Confiscation and provisional measures
    - Countries should ensure that they have policies and operational frameworks that prioritise asset recovery in both the domestic and international context.

Terrorist Financing and Financing of Proliferation

- Terrorist financing offence
    - Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts.
- Targeted financial sanctions related to terrorism and terrorist financing
    - Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing.
- Targeted financial sanctions related to proliferation
    - Countries should implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.
- Non-profit organisations
    - Countries should identify the organisations which fall within the FATF definition of non-profit organisations (NPOs) and assess their terrorist financing risks.

Preventive Measures

- Financial institution secrecy laws
    - Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

Customer Due Diligence and Record-Keeping

- Customer due diligence
    - Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious name.
- Record-keeping
    - Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities.

Additional Measures for Specific Customers and Activities

- Politically exposed persons
    - Financial institutions should be required:
        - have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person
        - obtain senior management approval for establishing (or continuing, for existing customers) such business relationships
        - take reasonable measures to establish the source of wealth and source of funds
        - conduct enhanced ongoing monitoring of the business relationship.
- Correspondent banking
    - Financial institutions should be required to undertake additional measures for cross-border correspondent banking relationships.
- Money or value transfer services

- Countries should take measures to ensure that natural or legal persons that provide money or value transfer services (MVTS) are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations.

- New technologies
  - Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to:
    - the development of new products and new business practices, including new delivery mechanisms
    - the use of new or developing technologies for both new and pre-existing products.

- Wire transfers
  - Countries should ensure that financial institutions include required and accurate originator information, and required beneficiary information, on wire transfers and related messages, and that the information remains with the wire transfer or related message throughout the payment chain.

Reliance, Controls and Financial Groups

- Reliance on third parties
  - Countries may permit financial institutions to rely on third countries to perform elements of the CDD measures.

- Internal controls and foreign branches and subsidiaries
  - Financial institutions should be required to implement programmes against money laundering and terrorist financing.
  - Financial groups should be required to implement group-wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes.

- Higher-risk countries
  - Financial institutions should be required to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF.
  - The type of enhanced due diligence measures applied should be effective and proportionate to the risks.

Reporting of Suspicious Transactions

- Reporting of suspicious transactions
  - If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)
    - Tipping-off and confidentiality.

Designed Non-Financial Businesses and Professions

- DNFBPs – customer due diligence
- DNFBPs – other measures.

Transparency and Beneficial Ownership of Legal Persons and Arrangements

- Transparency and beneficial ownership of legal persons
  - Countries should assess the risks of misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse.

- Transparency and beneficial ownership of legal arrangements

- Countries should assess the risks of the misuse of legal arrangements for money laundering or terrorist financing and take measures to prevent their misuse.

Powers and Responsibilities of Competent Authorities, and Other Institutional Measures – Regulation and Supervision

- Regulation and supervision of financial institutions
  - Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations.
- Powers of supervisors
  - Supervisors should have adequate powers to supervise or monitor, and ensure compliance by, financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections.
- Regulation and supervision of DNFBPs
  - Designated non-financial businesses and professions should be subject to regulatory and supervisory measures.

Operational and Law Enforcement

- Financial intelligence units
  - Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of:
    – suspicious transaction reports
    – other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.
- Responsibilities of law enforcement and investigative authorities
  - Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/ CFT policies.
- Powers of law enforcement and investigative authorities
  - When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related action.
- Cash couriers
  - Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system.

General Requirements

- Statistics
  - Countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems.
- Guidance and feedback
  - The competent authorities, supervisors and SRBs should establish guidelines, and provide feedback, which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions.

Sanctions

- Countries should ensure that there is a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons that fail to comply with AML/CFT requirements.

International Cooperation

- International instruments
- Mutual legal assistance
    - Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings.
- Mutual legal assistance: freezing and confiscation
    - Countries should have measures, including legislative measures, to take expeditious action in response to requests by foreign countries seeking assistance to identify, trace, evaluate investigate, freeze, seize and confiscate criminal property and property of corresponding value.
- Extradition
    - Countries should constructively and effectively execute extradition requests in relation to money laundering and terrorist financing, without undue delay
    - Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations.
- Other forms of international cooperation
    - Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing.

Source of information: https://www.fatf-gafi.org/en/home.html

4.5 The Money Laundering Reporting Officer (MLRO) and the Nominated Officer

Under POCA 2002, it is an offence to fail to disclose a suspicion of money laundering. This requires staff in financial services firms to be aware of what constitutes a suspicion, and that staff must be trained to recognise and deal with what may be a money laundering transaction. Firms are also required to ensure that business relationships are understood and monitored sufficiently well so that their staff will recognise patterns of activity which are not in keeping with the customer's anticipated profile.

The disclosure of suspicions is made, ultimately, to the legal authorities, namely the NCA. However, disclosure goes through two stages. First, the employee with a suspicion should disclose that suspicion within the firm to the MLRO, who reviews matters, and decides whether the suspicion should be passed on to the relevant UK authorities (ie, the NCA).

It is important to appreciate that, by reporting to the MLRO, the employee with the suspicion has fulfilled their responsibilities under the law – they have disclosed their suspicions. Similarly, by reporting to the NCA, the MLRO has fulfilled their responsibilities under the law. Section 330, Part 7 of POCA states that it is an offence for an individual not to report a suspicious activity if they know or suspect or have reasonable grounds for knowing or suspecting that a client/customer is engaged in money laundering.

In addition, it is also an offence if the disclosure is not made to the firm's MLRO (and by the MLRO to NCA – if deemed to be suspicious activity) as soon as practicable after the information or other matters have been identified and/or obtained.

Therefore, it is important for the firm's MLRO to provide training (both initial for new employees and ongoing) on the firm's employees on the firm's obligations and how these can be met. This is not a box ticking exercise, rather an ongoing continuous obligation for the firm – and in particular the firm's MLRO.

The main part of the FCA Handbook related to the role of the MLRO is the 'SYSC' sourcebook. As an approved person, the MLRO is subject to the Senior Managers Regime under the SM&CR, with a primary responsibility for ensuring that the firm adequately trains its staff in the knowledge and understanding of the regulatory requirements and how to recognise and deal with suspicious transactions.

4.5.1 MLRO or Nominated Officer?

Under the FCA rules, all firms (except for sole traders, general insurance firms and mortgage intermediaries) must appoint an MLRO with responsibility for oversight of their compliance with the FCA's rules on systems and controls against money laundering.

MLR 2017 require all affected firms to appoint a nominated officer to be responsible for receiving internal ML disclosures from staff members, and to make external reports to the NCA when necessary. The nominated officer is also responsible for receiving internal disclosures under POCA and the Terrorism Act 2000.

Although the obligations of the MLRO under the FCA requirements are different from those of the nominated officer under POCA, the Terrorism Act or MLR 2017, in practice, the same person tends to carry out both roles, and is usually known as the MLRO.

4.5.2 The FCA's Principles-Based Approach to Money Laundering Prevention

The SYSC requirements place obligations on firms' senior management to ensure that they have in place systems and controls which are appropriate to the business for the prevention of money laundering and terrorist financing. The JMLSG guidance notes help firms in interpreting and dealing with these obligations in the context of their specific types of business. In order to determine the arrangements and controls needed by a firm for these purposes, senior management need to have carried out a risk assessment. This should consider such factors as the:

- nature of the firm's products and services
- nature of its client base and geographical location, and
- ways in which these may leave the firm open to abuse by criminals.

Firms are required to establish and maintain effective systems and controls for compliance with the various requirements and standards under the regulatory system, and for countering the risk that the firm might be used to further financial crime.

In addition, firms must ensure that their systems and controls enable them to identify, assess, monitor and manage money laundering risk. They must carry out regular assessments of the adequacy of these systems and controls.

Failure by a firm to manage money laundering risk effectively will increase the risk to society of crime and terrorism. When considering whether a breach of its rules on systems and controls against money laundering has occurred, the FCA will look to see if the firm has followed relevant provisions in the guidance for the UK financial sector provided by the JMLSG.

In identifying its money laundering risk, and in establishing its systems and controls, a firm should consider a range of factors, including:

- its customer, product and activity profiles
- its distribution channels
- the complexity and volume of its transactions
- its processes and systems, and
- its operating environment.

The appointed MLRO is responsible for receiving and assessing internal suspicion reports and determining – after a proper investigation – whether to report them on to the NCA.

Firms should ensure that the systems and controls include appropriate:

- training for its employees in relation to money laundering prevention

- provision of information to its governing body and senior management, including a report at least annually by the firm's MLRO on the operation and effectiveness of those systems and controls
- documentation of its risk management policies and risk profile in relation to money laundering, and
- measures to ensure that money laundering risk is taken into account in its day-to-day operation and also with the development of new products, the taking on of new customers, and changes in its business profile.

A firm must ensure that its MLRO has an appropriate level of authority and independence within the firm and access to resources and information sufficient to enable them to carry out their responsibilities. The MLRO acts as a central point for all activity within the firm relating to AML/CFT and should be based in the UK.

Firms must appoint a director or senior manager (who may also be the MLRO) overall responsibility for the establishment and maintenance of effective AML/CFT systems and controls. Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. This function may be heavily involved in monitoring the firm's compliance with its AML/CFT procedures. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties. It should be adequately resourced and should have unrestricted access to the firm's relevant records.

4.5.3 Reporting of Suspicious Activities (SARs)

Following internal notification within firms to the MLRO, and an assessment that the activity is suspicious, in that it does not follow the usual activity of the client in question (or the expected business activity undertaken by the client), then the firm must make a report in a timely manner to the relevant UK authority (ie, the NCA).

Therefore, the key to knowing when to report suspicious activity is to have a good understanding of your customer; from understanding their business, building relationships with them to understanding the activities and transactions that they could (and do) undertake.

This is the key and fundamental piece of a firm's controls relating to the prevention of financial crime. Firms should put in place monitoring tailored to identify unusual activity that would not fall into the 'usual' activity of their clients. Not all clients are the same in terms of 'usual business activity', but this highlights the importance of continuous engagement with clients to ensure that you are updated with their business needs and activities.

The SAR report must contain all relevant information about the individual(s) or entity that they believe to be acting suspiciously.

Just like STORs, a firm must not second guess what the NCA would consider as suspicious – rather firms must report all such activity that they consider is suspicious based on the profile of the individual(s) or entity.

The Reporting of 'STORs' and 'SARs' – Overlapping Regimes

The FCA wrote to the trade association 'UK Finance' in 2019 in relation to firms reporting of suspicious transactions under the STOR and SAR regimes.

It can be complex identifying when to make a report under STOR and/or SAR, especially as they serve different purposes. The FCA had been critical of firms who think that filing a report under one regime discharges them of their obligations to report under the other. This was the reason that they sent a letter and provided advice. It is for firms to consider on a case-by-case basis whether they are required to submit a STOR, SAR or both.

4.6 The National Crime Agency (NCA)

The NCA is a UK national enforcement agency which is responsible for tackling organised crime, defending the UK's borders, fighting fraud, cybercrime, protecting children and young people.

The NCA is accountable to the Home Secretary. The NCA produces and maintains the national threat picture in relation to serious, organised and complex crime, which all other agencies work to. Using this agreed intelligence picture, the NCA tasks and coordinates the police and other law enforcement agencies, underpinned by a new strategic policing

requirement. The NCA also has its own specialist capabilities, including surveillance, fraud and threat-to-life situations. These are used by the NCA itself and are available to the police and other agencies.

Organised crime is increasingly globalised and IT-enabled, a trend inevitably accelerating with society's dependence on the internet. Organised criminals operate their own self-regulated market for cybercrime goods and services, including stolen data, malicious software, technical infrastructure and money laundering; and they operate on an industrial scale.

As more data is acquired, stored and shared, technologies advance and more of our government services and commerce are provided online and so the risk increases. Although there are a number of definitions of cybercrime, the one utilised by the NCA and its partners is as follows:

> *'Cybercrimes are those crimes committed, in full or in part, through the use of information communication technology (ICT) devices, such as computers or other computer-enabled tools, including mobile or 'smart' phones. Cybercrimes can be defined in two ways:*
>
> - ***Pure cybercrimes*** *(or computer-dependent crimes) – when a criminal act can only be committed through the use of computers or other ICT devices. In these cases, the devices are both the tool for committing the crime and target of the crime. For instance, the harvesting of online bank account details using malware, the hacking of a website through Structured Query Language (SQL) injection, hacking of networks to steal sensitive data or distributed denial of service attacks on websites or infrastructure.*
> - ***Cyber-enabled crimes*** *are those that may be committed without ICT devices, but are changed by use of ICT in terms of scale and reach. This can comprise a wide range of criminal activities, including, but not limited to, online fraud; theft or sexual offending and when the devices are used to organise or arrange crimes.'*

The multi-agency response to cybercrime, involving the NCA, the police and national and international partners, continues to target the perpetrators of cybercrime, helps to protect the UK against the threat and educates users to operate online more safely.

Nonetheless, all users need to be vigilant against the cybercrime threat, and should take sensible and practical precautions such as maintaining up-to-date internet security software (including anti-virus software) and other protections.

4.7 Financial Crime

The FCA now has a much greater focus on making judgements, for example, about individuals performing key roles and the sustainability of business models of firms. The FCA has stated that it cannot simply rely on monitoring systems and controls or assuming that firms' senior management are necessarily always best placed to make these judgements alone. But improving regulation and the outcomes for firms and consumers is not just about moving the regulatory telescope. The FCA also looks at behaviour and culture in firms, particularly ensuring that good culture and behaviour in firms are being:

- driven by senior management, and
- reinforced by effective corporate governance and the role of the boards.

Of course, part of changing behaviour and culture is about looking at the incentives on offer.

Why is effective governance important? In broad terms, it enables a firm's board and executive team to work together to deliver a firm's agreed strategy. In particular, it is about managing the risks the firm faces.

Good governance enables the board to share a clear understanding of the firm's risk appetite and to establish a robust control framework to manage that risk effectively across the business, with effective oversight and challenge along the way. This is what the FCA is keen to find happening within firms.

4.7.1 The FCA Financial Crime Guide: A Guide for Firms

The FCA published a document titled 'Financial Crime: A firms guide to countering financial crime risks'.

This Guide consolidates FCA guidance on financial crime. It does not contain rules and its contents are not binding. It provides guidance to firms on steps they can take to reduce their financial crime risk and aims to enhance understanding of FCA expectations and help firms to assess the adequacy of their financial crime systems and controls and remedy deficiencies.

An aim of the Guide is to help firms adopt a more effective, risk-based and outcomes-focused approach to mitigating financial crime risk.

The Guide provides practical examples in which firms might comply with applicable rules and requirements.

The Guide is divided into the following sections:

- Financial crime systems and controls.
- Money laundering and terrorist financing.
- Fraud.
- Data security.
- Bribery and corruption.
- Sanctions and asset freezes.
- Insider dealing and market manipulation.

FCA Consultation Paper on the 'Financial Crime Guide Update'

In 2024 the FCA consulted on changes to the Financial Crime Guide, it proposed changes in the following areas:

- Sanctions
    - Updated following 'lessons learnt' from issues post Russia's invasion of Ukraine.
    - Interplay between CDD/KYC procedures for AML and managing sanctions risks.
- Proliferation Financing
- Transaction Monitoring
    - Further guidance on how firms can implement and monitor 'transaction monitoring systems', and support responsible innovation and new approaches.
    - Including new self-assessment questions and examples of good and poor practice.
- Cryptoassets
    - Provide explicit references that cryptoassets businesses must consult the Guide.
- Consumer Duty
    - Explicit references that firms should consider whether their systems and controls are proportionate and consistent with their obligations under the Consumer Duty.
- Consequential Changes
    - Removing references to the 'EU', refreshing case studies and replacing expired links.

At the end of November 2024, the FCA published final guidance to the '*Financial Crime Guide*', which came into immediate effect.

4.7.2 Economic Crime Levy Consultation

In 2020, the Government announced its intention to introduce a mandatory economic crime levy paid for by the AML-regulated sector to tackle money laundering. A consultation paper was published seeking views on what the levy will pay for, how it should be calculated and distributed, and how the levy should be collected. The legislation came into effect in 2023, covering the period from April 2022 to March 2023. From 1 April 2024 the UK government increased the levy for 'larger' entities.

4.8 Terrorist Financing

In light of the war against terrorism, legislation in the form of the Terrorism Act 2000 has defined what amounts to terrorism.

Terrorism is the use or threat of action when it:

- involves serious violence against a person or serious damage to property
- endangers a person's life, other than the person committing the action
- creates serious risk to the health or safety of the public (or a section of the public)
- is designed seriously to interfere with or disrupt an electronic system
- is designed to influence the government or intimidate the public (or a section of the public), or
- is made for the purpose of advancing a political, religious or ideological cause.

In addition, if the threat or action involves the use of firearms or explosives it is terrorism, regardless of whether it was designed to influence the government or intimidate the public (or a section of the public), it is classed as 'terrorism'.

4.8.1 Anti-Terrorism Legislation and Guidance

Many of the requirements of anti-terrorism legislation are similar to the AML provisions encountered earlier. A person commits an offence if he enters into, or becomes concerned with, an arrangement that facilitates the retention or control of terrorist property by concealment, removal from the jurisdiction, transfer to nominees or in any other way. The person may have a defence if he can prove that he did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property.

There is a duty to report suspicions and it is an offence to fail to report when there are reasonable grounds to have a suspicion. The Terrorism Act 2000 and Anti-Terrorism Crime and Security Act 2001 specify that a failure to report is liable to a term of up to five years in jail, plus a fine.

Schedule 7 of the Counter Terrorism Act (CTA) gave new powers to HM Treasury to issue directions to firms in the financial sector.

Under the CTA, HM Treasury may issue directions when one or more of the following are met:

- The FATF has advised that counter-measures should be applied to a country (as per MLR 2017).
- HM Treasury reasonably believes that ML/terrorist financing activities are being carried on in the country, by its government or by persons resident or incorporated there, which pose a significant threat to the UK's national interests.
- HM Treasury reasonably believes that the country is developing or producing nuclear weapons, including chemical, or doing anything to facilitate that, and poses a significant threat to the UK's national interests.

While directions to individual firms will be served upon them, it is not yet clear how orders that apply to specified types of firm or the whole sector (which will require secondary legislation each time) will be publicised. It may or may not be via the sanctions mechanism or something similar – this issue is still being clarified with HM Treasury.

4.8.2 The Relationship Between Money Laundering, Terrorist Financing and Other Financial Crime

Although the focus of MLR 2017 is on firms' obligations in relation to the prevention of money laundering, POCA updated and reformed the obligation to report to cover involvement with any criminal property, and the Terrorism Act extended this to cover terrorist property.

From a practical perspective, firms must consider how best they should assess and manage their overall exposure to financial crime. This does not mean that the prevention of fraud, market abuse, money laundering and terrorism-financing must be addressed by a single function within a firm. There will, however, need to be close liaison between those responsible for each activity. Because terrorist groups can have links with other criminal activities, there is inevitably some overlap between AML provisions and financing terrorist acts.

However, there are two major difficulties with terrorist funds compared to other money laundering activities:

- Often, only quite small sums of money are required to commit terrorist acts.
- If legitimate funds are used to fund terrorist activities, it is difficult to identify when the funds become terrorist funds.

Therefore, financial services firms need to be as careful in ensuring compliance with the anti-terrorist and terrorist-financing legislation (including the Terrorism Act 2000), as they are with the rules on ML issues and the JMLSG guidance notes.

The Terrorism Act requires a court to take account of such approved industry guidance when considering whether a person within the financial sector has failed to report under that Act. The ML Regulations also provide that a court must take account of similar industry guidance in determining whether a person or institution within the regulated sector has complied with any of the requirements of MLR 2017.

4.9 UK Sanctions

Prohibitions under each financial sanction depend upon the Financial Sanction Regulation. Regulations are imposed by the following:

- **United Nations Security Council (UNSC)** – the UK is a member of the council, therefore all financial sanctions created by the UN are automatically imposed.
- **UK government** – financial sanctions are created by the UK government.

The HM Treasury's Office for Financial Sanctions Implementation provides a consolidated list of persons and organisations under financial sanctions, including those under the Global Human Rights (GHR) sanctions regime, EU legislation and other UK legislations.

When the UK government makes a decision to create, change or remove a sanction's designation, it will update the UK sanctions list. Where the UK government holds the contact details for those designated under the Sanctions Act, it will seek to inform them directly of their designation.

A full list of those on the sanction list is available from the following website:
https://www.gov.uk/government/publications/the-uk-sanctions-list

(Source of information: UK Government website – www.gov.uk)

Firms must not deal with clients (either individuals or legal persons – companies) if they are on the Sanctions list. However, where a client has just been added to the sanctions list, the firm may continue to undertake business with the client in very limited circumstances – but to do so, they must apply to the OFSI for a special licence.

The OFSI considers license exemption request on a case-by-case basis – taking into account the following circumstances:

- basic needs
- fees for the provision of legal services
- routine maintenance of frozen funds and economic resources
- extraordinary expenses
- pre-existing judicial decisions
- humanitarian assistance activity
- diplomatic situations, and
- prior obligations.

4.10 Economic Crime Act

The UK's Economic Crime (Transparency and Enforcement) Act 2022 (the Act) came into force in 2022, representing a significant shift in disclosure requirements for foreign companies which hold property interests in the UK.

It introduced the requirements for a public register of overseas entities. There are a number of threshold tests, for instance full disclosure for 25% direct or indirect ownership or significant influence/control.

The register is operated by Companies House and will apply retrospectively. For England and Wales, it will include all properties purchased from 1999, and in Scotland since 2014.

A six-month transitional period existed, given to allow overseas entities time to either sell their property or to register.

Failure to register, or submitting false information, will constitute a criminal offence and will prevent individuals and/or companies entering into property transactions. The penalty will constitute a criminal offence for both the entity and every responsible officer – which could lead to a fine or five years in jail.

In addition to the initial registration, there will be an annual compliance requirement to file a confirmation statement notifying of any changes to registrable beneficial owners or confirmation that the beneficial owners have not changed.

The information to be disclosed for an overseas entity and its beneficial owner will include, for corporates, the country of incorporation, registered number, service address and email address.

For individuals the details required include name, date of birth, service address and the date on which the individual became a registrable beneficial owner in relation to the overseas entity.

The Act tightened the regime and requirements for 'unexplained wealth orders'; the increased scope includes company directors and owners of property held both in trusts and offshore.

The Act also makes changes to the UK sanctions legislation; there will no longer be the requirements to prove those breaching sanctions knew or suspected they were breaching the law in order for the UK government to impose a fine.

4.11 Economic Crime and Corporate Transparency Act

The UK government introduced a new 'failure to prevent fraud' offence as an amendment to its Economic Crime and Corporate Transparency Bill, which received Royal Assent in October 2023.

In April 2023, the Home Office published a fact sheet and tabled an amendment to introduce the failure to prevent fraud offence, which is supported by the Serious Fraud Office and the Crown Prosecution Service.

This legislation shifts the focus from organisations as victims of fraud (inward fraud) to make it easier for organisations to be prosecuted for fraud committed by employees or third parties that the organisation benefits from (outward fraud). It will also require many organisations to make significant changes to fraud compliance programmes in order to prevent a wide range of fraud offences.

The offence will make organisations liable if it fails to prevent specific fraud offence (noted below) from being committed where:

- an employee or agent commits the fraud, and
- the fraud is intended to benefit the organisation.

There will be a defence of 'reasonable procedures' to prevent fraud, meaning it will require organisations to review and enhance their anti-fraud systems and controls to cover fraud committed for their benefit by employees or agents.

The government has announced that it will produce specific guidance on what reasonable procedures will look like in due course (akin to the UK Bribery Act Adequate Procedures Guidance).

The offence will apply to all 'large' bodies corporate and partnerships. This means that in addition to businesses, large not-for-profit organisations such as charities will also be in scope, as well as incorporated public bodies.

In order to be considered 'large' an organisation must meet two of the three following criteria:

- more than 250 employees
- more than £36 million turnover, and
- more than £18 million in total assets.

Although the exact jurisdictional scope remains unclear, the new offence will also apply to organisations and employees who are based overseas where an employee or agent commits a fraud offence under UK law or which targets UK victims.

There has been continuing debate as to which types of fraud offence should be included in the new 'failure to prevent' fraud offence. The proposed offence captures fraud and false accounting offences which the government considers are most likely to be relevant to large corporations.

These are:

- fraud by false representation
- fraud by failing to disclose information
- fraud by abuse of position
- obtaining services dishonestly
- participation in a fraudulent business
- false statements by company directors
- false accounting
- fraudulent trading
- cheating the public revenue.

The types of conduct that could be caught are broad. Offences could arise out of warranties and representations made in transaction documents, prospectuses, annual reports, and insurance claims.

Home Office guidance notes that conduct caught could include:

> *'dishonest sales practices, false accounting and hiding important information from consumers or investors' and 'dishonest practices in financial markets.'*

4.12 Recent 'Financial Crime' Related Publications

4.12.1 FCA 'Dear CEO Letter' – Action Needed in Response to Common Control Failings Identified in Anti-Money Laundering Frameworks

In 2024, the FCA published a 'Dear CEO' letter for firms to take notice and action, following failings that they identified in firms relating to their anti-money laundering frameworks.

The FCA identified the following common issues:

- Discrepancies between firms' registered and actual activities.
- Financial crime controls which had not kept pace with business growth.
- A failure to risk assess their own or their customers' activities properly.
- Inadequate resourcing and oversight of financial crime issues and requirements.

4.12.2 FCA Report – 'Assessing and Reducing the Risk of Money Laundering Through the Markets' (MLTM)

In January 2025 the FCA published updated risk analysis on money laundering through the markets. The report covered examples of good and poor practice on enhancing systems, controls and training; practical case studies and detailed areas of focus for the FCA.

The FCA reviewed the financial crime systems and controls at a sample of wholesale brokers to understand how firms are approaching:

- business-wide and customer risk assessments (BWRA and CRA)
- know your customer (KYC) and customer due diligence (CDD) checks

- governance and oversight
- transaction monitoring (TM)
- investigations and suspicious activity reports (SARs)
- training.

The FCA noted that although their review focused on wholesale broker firms, their findings should be considered across wider markets and by other types of firms and business models.

In the report the FCA noted that they expect firms to have robust financial crime systems and controls at each stage of the customer and transaction journey to ensure that there are no 'weak links' that expose participants and the overall transaction to financial crime.

The FCA considers that firms must:

- consider MLTM risk and reflect this in their BWRA and systems and controls
- ensure they have firm and role specific MLTM staff training and awareness in place
- consider how best to use TM as part of an integrated process of financial crime systems and controls, incorporating tailored TM controls and alerts. Encourage more collaboration between TM, trade surveillance (TS), front and middle office teams
- ensure relevant teams are aware of the UKFIU MLTM SARs glossary code, are using it appropriately, and are submitting high-quality SAR reporting
- review the recently enacted Economic Crime and Corporate Transparency Act 2023 (ECCTA) and consider how they can share information to counter money laundering, raise awareness and intelligence, and reduce MLTM risk.

The FCA stated that they found good practice and progress in financial crime systems and controls in firms sampled, but that firms need to focus and improve to mitigate risk and tackle issues raised in a previous thematic review published in 2019 (TR19/4).

The FCA noted the following key challenges:

- transaction monitoring
- knowledge of the UK Financial Intelligence Unit MLTM SAR glossary code
- information sharing
- documenting customer risk assessments methods.

Source of information: FCA website



5. UK Bribery Act 2010 (The 'Bribery Act')

Bribery undermines democracy and the rule of law and poses very serious threats to sustained economic progress in developing and emerging economies and to the proper operation of free markets more generally. The Bribery Act is intended to respond to these threats and to the extremely broad range of ways that bribery can be committed. It does this by providing robust offences, and enhanced sentencing powers for the courts by raising the maximum sentence for bribery committed by an individual from seven to ten years' imprisonment.

The Bribery Act contains two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery) in Sections 1 and 2 respectively. It also sets out two further offences which specifically address commercial bribery. Section 6 of the Act creates an offence relating to bribery of a foreign public official in order to obtain or retain business or an advantage in the conduct of business, and Section 7 creates a new form of corporate liability for failing to prevent bribery on behalf of a commercial organisation.

It creates an offence which can be committed by commercial organisations, which fail to prevent persons associated with them from committing bribery on their behalf.

A defence for an organisation under the Bribery Act is that they are able to prove that, despite a particular case of bribery, it had adequate and appropriate procedures in place to prevent individuals employed by them from undertaking bribery. As required under Section 9 of the Bribery Act, the Secretary of State has published guidance about procedures that commercial organisations can put in place to prevent employees undertaking (carrying out) bribery.

Section 12 of the Bribery Act provides that the courts have jurisdiction over the Sections 1, 2 or 6 offences committed in the UK, but they also have jurisdiction over offences committed outside the UK if the person committing them has a close connection with the UK, by virtue of being a British national or ordinarily resident in the UK, a body incorporated in the UK or a Scottish partnership.

However, as regards Section 7, the requirement of a close connection with the UK does not apply. Section 7(3) makes clear that a commercial organisation can be liable for conduct amounting to a Section 1 or 6 offence on the part of a person who is neither a UK national or resident in the UK, nor a body incorporated or formed in the UK. In addition, Section 12(5) provides that it does not matter whether the acts or omissions which form part of the Section 7 offence take part in the UK or elsewhere.

So, providing that the organisation is incorporated or formed in the UK, or that the organisation carries on a business or part of a business in the UK (wherever in the world it may be incorporated or formed), then UK courts have jurisdiction.

General Bribery Offences (Sections 1–7)

Sections 1–5

Section 1 of the Bribery Act (offences of bribing another person) makes it an offence for a person to offer, promise or give a financial or other advantage to another person in one of two cases:

- **Case 1** applies when a person intends the advantage to bring about the improper performance by another person of a relevant function or activity or to reward such improper performance.
- **Case 2** applies when a person knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity.

Section 2 of the Bribery Act relates to offences relating to being bribed. A person is guilty of an offence if they request, agree to receive or accept a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly by that person (or another person).

Improper performance is defined in Sections 3 (functions or activity to which bribe relates), Section 4 relates to improper performance to which bribe relates and Section 5 refers to the expectation test, which means a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust.

For the purposes of deciding whether a function or activity has been performed improperly, the test looks at what a reasonable person in the UK would expect in relation to the performance of that function or activity. If the performance of the function or activity is not subject to UK law (for example, it takes place in a country outside UK jurisdiction) then any local custom or practice must be disregarded, unless permitted or required by the written law applicable to that particular country. Written law means any written constitution or provision made by or under legislation applicable to the country concerned, or any judicial decision evidenced in published written sources.

Section 6 (Bribery of Foreign Public Officials)

Section 6 creates a stand-alone offence of bribery of a foreign public official (FPO). The offence is committed if a person offers, promises or gives a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of their official functions. The person offering, promising or giving the advantage must also intend to obtain or retain business or an advantage in the conduct of business by doing so. However, the offence is not committed if the official is permitted or required by the applicable written law to be influenced by the advantage.

A foreign public official includes officials, whether elected or appointed, who hold a legislative, administrative or judicial position of any kind in a country or territory outside the UK. It also includes any person who performs public functions in any branch of the national, local or municipal government of such a country or territory, or who exercises a public function for any public agency or public enterprise of such a country or territory, such as professionals working for

public health agencies and officers exercising public functions in state-owned enterprises. Foreign public officials can also be officials or agents of a public international organisation, such as the United Nations (UN) or the World Bank.

Hospitality, Promotional, and Other Business Expenditure

Legitimate hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better present products and services, or establish business relationships is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. The government does not intend the Bribery Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes. However, hospitality and promotional or other similar business expenditure can be employed as bribes.

In order to amount to a bribe under Section 6, the 'action' must be made with the intent to provide and/or offer financial or other advantage to influence the official in their official role and thereby secure business or a business advantage. Therefore, in some circumstances hospitality or promotional expenditure in the form of travel and accommodation costs could even amount to a financial or other advantage to the relevant official.

Section 7 (Failure of Commercial Organisations to Prevent Bribery)

A commercial organisation is liable to prosecution if a person associated with it (ie, employed by that organisation) bribes another person with the sole intention to obtain or retain business or an advantage in the conduct of business for that organisation.

The commercial organisation would be able to rely on a defence if it can show that, despite a particular case of bribery, it had adequate and appropriate procedures in place to prevent persons associated with it from bribing. In accordance with established case law, the standard of proof which the commercial organisation will need to discharge in order to prove the defence, in the event of prosecution, is the balance of probabilities.

This broad scope means that contractors could be associated persons to the extent that they are performing services for or on behalf of a commercial organisation. Also, if a supplier can properly be said to be performing services for

a commercial organisation rather than simply acting as the seller of goods, it may also be an associated person.

Adequate Procedures as Defence against the Offence of Bribery – Ministry of Justice Guidance

Section 9 of the Act states that the Secretary of State must publish guidance about procedures that relevant organisations can put in place to prevent persons associated with them from bribing.

The Ministry of Justice published guidance to assist firms regarding procedures to prevent persons associated with commercial organisations from making (offering) bribes.

The government considers that procedures put in place by commercial organisations wishing to prevent bribery being committed on their behalf should be informed by six principles. These are set out below.

The principles are not prescriptive; but are focused, allowing for the variety of circumstances that commercial organisations find themselves in. Small organisations will, for example, face different challenges from those faced by large global companies. Accordingly, the detail of how organisations might apply these principles, taken as a whole, will vary, but the outcome should always be robust and effective anti-bribery procedures.

Bribery prevention procedures should be proportionate to risk.

Although commercial organisations with entirely domestic operations may require bribery prevention procedures, these should be lower risk than those adopted by global organisations.

The Principles

Principle 1	**Proportionate procedures**	A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

Principle 2	**Top-level commitment**	The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) is committed to preventing bribery by persons associated with it. It fosters a culture within the organisation in which bribery is never accepted.
Principle 3	**Risk assessment**	The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.
Principle 4	**Due diligence**	The commercial organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
Principle 5	**Communication (including training)**	The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, which is proportionate to the risks it faces.
Principle 6	**Monitoring and review**	The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Policies articulate a commercial organisation's anti-bribery stance, show how it will be maintained and help to create an anti-bribery culture. They are therefore a necessary measure in the prevention of bribery, but they will not achieve that objective unless they are properly implemented.

Adequate bribery prevention procedures ought to be proportionate to the bribery risks that the organisation faces. An initial assessment of risk across the organisation is therefore a necessary first step. To a certain extent, the level of risk will be linked to the size of the organisation and the nature and complexity of its business, but size will not be the only determining factor.

Some small organisations can face quite significant risks and will need more extensive procedures than their counterparts facing limited risks. However, small organisations are unlikely to need procedures that are as extensive as those of a large multinational organisation.

Bribery prevention procedures may be stand-alone or form part of wider guidance, for example on recruitment or on managing a tender process in public procurement. Whatever the chosen model, the procedures should seek to ensure there is a practical and realistic means of achieving the organisation's stated anti-bribery policy objectives across all of the organisation's functions.

Commercial organisations' bribery prevention policies are likely to include certain common elements, such as:

- a commitment to bribery prevention (Principle 2)
- a general approach to mitigation of specific bribery risks, possibly those arising from the conduct of intermediaries and agents, or those associated with hospitality and promotional expenditure, facilitation payments or political and charitable donations or contributions (Principle 3), and
- an overview of its strategy to implement its bribery prevention policies.

Source: Ministry of Justice website



6. Financial Benchmarks

Following the end of the Brexit transitional period, the EU BMR legislation was onshored and adopted into UK law – it is now known as 'UK BMR'.

The Regulation imposes requirements on firms that provide, contribute to or use a wide range of interest rate, currency, securities, commodity and other indices and reference prices. The legislation Regulation is a key part of the EU's response to the 'LIBOR' scandal and the allegations of manipulation of foreign exchange and commodity benchmarks. Its main aim being to reduce the risk of manipulation of benchmarks by addressing conflicts of interest, governance controls and the use of discretion in the benchmark-setting process. It will achieve this by requiring administrators of a broad class of benchmarks to be authorised or registered by a regulator and to implement governance systems and other controls to ensure the integrity and reliability of their benchmarks.

The Regulation replaced the then UK framework regulating the administrators of LIBOR and other specified benchmarks. It takes a very different approach from those jurisdictions, such as Japan and Singapore, that – like the UK – have so far chosen to regulate a limited range of critical benchmarks and those jurisdictions, such as the US, that are relying on self-regulation and robust enforcement action to achieve the objectives of the IOSCO Principles.

The UK BMR covers a very wide range of indices including indices linked to interest rates, currencies, securities, commodities and even factors such as the weather. An index will be regulated as a 'benchmark' where it determines amounts payable under, or sets the value of, financial instruments or financial contracts; or is used in investment funds. The aim is to cover indices used in securities and derivatives traded on a regulated trading venue under UK MiFID II and the **Markets in Financial Instruments Regulation (UK MiFIR)**, including securities and derivatives traded outside a venue via an investment firm that is a 'systematic internaliser'.

The Regulation also includes indices used to set interest rates under certain consumer loans and consumer mortgages as well as the indices used in index tracking and some other funds. There are exemptions for certain kinds of providers and indices from the scope of the Regulation, covering, in particular, central banks and public authorities (third countries) that provide indices for public policy purposes.

There is an exemption for single reference prices for an individual security or derivative, but this does not include commodities.

How Are Firms Affected?

A firm will be benchmark administrator if they provide indices that are used in:

- financial instruments traded on trading venues or via systematic internalisers in the UK
- mortgage or consumer credit contracts, or
- investment funds.

A firm will be a supervised contributor if they are an authorised person and:

- contribute input data that is not readily available to the administrator, and
- provide the input data for the purpose of a benchmark determination.

A firm will be a benchmark user and be subject to additional requirements if it is supervised under UK MiFID, UK CRD, UK UCITS and they:

- issue a financial instrument that references an index

- determine the amount payable under a financial instrument or a mortgage or consumer credit contract by referencing an index
- are a party to a mortgage or consumer credit contract that references an index
- provide a borrowing rate calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a consumer credit contract to which the creditor is a party, and
- measure the performance of an investment fund through an index either to track the return of the fund or to define its asset allocation.

Restrictions on Use of a Financial Benchmark

UK firms are prohibited from 'using' indices as a benchmark unless they are produced by an independent administrator included on the UK register of administrators authorised or registered under the Regulation or in an approved third country (qualified for use in the UK under the Regulation's third country regime).

The UK BMR groups benchmarks into six different types:

1. **Critical benchmarks** – where the value of contracts underlying the benchmark is at least €500 billion, or where a benchmark has been recognised as critical in a member state.
2. **Significant benchmarks** – where the value of contracts underlying the benchmark is at least €50 billion, or where there are no or very few market-led substitutes and there would be an impact on financial stability if the benchmark ceased to be produced.
3. **Commodity benchmarks** – where the underlying asset of the benchmark is a commodity as defined by MiFID II. Commodity benchmarks are subject to the requirements set out in Annex II of the Regulation unless they are regulated data benchmarks, or are based on submissions, the majority of which are supervised entities. The articles relating to significant and non-significant benchmarks do not apply to commodity benchmarks.
4. **Regulated data benchmarks** – where the input data to the benchmark is provided directly from regulated venues. Certain provisions of the Regulation do not apply to regulated data benchmarks, and they cannot be classified as critical.

5. **Interest rate benchmarks** – where the benchmark is determined on the basis of the rate at which banks may lend to, or borrow from, other banks or agents in the money markets. Interest rate benchmarks are subject to the requirements set out in Annex I of the Regulation. The articles relating to significant and non-significant benchmarks do not apply to interest rate benchmarks.
6. **Non-significant benchmarks** – where the value of contracts underlying the benchmark is less than €50 billion, and the benchmark is not a commodity or interest rate benchmark.

Equivalence, Recognition and Endorsement

In order for supervised entities in the UK to be able to use benchmarks produced by third country administrators (eg, EU countries, US, Japan, Australia), those administrators must apply to be added to the FCA's list of benchmarks in one of three ways:

1. **Equivalence** – where an equivalence decision has been approved/provided.
2. **Recognition** – where an administrator located in a third country has been recognised.
3. **Endorsement** – where an administrator or supervised entity located in the EU with a clear and well- defined role within the control or accountability framework of a third-country administrator and is able to monitor effectively the provision of a benchmark, applies for endorsement in accordance with the requirements set out in Article 33 of the Regulation

Refer to chapter 5 for the HM Treasury consultation paper published in December 2025, which proposes changes to the UK Benchmarks Regime.



7. Data Protection

7.1 UK Data Protection Regime

The **Data Protection Act (DPA) 1998** provided for the way in which personal data must be dealt with in order to protect the rights of the persons concerned. Personal data relates to living individuals who can be identified by that data. Following the implementation of the EU General Data Protection Regulation (GDPR) in May 2018, the DPA 1998 was repealed and replaced by the UK's Data Protection Act 2018.

The Data Protection Act (DPA) 2018, has a wider remit than the UK GDPR, as noted below:

- The DPA 2018 has a part dealing with processing that does not fall within EU law, for example, where it is related to immigration. It applies UK GDPR standards but it has been amended to adjust those that would not work in the UK national context.
- It also has a part that transposes the EU Data Protection Directive 2016/680 (Law Enforcement Directive) into domestic UK law. The Directive complements the UK GDPR and Part 3 of the DPA 2018, setting out the requirements for the processing of personal data for criminal 'law enforcement purposes'.

- National security is also outside the scope of EU law. The UK Government decided that it is important that the intelligence services are required to comply with internationally recognised data protection standards, so there are provisions based on the Council of Europe Data Protection Convention 108 that apply to them.
- There are also separate parts to cover the ICO and their duties, functions and powers plus the enforcement provisions.

The DPA 2018 Principles

First data protection principle	Processing must be lawful and fair
Second data protection principle	Purposes of processing must be specified, explicit and legitimate
Third data protection principle	Personal data must be adequate, relevant and not excessive
Fourth data protection principle	Personal data must be accurate and kept up to date
Fifth data protection principle	Personal data must be kept for no longer than is necessary
Sixth data protection principle	Personal data must be processed in a secure manner

The Role, Responsibilities and Accountability of Data Controllers and Data Processors

A data controller means a natural or legal person who alone or jointly with others determines the purpose and means of the processing of personal data. They must register with the **Information Commissioner's Office (ICO)**.

A data processor means a natural or legal person who processes personal data on behalf of a data controller. They are not required to register with the ICO as

they do not have the direct relationship with the data subjects.

Data controllers must implement appropriate measures to ensure that the processing of personal data complies with the requirements, being able to evidence these measures to others, including the Information Commissioner. They must also, prior to processing personal data, consider the impact of the proposed processing on the rights and freedoms of data subjects.

A data controller must implement appropriate technical and organisational measures to ensure that the principles are implemented and the risks to the rights and freedoms of data subjects are minimised.

Data controllers must implement security and data breach reporting measures.

A data processor may only process personal data on the instruction from the data controller or where it is complying with a legal obligation.

Rights of Individuals (Data Subjects)

This imposes obligations of transparency on controllers and confers certain rights to individuals about personal data processing.

A data controller is required to make available to data subjects a range of information, including:

- the identity and contact details of the data controller and their data protection officer
- the purpose for which their personal data is being processed
- the existence of their right to exercise any of the below rights
- the legal basis for the processing of their personal data, and
- the retention period or criteria used to determine the retention period.

Data controllers must provide a confirmation on whether or not personal data is being processed. Where a data subject identifies inaccurate information, the data controller must rectify the error.

On request, and subject to certain conditions being met, a data controller must erase personal data and/ or restrict its processing.

The Breach Notification and Reporting Requirements

A data controller must provide a notification to the Information Commissioner without undue delay.

If the notification is not made within 72 hours, the notification must detail the reason for the delay in reporting.

The notification must include:

- a description of the nature of the data breach (for example, approximate numbers of affected data subjects, the categories and approximate number of data records concerned)
- the name and contact details of a contact point from whom additional information can be obtained
- a description of the likely consequences of the breach, and
- a description of the measures taken by the controller to address the breach, including any measures to mitigate the adverse effects.

A data processor must notify a data controller immediately, without undue delay, when it becomes aware of a data breach.

[Source of information: ICO website]

7.1.1 The Information Commissioner's Office (ICO)

The ICO's mission is:

> *'To uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals'.*

The ICO has the power to levy a maximum fine of £17.5 million or 4% of global turnover for a serious breach. The ICO can issue a fine of up to £8.7 million, or 2% of annual turnover, for standard penalties – such as infringements (eg, non-compliance with administrative requirements). In addition, the ICO can issue penalties up t £500,000 for specific violations, such as marketing breaches.

In addition, breaches of data protection can now also lead to criminal prosecution, potentially resulting in unlimited fines.

The ICO has stated that it will only use its new powers in specific circumstances. These are serious contraventions of data protection principles by a data controller, and when the contravention was of a kind likely to cause substantial damage or substantial distress and was either deliberate, or the data controller knew or ought to have known that there was a risk that the contravention would occur but failed to take reasonable steps to prevent the contravention.

Factors impacting the ICO decision to impose a financial penalty include:

- the nature of the personal data involved
- the duration and extent of the contravention
- the number of individuals actually or potentially affected
- the importance, value, degree, amount or extent of the breach
- the public importance (ie, in the case of a security breach)
- whether the contravention was deliberate and/or premeditated
- whether the data controller was aware of and did not follow relevant advice, and
- whether there were inadequate procedures, policies, processes and practices in place.

Factors impacting the ICO decision not to impose a financial penalty include whether:

- the data controller has already complied with requirements of another regulatory body, or
- the contravention was caused by circumstances outside the direct control of the data controller.

The ICO website contains details on fines levied against companies, including government entities and agencies.

There is a reoccurring theme when looking at the ICO announcements regarding fines, poor security arrangements, poor systems and controls – including testing and monitoring of their systems.

7.2 Recent Developments – 'Data (Use and Access) Act 2025'

The Data (Use and Access) Act 2025 (DUAA) is the first major data protection reform since Brexit; it introduces changes to UK GDPR, DPA 2018 and PECR (Privacy and Electronic Communications Regulations 2003).

The DUAA is a wide-ranging Act which includes important changes to the UK's data protection and privacy legislation; and is not a replacement for the UK GDPR, DPA 2018 or PECR. The Act is intended to promote innovation, economic growth and make things easier for organisations and is to be implemented in phases between June 2025 and June 2026 – although the majority of the Act will be brought into force by secondary legislation that needs to be laid before Parliament. (It received Royal Assent in June 2025.)

How does the Act fit with existing UK data protection laws?

- **UK GDPR**
    - Remains the primary framework for data protection legislation in the UK.
- **DPA 2018**
    - Supplements and provides content to the UK GDPR, including national-specific provisions.
- **The Data (Use and Access) Act 2025**
    - Modifies and extends existing laws. Provisions will override or supplement parts of the UK GDPR and DPA 2018.
- **PECR**
    - Supplements and provides content to the UK GDPR by regulating direct marketing, cookies, and network security. The Data (Use and Access) Act 2025 also amends PECR

What are the key changes under the Act?

Data Subject Right to Complain

- Currently data subjects will make a complaint to the ICO. While the ICO is not going to turn away data subjects making a complaint to them, they are encouraging all data subjects to make their complaint directly to the data controller first.
    - ie, the same approach in financial service where the initial complaint must be made and investigated by the regulated firm, before an individual can then contact the FOS.
- The ICO consultation should publish its finalised guidance in H1 2026.

Data Subject Access Request

- Clarifies that the right for an individual to obtain copies of their personal data under the UK GDPR is limited – entitled only to the data that would be found in a 'reasonable and proportionate' search.
- Data controllers receiving requests from data subject for copies/details on personal information that are held on them can now base their response on a reasonable and proportionate search.

Data Transfers

Transfers of UK data will be brought into a more 'common law' model; rather than both exporters and the UK government having to address if an importer country has 'adequate' data laws, the new test will be whether the standards of protection will be 'materially lower' than those applicable in the UK.

Information Commission

The ICO will also change its name to the 'Information Commission' (IC) at some point in 2026 – although it is in the Act, the legislative change needs to be enacted by primary legislation laid before Parliament by either the Secretary of State or HM Treasury. This is scheduled to be undertaken at some point in Q1 2026.

(The aim is to bring the IC into line with other UK regulators (ie, FCA) making it a full corporation with board members, the majority of which should 'in so far as practicable' be non-executive directors.)

The IC will also have new powers:

- The IC will exercise discretion.
    - It will make judgment calls on whether to proceed with enforcement under the previous or updated regime if there is ongoing non-compliance.
        - In some cases, it will need to exercise discretion when considering regulatory action on alleged non-compliance with an existing provision under the data protection legislation which is going to be removed, amended or replaced with a similar provision under the DUAA. It will make a judgement on whether to proceed with regulatory action under the old provision or, where there is ongoing non-compliance, consider action under the new provisions.
    - It will consider contemporaneous guidance (when assessing non-compliance).
        - When considering regulatory action under the DUAA's new provisions, it will consider the ICO guidance available to organisations at the time of the alleged non-compliance.
    - It will publish further guidance. The ICO confirms it plans to publish new and updated guidance to reflect the DUAA, and that it will identify the nature, scope, and timeline of such guidance on the ICO's new dedicated planned guidance page.
    - It will conduct public consultations on new powers.
        - The ICO notes that the DUAA provides the ICO with enhanced powers, such as:
            - compel witnesses to attend interviews
            - request technical reports, and
            - issue larger fines for breaches aligning the fines that the ICO can levy under PECR and

GDPR (ie, up to a maximum of £17.5 million or 4% of global turnover, whichever is higher).

- The ICO confirmed that, as it is required to produce statutory guidance on such powers, it will launch public consultations on such guidance closer to the commencement of the relevant DUAA provisions.



8. Whistleblowing

The **Public Interest Disclosure Act (PIDA) 1998** introduced legislation to protect persons from retaliation, if they inform regulatory authorities of concerns that might come to their attention at their place of work; this is generally referred to as whistleblowing.

A protected disclosure is where information is revealed by a worker (in reasonable belief) that shows that one of the following has been, is being, or is likely to be committed:

- a criminal offence
- a failure to comply with any legal obligation
- a miscarriage of justice
- the putting of the health and safety of an individual in danger
- damage to the environment, or
- deliberate concealment of any of the above.

It is irrelevant whether any of the above occurred in the UK or elsewhere, or whether the law is the law of the UK or any other country.

Firms are encouraged to consider adopting (and encouraged to invite their appointed representatives or, if applicable, their tied agents to consider

adopting) appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA.

The FCA and the PRA published new rules in respect of whistleblowing.

Firms must establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers. Which must:

a. be able to effectively handle disclosures of reportable concerns including:

    1. where the whistleblower has requested confidentiality or has chosen not to reveal their identity, and
    2. allowing for disclosures to be made through a range of communication methods

b. ensure the effective assessment and escalation of reportable concerns by whistleblowers where appropriate, including to the FCA or PRA
c. include reasonable measures to ensure that if a reportable concern is made by a whistleblower, no person under the control of the firm engages in victimisation of that whistleblower
d. provide feedback to a whistleblower about a reportable concern made to the firm by that whistleblower, where this is feasible and appropriate
e. include the preparation and maintenance of:

    1. appropriate records of reportable concerns made by whistleblowers and the firm's treatment of these reports, including the outcome, and
    2. up-to-date written procedures that are readily available to the firm's UK-based employees outlining the firm's processes for complying with this chapter

f. include the preparation of the following reports:

    1. a report made at least annually to the firm's governing body on the operation and effectiveness of its systems and controls in relation to whistleblowing, the report must maintain the confidentiality of individual whistleblowers, and

2. prompt reports to the FCA about each case the firm contested, but lost before an employment tribunal where the claimant successfully based all or part of their claim on either detriment suffered as a result of making a protected disclosure in breach of Section 47B of the Employment Rights Act 1996, or being unfairly dismissed under Section 103A of the Employment Rights Act 1996

g. include appropriate training for:

1. UK-based employees
2. managers of UK-based employees wherever the manager is based, and
3. employees responsible for operating the firm's internal arrangements.

The FCA will take into account the following to determine if the firm has complied with the above measures:

- the firm's written procedures state that there may be other appropriate routes for some issues, such as employee grievances or consumer complaints, but internal arrangements as set out in SYSC 18.3.1R(2) can be used to blow the whistle after alternative routes have been exhausted, in relation to the effectiveness or efficiency of the routes, and
- nothing prevents firms taking action against those who have made false and malicious disclosures.

Firms are required to undertake training and development for all UK-based employees, and should include the following:

- a statement that the firm takes the making of reportable concerns seriously
- reference to the ability to report reportable concerns to the firm and the methods for doing so
- examples of events that might prompt the making of a reportable concern
- examples of action that might be taken by the firm after receiving a reportable concern by a whistleblower, including measures to protect the whistleblower's confidentiality, and

- information about sources of external support such as whistleblowing charities.

Managers of UK-based employees wherever the manager is based, must provide training and development to ensure that individuals know:

- how to recognise when there has been a disclosure of a reportable concern by a whistleblower
- how to protect whistleblowers and ensure their confidentiality is preserved
- how to provide feedback to a whistleblower, where appropriate
- the steps to ensure fair treatment of any person accused of wrongdoing by a whistleblower, and
- the sources of internal and external advice and support on the matters referred to above.

Firms must inform UK-based employees (in the employee handbook or equivalent document) that they may disclose reportable concerns to the PRA or FCA. Firms must make clear that:

- prior reporting using the firm's internal arrangements is not a pre-condition of reporting to the PRA or FCA
- reporting may be both by the firm's internal arrangements and also to the PRA or FCA (either consecutively or simultaneously).

8.1 Appointed Representatives and Tied Agents

Firms are encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA or PRA. Firms must ensure that their appointed representatives or, where applicable, their tied agents, inform any of their UK-based employees who are workers that, as workers, they may make protected disclosures to the FCA.

8.2 Link to Fitness and Propriety

The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistleblower. Such evidence could call into question the fitness and propriety of the firm or relevant members of its staff, and could therefore, if relevant, affect the firm's continuing satisfaction of Threshold Condition 5 (Suitability) or, for an approved person or a certification employee, their status as such.

8.3 Whistleblower Champion

Under the SM&CR, certain firms are required to appoint an individual acting as the 'whistleblower champion'.

Firms must allocate the responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing, including policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.

The whistleblower champion should have a level of authority and independence within the firm, and access to resources (including access to independent legal advice and training), and information sufficient to enable them to carry out that responsibility. They do not need to have a day-to-day operational role handling disclosures from whistleblowers. They can be based anywhere, provided they can perform the function effectively, and meet the criteria of the Senior Managers Regime of the SM&CR.

8.4 FCA Campaign to Encourage Individuals to Report Wrongdoing

In 2021, the FCA launched a campaign to encourage individuals working in financial services to report potential wrongdoing to the FCA, and to remind them of the confidentiality processes in place.

Whistleblowers that report to the FCA will have a dedicated case manager. They can meet with the FCA to discuss their concerns and can receive optional regular updates throughout the investigation. Every report the FCA receives is reviewed and the FCA will protect individual whistleblowers' identities.

The FCA has been investing in increased resourcing to support whistleblower interaction, including increasing the headcount on its whistleblowing team. This specialist team is trained to debrief and interact directly with whistleblowers, as well as liaising with various departments across the organisation.

Individuals can choose to remain anonymous, and many people do. If they do share any information about themselves, then the FCA will keep this safe. This includes not confirming the existence of a whistleblower when making enquiries, unless legally obliged to do so.



9. Climate Financial Risk Forum (CFRF)

Climate change and society's response to it presents financial risks and opportunities that are relevant to the objectives of both the PRA and the FCA. The Climate Financial Risk Forum's (CFRF) aim is to develop practical tools and approaches to address climate-related financial risks.

The objective of the CFRF is to build capacity and share best practice across financial regulators and industries to advance the financial services sector's responses to the financial risks from climate change. It brings together senior representatives from across the financial sector, including banks, insurers, and asset managers. The forum will also include observers from trade bodies to represent a broader range of firms and ensure the outputs of the CFRF are communicated to their members.

The forum is chaired by individuals from the PRA and the FCA. It is scheduled to meet three times a year and will report to the CEO of the PRA and the FCA.

Climate change will have a significant impact on the financial services sector and will increasingly influence consumer decision making. For example, it could affect the values of all types of financial assets and how investment managers deliver long-term sustainable value to investors.

It could also increase the cost of insurance for some consumers and reduce the availability of insurance to offer products and cover for others.

The CFRF is an industry-led forum, bringing together senior representatives from across the financial sector to produce practical tools and recommendations for firms in response to climate-related financial risks and capturing the opportunities arising from climate change. The aim of the forum is to advance thinking and share good practice about how firms can improve their responses and overcome barriers to dealing with climate-related financial risks.

Membership of the forum is drawn widely from across the sector and includes banks, insurers and asset managers, with trade bodies observing and feeding in the views of a broader range of firms.

9.1 CFRF Guide

In 2020, the CFRF published their guide to climate-related financial risk management. The guide aims to help financial firms understand the risks and opportunities that arise from climate change, provides support for how to integrate them into their risk strategy and decision-making processes.

The guide contains four industry-produced chapters:

- **Risk management** – by appropriately embedding climate-related financial risk into its governance and risk management processes, a firm can make informed business decisions and improve its resilience.
- **Scenario analysis** – by appropriately modelling and considering a range of potential futures, a firm can better understand and manage future risks today, whilst capturing opportunities to support the transition to a net-zero carbon economy.
- **Disclosures** – by making effective climate-related financial disclosures, a firm can improve transparency regarding the impact of material financial risks from climate change on their business, thereby helping the market appropriately assess the true future value of assets.
- **Innovation** – by developing novel products, services, policies and approaches, a firm can adapt its business to respond to the potential

impacts of climate change, benefit consumers and deliver the change required to meet climate goals.

Chapter	What is covered?	What is included?	Key messages
Risk Management	A practical guide to climate risk management, providing real-world examples of good practice and case studies to illustrate how to embed climate change within existing risk management processes.	• Risk governance • Risk management frameworks • Risk appetite • Risk assessment • Data and tools • Training and culture • Key challenges	How firms can approach designing and implementing a governance approach for climate risks akin to those used for established financial risks, while addressing climate risk-specific nuances. How firms can decide whether to treat climate risk as a standalone or as a cross-cutting risk and then integrate climate risk into existing risk management frameworks, recognising how the linkages between climate risk and established risk types may be identified and understood. It recommends that a mature risk appetite considers

			scenario analysis and impact assessments or trend analysis.
Scenario Analysis	A practical guide outlining leading practice and case studies on how to use scenario analysis to assess climate-related financial risks to inform firms' strategy, risk management and business decisions.	• Scenario analysis • Scenario identification and development • Scenario assessment • Challenges and barriers	The results from identifying potential exposures should inform the scenario development process, which in turn should determine the key assumptions used in the assessment of the financial impact of that scenario. Insights gained from that financial impact analysis should in turn feed back into the refinement and identification of new risks and potential exposures and inform the ongoing development of existing scenarios as well as supporting identification of potential new scenarios to be analysed.

Disclosures	Practical recommendations for financial institutions wishing to meet good practice expectations for public climate-related financial disclosures. It draws on good practice examples from industry as well as guidelines set by relevant and respected industry bodies.	• Key messages for implementing good practice in climate- related financial disclosures • Disclosures on governance and strategy • Disclosures by asset manager • Disclosures by banks • Disclosures by insurers • Suggested timeline to implementation, and • Gaps and barriers.	The recommendations are based on the seven principles for effective climate-related financial disclosures set out in the TCFD recommendations, namely that disclosures should: • Represent relevant information • Be specific and complete • Be clear, balanced, and understandable • Be consistent over time • Be comparable among companies within a sector, industry, or portfolio • Be reliable, verifiable and objective, and • Be provided on a timely basis

Innovation	Recommendations for how financial institutions and other stakeholders (ie, regulators) can start to deliver a step change in aligning private sector financial flows with climate goals, drawing on examples of good industry practices.	• Possible approaches to match the sources of finance and pools of capital against potentially investable assets and technologies, to identify and enable pathways for investment. • The role of data innovation to improve the quality and availability of information that facilitates the effective allocation of capital. • Practical measures that financial institutions can take to address this mobilisation of finance to tackle climate targets.	Developing new investment vehicles and products (ie, transition bonds and emerging market green infrastructure funds) to enable deployment of assets into developing and emerging transition and net-zero markets. Building local partnerships between finance institutions, local authorities and other public sector bodies to support development of investable, net-zero carbon projects, building on clear national policy frameworks for net-zero ambitions. Improving the quality and consistency of climate- related data to enable markets to better quantify the risks and

			opportunities, and then act on them (ie, by developing common principles and good practice for sector-wide data sharing, building on those for open banking and open finance).

The CFRF published its second set of guides to assist the firms with managing their climate-related financial risks.

The guides are written by industry and focus on risk management, scenario analysis, disclosure, innovation and climate data and metrics. They build on the previous guides (published in 2020).

CRF Working Groups

The five CFRF working groups, as noted below, published ten deliverables (reports) which are summarised as follows:

- **Risk Management**
    - Designed to help retail banks, corporate banks, insurers and asset managers produce and implement risk appetite statements that integrate climate-related financial risks.
    - Summary of firms' training needs for climate risks and opportunities and how they could be delivered as a coherent syllabus.
- **Scenario Analysis**
    - Practical examples on how firms can incorporate sector-specific points when developing an effective approach to scenario analysis.
    - Will publish a publicly available online scenario analysis tool in Q1 2022:

        - will be designed for use by smaller firms who may not have the experience or resources.

- **Disclosure**
    - Collated a number of case studies on disclosure from a variety of organisations that will be relevant to firms as they develop their approach to climate-related disclosures.
    - Guidance highlighting the legal risks associated with publishing a climate-related disclosure and how these risks can be effectively managed.
- **Innovation**
    - Focused on identifying and sharing practical opportunities to mobilise financial capital:
        - to push/direct an economy-wide transition to meet climate targets and the resultant briefing paper highlights the key points.
    - Produced a set of seven short films highlighting innovative approaches to mobilising finance in support of the transition to net zero.
- **Climate Data and Metrics**
    - Report on climate data and metrics recommends five areas where climate-related metrics could be employed:
        - transition risks
        - physical risks
        - portfolio decarbonisation
        - mobilising transition finance, and
        - engagement.
    - The first part of the report provides detail on the five areas noted above.

    - The second part focuses on implementation and provides practical guidance and support towards a set of common and consistent climate metrics.

In December 2022, the CFRF published its third round of 'guides' to assist the industry to address climate- related financial risks and opportunities.

The guides focus on the transition to net zero, scenarios analysis, climate disclosure, data and metrics:

- Transition to net zero.
    - Mobilising investment into climate solutions.
- Disclosures: Managing legal risks.
    - A carbon budget primer for financial institutions.
- Scenarios analysis.
    - Physical risk underwriting guide.
    - Scenario analysis guide for banks.
    - Scenario guide in financial firms.
    - Climate litigation risk chapter.
- Disclosure, data and metrics.
    - Industry frameworks and metrics in relation to green and transition finance.

In October 2024, the CFRF published guides of three key areas of climate risk:

1. **Nature related risk – 'Handbook for financial institutions'**
    - An introduction for financial institutions to help frame nature as a risk, it discusses emerging practices in incorporating nature into financial risk management.
2. **Short-term scenarios**

- Discussion on the various uses of cases of short-term scenarios for banks/asset managers and insurers to provide more guidance to firm.

3. **Mobilising adaption finance to build resilience**

    - Provides guidance to assess physical risk faces by the industry and to facilitate increased levels of investment into climate adaptation to respond to those risk as an opportunity.

9.2 Recent Developments

In October 2025, the CFRF issued its latest suite of publications:

From Risk to Resilience: Integrating Adaptation into Finance

- As physical climate risks intensify, the financial sector faces growing pressure to move from high-level strategies to practical, operational responses. The 2025 report of the CFRF Adaptation Working Group provides a toolkit to help financial institutions integrate resilience into decision-making across asset classes, sectors, and geographies.
- Building on the 2024 report Mobilising Adaptation Finance to Build Resilience, this year's output focuses on data, modelling, and incentive-based mechanisms that can mainstream adaptation into financial systems, from granular asset-level assessments to sovereign risk analysis.

Skilling Up: Training available on Physical Risks of Climate Change in the Financial Sector

- Financial institutions should identify their specific training needs around physical climate risks and implement plans on how they can be addressed.
- Regulatory bodies in the finance sector should consider the knowledge gaps around physical climate risk and how they can encourage training to support updates to guidance, standards and regulation.
- Training providers should consider providing additional training products to fill the gaps identified in this report.

A Risk Professional's Guide to Physical Risk Assessments: A GARP Benchmarking Study of 13 Vendors

- Despite uncertainties, the increasing frequency and severity of physical risks from climate change are clear. Financial institutions need to develop internal expertise, engage thoroughly with vendors, and use robust due diligence to manage these risks effectively.
- This document is a comprehensive benchmarking study conducted by the Global Association of Risk Professionals (GARP) on behalf of the Climate Financial Risk Forum (CFRF). It assesses the variability and methodologies of physical risk assessments provided by 13 third-party vendors.
    - the study focuses on how physical risks from climate change – such as flooding, cyclones and windstorms – are modelled at the asset level and the extent to which vendor estimates differ.
- The study highlights significant dispersion in hazard and damage estimates across vendors, with some properties assessed as highly exposed by some vendors but not by others. Estimates of vulnerability and damage ratios also vary considerably.
- The study highlights a range of reasons for the divergences, including modelling approaches, differences in data and metrics.
- The study can help financial institutions navigate the complex landscape of physical risk modelling, providing a checklist for financial institutions to consider when selecting vendors and conducting physical risk assessments.

Quantitative Climate Scenario Analysis in Financial Decisions Case Studies

- The paper presents a set of nine case studies quantifying the financial impacts from climate scenarios.
    - they have been authored by financial institutions, academia and data and analytics providers and offer a diverse perspective, as they cover a range of asset classes, geographies, risk types and scenario severity.
- Comparing and contrasting each case studies approach and results can assist financial professionals in their effort to quantify the financial risks of

climate change, manage them and meet regulatory expectations.

    - the case studies provide concrete and transparent quantified scenario analysis examples. As a combined paper, it can help benchmark against peers, inspire new use cases or methods, and support risk-based internal discussions.
    - it provides examples of the latest forward-looking quantitative climate scenario analysis, an important tool whose practice within the industry is still developing.

- These case studies provide useful takeaways for financial professionals looking to perform climate scenario analysis on their portfolios:

    - consider adaptation capacity in sovereign risk analysis. It can materially affect the financial impact and helps assess the case for investment in adaptation.
    - assess both direct and indirect physical risks. While direct risks (impact on a company's own physical assets) are easier to model, the indirect risk (eg, via supply chains) can be significant and increase materially over time.
    - in addition to one-time event-driven shocks, consider the impact of the recurrence of physical risk events. One-time shock may cause temporary business interruptions or repair costs; while recurring hazards could drive continuing increases in operating expenses and over time may lead to a significant impact on the company's financial profile.
    - consider company specifics and the carbon 'value chain' within a sector. The financial performance of companies within a sector can vary greatly. In addition to a firm's own emission profile or direct carbon costs, it matters how these costs are absorbed or passed along the value chain. This pass-through can reshape the competitiveness of the upstream and downstream players and may accelerate the adoption of alternative climate solutions, which can ultimately transform the industry value chain.

Developing an Approach to Nature Risk in Financial Services

- This is the second handbook from the CFRF Nature-Related Risk Working Group, focusing on nature-related financial risks and its implications for financial services.
- It provides practical guidance for banks, insurers, and asset managers to understand, assess, and manage nature-related risks alongside climate risks.
- Financial professionals can use the handbook to:
    - Deepen their understanding of how climate and nature risks are interconnected and why both must be considered together.
    - Apply frameworks such as TNFD's LEAP to identify, evaluate, and prepare for nature-related risks in their portfolios.
    - Further understand emerging best practices, scenario analysis approaches, and real-world case studies.
    - Inform internal discussions, risk management strategies, and regulatory engagement by leveraging practical tools, data sources, and scenario narratives provided in the paper.
- The paper also highlights several key messages for financial institutions:
    - Nature and climate risks are deeply interconnected and can amplify each other.
        - ignoring these links can lead to underestimating systemic risks and missing opportunities for effective risk mitigation and value creation.
    - Systemic risks from nature loss are material and can propagate through financial systems.
        - these risks can arise from compounding, cascading, and contagion effects – such as supply chain disruptions, asset devaluation, and macroeconomic shocks – making holistic risk assessment essential.
    - Practical steps and tools are available now. Financial institutions can start by conducting nature 'heatmap' assessments, integrating nature

risk into scenario analysis, and collaborating with peers and regulators to build capability.

    - the handbook provides concrete examples, data sources, and frameworks to support immediate action.

2025 Online Climate Scenario Narrative Tool

- Interactive tool generating a summary of climate-related risks and opportunities for firms based on business activities models, products, risks of the firm. Uses data from scenarios by the Central Banks and Supervisors Network for Greening the Financial System (NGFS).
- Key updates include:
    - alignment with the latest NGFS Long-Term Scenarios Phase V (November 2024) and signposting to the NGFS Short-Term Scenarios (May 2025).
    - a new charting feature for generating standalone graphs has been introduced. This is ideal for presentations and bespoke analysis, providing a more flexible and user-friendly experience.
    - highlights of the scenarios limitations and assumptions to support a better understanding of the scenarios and their context, to enable effective use the tool's output.

A full list of published CFRF guides can be located at: FCA Website

9.2.1 FCA 'ESG Strategy'

In 2021, the FCA published its strategy for positive change with respect to its 'ESG strategy' – key themes from the strategy are 'transparency' and 'trust'. The FCA work is based on five core themes:

- **Transparency** – promoting transparency on climate change and wider sustainability along the value chain.
- **Trust** – building trust and integrity in ESG-labelled instruments, products and the supporting ecosystem.

- **Tools** – working with others to enhance industry capabilities and support firms' management of climate-related and wider sustainability risks, opportunities and impacts.
- **Transition** – supporting the role of finance in delivering a market-led transition to a more sustainable economy.
- **Team** – developing strategies, organisational structures, resources and tools to support the integration of ESG into FCA activities.

9.2.2 Sustainability Disclosure Requirements

In 2021, the FCA published a discussion paper on Sustainability Disclosure Requirements and investment labels.

The FCA invited views on the potential criteria for classifying and labelling investment products. The aim is to help consumers navigate their sustainability characteristics. The FCA is also interested in obtaining feedback with respect to supporting entity-level and product-level disclosures.

In 2021, the FCA published a Policy Statement, with feedback and final rules, relating to enhanced climate-related disclosures for asset managers, life insurers and FCA-regulated pension providers.

The rules require in-scope firms to make disclosures on an annual basis based on the following:

- **Entity level**
    - Annual Taskforce Climate-related Financial Disclosure (TCFD), displayed on the firm's main website:
        - setting out how they take climate-related matters into account in managing or administering investment on behalf of clients and consumers.
- **Product level**
    - Disclosures on the products and portfolios made publicly in a prominent place on the firm's main website:

- cross referenced in an appropriate client communication, or
- made available upon request to certain eligible institutional clients.

The above disclosures applied from 1 January 2022 for the largest in-scope firms, one year later for smaller firms above the £5 billion exemption threshold (ie, 1 January 2023).

[Source of information:
https://www.fca.org.uk/cfrf
https://www.fca.org.uk/publication/corporate/climate-financial-risk-forum-guide-2020-summary.pdf]

In 2022, the FCA published a consultation paper (CP22/20) on sustainability disclosure requirements.

The proposals were to advance the FCA's approach on market transparency on the sustainability profile of products and firms and reduce the harm that could arise (in the future in the form of misselling) from greenwashing.

The proposals in the consultation are only relevant to funds and portfolio management based in the UK.

For the investment market (and firms operating in it) to flourish there needs to be trust and transparency, the FCA has concerns around greenwashing and how this may erode trust from consumers and investors in the purchase of goods and services from investment firms. The purpose of the rules is therefore to assist consumers and investors to navigate the increasingly complex investment product landscape and protect them from 'greenwashing'.

Outcomes the FCA is Seeking

The FCA was very clear in the consultation that the proposals are intended to advance its strategic objective to make markets function well (through increasing transparency on the sustainability profile of products) and the reduction of harm arising from greenwashing.

- The disclosure requirements will facilitate the flow of consistent information along the investment chain, increasing transparency in the market and furthering our objective to promote market integrity.

- Sustainable investment labels, consumer-facing disclosures, and rules for distributors will help to protect consumers by equipping them to navigate the market more effectively and identify products that meet their needs and preferences.
- The naming and marketing rules will similarly help to protect consumers by reducing the risk of greenwashing.
- The labels and consumer-facing disclosures will help consumers to compare products more effectively, and efficiently, potentially leading to greater competition among similar products (ie, where consumers are comparing like for like).

In 2023, the FCA published its long awaited Policy Statement, along with final rules, as well as a consultation on anti-greenwashing guidance.

With regards to the anti-greenwashing rule, and guidance, this came into effect from May 2024 for all regulated firms when undertaking client communication, marketing or making a statement about the 'sustainability characteristics' about a product or service.

The purpose of the rules is to ensure that such claims or reference to 'sustainability characteristics' of a product or service are:

- consistent with the sustainability characteristics of the products to services, and
- are fair, clear and not misleading.

The requirements apply to all FCA regulated firms and apply no matter where the communication was developed or written – if it is distributed by a FCA regulated firm to its clients (both retail and professional clients), then the FCA rules apply.

Client communications include statements, assertions, strategies, targets, policies, information and images.

In its Guidance Consultation, the FCA noted that sustainability references should be:

- correct and capable of being substantiated
- clear and presented in a way that can be understood

- complete – they should not omit or hide important information and should consider the full life cycle of the product or service, and
- comparisons to other products or services are fair and meaningful.

The FCA also noted in its published Finalised Guidance (FG24/3) that there are existing sections of their Handbook that require firms to ensure information client communications are fair, clear and not misleading (the Principles for Businesses, Conduct of Business (4.2) and Consumer Credit (3.3)). The FCA further noted that the anti-greenwashing rule is intended to complement and be consistent with these rules, stating that they are not intended to override or substitute any of the rules.

In addition, the FCA noted that they consider the anti-greenwashing rules are consistent with the Consumer Duty, where firms must act in good faith towards their retail customers.

The 'Sustainability Disclosure Requirements and Investment Labels' regime focuses on the following main areas regarding disclosure requirements:

- Establish four sustainable investment labels to help consumers navigate the investment product.
- Landscape and enhance consumer trust, which came into effect in 2024:
    - sustainable focus
    - sustainable improvers
    - sustainable impact
    - sustainability mixed goals – only applicable where the fund sustainability objective is to invest in accordance with two or more of the other three sustainability objectives.
- Setting naming and marketing rules, which came into effect from 2 December 2024.
- Consumer-facing disclosures.
- Simple consumer-facing disclosures to assist consumers in understanding the main sustainability related features of a product.
- Detailed disclosures for a wider targeted audience (institutional investors and retail customers who wish to find out more information), which came

into effect from 2 December 2025:

    - pre-contractual disclosures
    - sustainability product report
    - sustainability entity report.
- Restrictions on the use of sustainability related terms unless the product has a 'sustainable investment label'.
- Distributors of investment products must ensure that product entry level information, including investment labels, are made/provided to customers.
- These rules come into effect from 2 December 2025 for firms with AUM greater than £50 billion, or will come into effect from 2 December 2026 for firms with AUM greater than £5 billion, but less than £50 billion.

In April 2024 the FCA published a consultation (CP24/8) with proposals to extend the Sustainability Disclosure Requirements (SDR) regime to Portfolio Management.

The FCA defines portfolio management as a service provided to a client which comprises either:

- managing investments, or
- private equity or other private market activities, consisting of advising on investments or managing investments (on a discretionary and/or advisory basis).

As noted above, the rules for investment labels and accompanying disclosures came into effect from December 2024. The FCA proposed that these requirements, and timeframes, will apply to firms providing portfolio management. Thereby, having one 'SDR' framework for forms offering firms offering/providing portfolio management and asset management (ie, management of collective investment schemes).

9.2.3 UK Sustainability Reporting Standards

In February 2026 the UK government published the final version of the first two UK Sustainability Reporting Standards, based upon the first two standards

published by the International Sustainability Standards Board (ISSB). This marks the conclusion of the UK's endorsement process, which was supported by the UK's Technical Advisory Committee which gave the government robust and thorough advice on the operation of the standards in the UK context.

UK SRS have been created by assessing and endorsing the global corporate reporting baseline of IFRS Sustainability Disclosure Standards. UK SRS S1 and UK SRS S2 set out a framework for corporate disclosures. UK SRS S1 includes the general framework for applying UK SRS, as well as requirements on general sustainability-related risks and opportunities. UK SRS S2 sets out requirements on climate-related risks and opportunities.

UK SRS 1

- The objective of UK SRS S1 General Requirements for Disclosure of Sustainability-related Financial Information is to require an entity to disclose information about its sustainability-related risks and opportunities that is useful to primary users of general purpose financial reports in making decisions relating to providing resources to the entity.
- This Standard requires an entity to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term. For the purposes of this Standard, these risks and opportunities are collectively referred to as 'sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects'.

UK SRS 2 – Climate-related Disclosures

- The objective of UK SRS S2 Climate-related Disclosures is to require an entity to disclose information about its climate-related risks and opportunities that is useful to primary users of general purpose financial reports in making decisions relating to providing resources to the entity
    - This Standard requires an entity to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term. For the purposes of this Standard,

these risks and opportunities are collectively referred to as 'climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects'.

- This Standard applies to:
  - climate-related risks to which the entity is exposed, which are:
    - climate-related physical risks, and
    - climate-related transition risks, and
  - climate-related opportunities available to the entity. Climate-related risks and opportunities that could not reasonably be expected to affect an entity's prospects are outside the scope of this Standard.
- The objective of climate-related financial disclosures on governance is to enable users of general purpose financial reports to understand the governance processes, controls and procedures an entity uses to monitor, manage and oversee climate-related risks and opportunities.
  - to achieve this objective, an entity shall disclose information about:
    - the governance body(s) (which can include a board, committee or equivalent body charged with governance) or individual(s) responsible for oversight of climate-related risks and opportunities

Ahead of the UK government's announcement on sustainability reporting standards, at the end of January 2026 the FCA published a consultation paper titled *'Aligning listed issuers' sustainability disclosures with international standards'.*

The purpose of the consultation is to replace existing current rules for listed companies' climate disclosures, with proportionate rules to:

- Align reporting with current international standards, with an implementation approach that reflects the readiness of listed companies.
- Make sure investors can access clear, consistent and robust information about sustainability risks and opportunities.

- Support overseas companies to be more transparent about their sustainability reporting, while removing duplication.

The FCA is expected to publish its Policy Statement, with rules, in the autumn of 2026.



10. Cryptoassets

Information on regulatory developments with regards to cryptoassets can be found in chapter 5.

Financial promotion requirements relating to cryptoassets can be found in section 14.4.13 in chapter 2.

The only regulation in respect of cryptoassets per se in the UK at present is under the MLRs, in connection with anti-money laundering (AML) and counter-terrorist financing (CTF). Under the MLRs, the FCA (as noted below) is the AML and CTF supervisor for certain cryptoasset service providers in the UK.

However, certain types of cryptoasset fall within the existing FSMA regulatory perimeter set by the Regulated Activities Order (RAO), as they qualify as 'specified investments'.

For instance, security tokens provide rights and obligations akin to shares, debt instruments or other securities, which are specified investments as set out in the RAO – meaning they are already within the regulatory perimeter and that firms carrying on specified activities involving security tokens need to ensure that they have the correct permissions and are following the relevant rules and requirements.

Also, other types of cryptoasset may also fall within other elements of existing financial services regulation, notably where forming part of (or being the subject matter of) a financial instrument within Part 1 of Schedule 2 to the RAO, e-money under the E-Money Regulations 2011 (EMR 2011) or, where facilitating regulated payment services, the Payment Services Regulations 2017 (PSR 2017).

Borrowing/lending of cryptoassets is not explicitly regulated in the UK. It is arguable that lending of cryptoassets to consumers could fall within scope of consumer credit regulation, but the FCA does not make any public announcements in this regard.

10.1 Anti-Money Laundering & Terrorist Financing

In 2020, the FCA became the AML and TF supervisor in the UK; therefore any cryptoasset business needs to register with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 if they wish to provide cryptoasset services by 'way of business' and if this service is to be carried on in the UK.

10.2 Scope of Cryptoasset Services

Cryptoasset businesses by way of business, provide one or more of the following services summarised in the scope of services table below:

Cryptoasset service	As described in the MLRs
Cryptoasset exchange provider (including cryptoasset Automated Teller Machine (ATM), peer to peer providers, issuing new cryptoassets, eg, Initial Coin Offering (ICO) or Initial Exchange Offerings)	A firm or sole practitioner which by way of business provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved, when providing such services: a. exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets b. exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another, or c. operating a machine which utilises automated processes to exchange cryptoassets for money or money for cryptoassets.
Custodian Wallet Providers	A firm or sole practitioner which by way of business provides services to safeguard, or to safeguard and administer: • cryptoassets on behalf of its customers, or • private cryptographic keys on behalf of its customers in order to hold, store and transfer cryptoassets, when providing such services.

10.3 FCA Approach to Supervision

The FCA's approach is based on the same as other businesses under the MLRs. It is risk based so that businesses which pose the greatest money laundering and terrorist financing risk receive an increased level of supervisory focus.

The FCA's supervisory assessment includes a requirement for a business to show that it has policies, controls and procedures in place to effectively manage money laundering and terrorist financing risks proportionate to the size and nature of the business's services.

Cryptoasset businesses should also carry out regular assessments of their policies, controls and procedures to ensure that these remain relevant and appropriate. They must be alert to any change in their operating model that may have an impact on the way they conduct their business.

Some requirements are set out below. It is not an exhaustive list and does not include the wider rules and guidance that a cryptoasset business, which is also authorised under FSMA by the FCA, must adhere to in addition to the MLRs.

Businesses must:

- take appropriate steps to identify and assess the risks of money laundering, proliferation financing and terrorist financing which the business is subject to
- assess the money laundering, terrorist financing and proliferation financing risks related to any new technologies prior to launch and take appropriate measures to manage and mitigate those risks
- have in place policies, systems and controls appropriate to mitigate the risk of the business being used for the purposes of money laundering, terrorist financing and proliferation financing. This risk-based approach should seek to mitigate the risks identified in the business' risk assessment
- where appropriate, for the size and nature of its business, appoint an individual who is a member of the board or senior management to be responsible for compliance with the MLRs and the nominated officer. The nominated officer is also the person responsible for reporting suspicious activity to the NCA under Part 7 (Money Laundering) of the POCA 2002
- where appropriate, for the size and nature of its business, establish an independent internal audit function with responsibility for examining and evaluating the adequacy and effectiveness of the policies, controls and procedures, and making recommendations, as well as monitoring the controls
- undertake screening of employees
- undertake customer due diligence when entering into a business relationship or occasional transactions
- apply more intrusive due diligence, known as enhanced due diligence, when dealing with customers who may present a higher money laundering, terrorist financing and proliferation financing risk. This includes customers who meet the definition of a politically exposed person
- undertake ongoing monitoring of all customers to ensure that transactions are consistent with the business's knowledge of its customer, the customer's business and risk profile.

10.4 Consumer Protections and Disclosure

The FCA's responsibility under the regime is limited to AML/CTF registration, supervision and enforcement only.

Registration does not mean that customers of cryptoasset businesses will benefit from the protection of the FOS or the FSCS.

One of the priorities for the FCA is to ensure that cryptoasset businesses do not mislead customers about what consumer/investor protections apply and the status of their FCA registration.

As most cryptoassets are not specified investments under the Financial Services and Markets Act 2000 (FSMA), it is unlikely that customers will have access to the Financial Ombudsman or the FSCS.

The FCA has provided guidance setting out their position on the types of cryptoassets which would fall within their regulatory remit and the implications this has on consumer protections:

- cryptoasset services involving security tokens, for example, are regulated tokens which will provide the same protections as specified investments set out in the Regulated Activities Order
- cryptoasset services which fall into unregulated space will not have the same consumer protections.

Source of information: FCA website & HM Treasury website

Sources of information for this chapter:

FCA	*https://www.fca.org.uk/*
HM Treasury	*www.gov.uk/government/organisations/hm-treasury*
The 'Takeover Code'	*www.thetakeoverpanel.org.uk*
JMLSG website	*www.jmlsg.org.uk*
Ministry of Justice (UK Bribery Act 2010)	*www.justice.gov.uk*
Information Commissioner's Office	*https://ico.org.uk/*

Chapter Four

The Regulation of Markets and Exchanges

Section 1	Recognised Investment Exchanges and Clearing Houses
Section 2	UK Markets
Section 3	Multilateral Trading Facilities (MTFs)
Section 4	Organised Trading Facilities (OTFs)
Section 5	Systematic Internalisers (SIs)
Section 6	Derivatives Markets
Section 7	Codes



Overall Learning Objective

To demonstrate a knowledge and understanding of the main dealing and reporting rules of the major securities and financial derivatives exchanges and some of the major characteristic of and differences between a variety of regulated markets, including other developments in the area of payment and infrastructure.

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1. Recognised Investment Exchanges and Clearing Houses

1.1 Recognised Investment Exchanges (RIEs) and Recognised Overseas Investment Exchanges (ROIEs)

Since a large proportion of trades in financial instruments is carried out via established exchanges, such as the London Stock Exchange (LSE), the Financial Conduct Authority (FCA) has the responsibility of recognising and supervising them under the Financial Services and Markets Act (2000) (FSMA).

Any body corporate or unincorporated association may apply to the FCA for an order declaring it to be a recognised investment exchange (RIE). The FCA will seek to establish whether the applicant is fit and proper to operate as an

exchange, including whether it has sufficient financial resources to properly carry out its activities. The applicant must be willing and able to share information with the FCA, and to promote and maintain high standards of integrity and fair dealing, including laying down rules for activities on the exchange. It must record, monitor and enforce compliance with these rules.

Once recognised, these exchanges are subject to supervision and oversight by the FCA. Being granted recognised status relieves the organisation of the requirement to be an authorised person to conduct financial services business.

RIEs can be UK- or overseas-based. In the latter case, they are often referred to as **recognised overseas investment exchanges (ROIEs)**.

There are currently five RIEs based in the UK, offering membership and access to their market to UK firms:

1. **The London Stock Exchange (LSE)** – this is the largest formal market for securities in the UK. It facilitates deals in shares, bonds and some derivatives (for example, those that take the form of covered warrants).
2. **Intercontinental Exchange (ICE)** – this exchange is owned by a company listed on the New York Stock Exchange (NYSE), called Intercontinental Exchange – hence ICE. It deals in futures for energy products, such as crude oil and gas, and also in such new instruments as carbon emission allowances.
3. **The London Metal Exchange (LME)** – this exchange provides trading in a variety of futures and options on base metals and some plastics.
4. **Aquis Stock Exchange Limited** – this is an exchange for ambitious growth enterprises. Both equities and debt instruments are traded on the exchange.
5. **Cboe Europe Limited** – it operates two equity exchanges, in the UK (Cboe UK) and the Netherlands (Cboe NL). These represent one of the largest pan-European equities exchange groups by market share and value-traded.

ROIEs, in contrast, are based outside the UK, but carry on regulated activities within the UK (for example, by offering electronic trading facilities to members in the UK) and, to this extent, are regulated and supervised by the FCA. They do not have physical UK operations (except for some support representation), so they

are necessarily electronic marketplaces. They include the National Association of Securities Dealers Automated Quotations (NASDAQ), established in the US, and the Australian Securities Exchange (ASX).

At the time this workbook was published there were 32 ROIEs that are regulated and supervised by the FCA.

Source of information – FCA website (financial services register/other registers)

1.2 Recognised Clearing Houses (RCHs) and Recognised Overseas Clearing Houses (ROCHs)

Recognised clearing houses (RCHs) are supervised by the Bank of England under FSMA 2000. Clearing houses facilitate the clearing and sometimes also the settlement of trades.

There are currently four recognised clearing houses in the UK. Of these, Euroclear UK & Ireland is not a recognised central counterparty – rather it is a recognised central securities depository:

1. **LCH Limited** – this acts as central counterparty (CCP) for trades executed on Euronext.LIFFE, the LME and ICE Futures, and for certain trades executed on the LSE. LCH stands for London Clearing House.
2. **Euroclear UK & Ireland (formerly CRESTCo)** – this firm is owned and operated by Euroclear, and offers the facility, via the CREST system – to settle trades in dematerialised form. It is mainly known for UK and Irish equity clearing, and also provides clearing and settlement for a variety of other equities, bonds and funds.
3. **LME Clear Limited** – launched in 2015 by the LME for its members.
4. **ICE Clear Europe Limited** – a recently formed subsidiary of the Intercontinental Exchange group of companies (ICE), a group that operates global electronic marketplaces for trading futures, options and over-the-counter (OTC) energy and chemical contracts. It acts as a clearing house and CCP specifically for contracts executed on, or through, ICE Futures.

As with an RIE, recognition as an RCH means that the clearing house does not need to become an authorised person in order to conduct financial services business in the UK.

Recognised overseas clearing houses (ROCHs) are similar to RCHs, except they are based overseas, rather than in the UK. Examples of ROCHs include ICE Clear US Inc and the CME.

The current list of RCHs and ROCHs can be found on the Bank of England website – *http://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision.*

1.3 Obtaining Recognised Status

FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 set out the requirements that enable recognised status to be obtained and provided.

In order for recognition to be provided by the FCA for the RIEs, ROIEs, RCHs and ROCHs (other than those RCHs and ROCHs which are central counterparties), the following must be complied with, where they must:

- be fit and proper
- maintain sufficient financial resources
- have proper systems and controls
- cooperate and share information
- maintain high standards
- record and monitor trades
- have proper procedures
- investigate complaints
- take appropriate measures to reduce the use of the exchange or clearing house for financial crime or market abuse, and
- have in place arrangements for settlement and appropriate arrangements for safe custody.

Once they have been granted recognised status, the FCA will undertake continuous supervision.

1.4 Designated Investment Exchanges (DIEs)

The FCA also recognises some overseas exchanges where no business is undertaken from the UK.

By granting **designated investment exchange (DIE)** status, the FCA assures UK market participants and/or investors that they consider the overseas market to be equivalent to the UK in terms of local regulation and investor rights.

Examples of DIEs include:

- Tokyo Stock Exchange
- NYSE, and
- Hong Kong Exchanges and Clearing ltd.

At the time this workbook was published there were 29 DIEs.

Source of information: FCA website (financial services register/other registers)

1.5 Quote- and Order-Driven Markets

Financial markets are operated in two different ways: order-driven (the most common), and quote- driven (the market maker system).

In an order-driven market, buyers and sellers disclose the prices at which they are willing to trade. When the price matches, then a trade is undertaken. There may be periods when buyers' and sellers' views on the value of companies and/or shares diverge and no buyers are prepared to buy at the prices sellers are seeking.

In contrast, in a quote-driven market the continuity of bid and offer prices is ensured by having certain exchange members (market makers) who are obliged by the exchange rules to provide buying and selling prices throughout the day.

The main advantage of this approach is that investors have a guaranteed pool of liquidity.

For this obligation, and for taking on this risk of always having to buy or sell, market makers are compensated by access to inter-dealer broker systems and relaxed disclosure requirements on transactions carried out, and the taking of temporary short positions in equities, sovereign debt and credit default swaps (CDSs).

1.6 Liquidity

In the context of regulated markets, liquidity is defined as the ability to enter or exit the market, in reasonable size, at an acceptable price spread, and create only modest price distortion.

Traditionally the quote-driven market was described as being the best way to provide liquidity, because market makers are obliged to buy and sell the stock. However, a quote-driven dealing system means that investors suffer the bid/offer spread when dealing, thus introducing a cost to the investor. Also, liquidity is derived from more than just a trading method; there are a number of other important prerequisites such as:

- 'free' availability of the security being traded
- the ability of the stock to be freely borrowed or repo'd
- the existence of suitable derivatives for trading and hedging purposes
- well-capitalised exchange membership and investment community of both principals and agents, and
- efficient settlement systems to minimise failures (reduce counterparty risk).



2. UK Markets

2.1 London Stock Exchange (LSE)

The LSE operates as both a primary market and a secondary market. The majority of members can act in two capacities, either as 'agency' or on a 'principal' basis.

The most relevant parts of the LSE rulebook are the following sections:

- Definitions
- Core rules
- Trading rules: order and off order book
- Market maker rules
- Settlement, clearing and benefits rules
- Compliance
- Default rules
- AIM Registered organisation list, and
- Member firm information sheets.

LSE rules require all market makers to disclose and trade-report all transactions carried out. Trades carried out via SETS (Stock Exchange Electronic Trading

System) or other order books are automatically trade-reported. The following provides examples of the required information:

- member firm reporting the transaction
- date and time of the transaction
- whether the security is a buy/sell
- the security (name)
- the price and amount/nominal bought/sold
- trade reporting conditions, ie, is security/share cum-dividend
- settlement due date, and
- dealing capacity (principal/agent).

2.1.1 Transaction Reporting

Transaction reporting is required under the FCA's Supervision sourcebook (derived from UK MiFIR), and is for market surveillance/market manipulation purposes, rather than for market transparency purposes. When a firm provides a report of its transactions to an approved reporting mechanism (ARM) it is fulfilling its obligations to report to the FCA as required by the Supervision (SUP) Sourcebook of the FCA's Handbook. The information contained in a transaction report is not disclosed to the market.

Subject to some limited exceptions (such as an entity being a non-UK entity that is either, not an investment firm or is an investment firm that does not have a presence in the UK, ie, it is not regulated/ does not operate out of a branch/subsidiary in the UK or the underlying financial instrument is not reportable), if both parties to a transaction are domiciled in the UK, they are required to submit transaction reports containing specific information, which includes:

- reporting firm's identity – legal entity identifier (LEI)
- trading venue identifier code
- executing entity identifier code
- trading date and time
- whether the transaction is a buy/sell

- instrument identification code (name and ISIN of the instrument)
- trading capacity
- quantity – number of shares/nominal/amount of stock purchased/sold
- settlement date
- identity of the counterparty (other party to the transaction)
- price and currency
- unique transaction identifier
- buyer/seller identification code
- buyer/decision-maker, first name, surname and date of birth, and
- seller/decision-maker code, first name, surname and date of birth.

Following Brexit, UK branches of EEA firms are now UK branches of third country entities and are, therefore, required to report under UK MiFIR. This also means that these branches will have dual reporting obligations – under UK MiFIR and also under EU MiFIR due to their parents' obligations.

Transaction reporting is one of the key areas that the FCA review and monitor. There have been a number of fines with respect to underreporting and incorrect reporting of transactions.

Firms are also able to report directly to the FCA, rather than use an ARM.

2.2 Alternative Investment Market (AIM)

The AIM market offers access for smaller, fast-growing companies to obtain access to the market at a lower cost and with a lighter regulatory burden.

To be listed on AIM, there are no requirements for the minimum percentage that must be held by the public, or a minimum market value of securities. The company is not required to have a lengthy trading history. However, all securities must be freely transferable.

AIM companies must have a nominated adviser (Nomad) to advise the company and/or its directors of their responsibilities, and a nominated broker to support trading on the company's shares.

In addition, there are ongoing obligations to publish price-sensitive information immediately and disclose details of significant transactions.

Refer to chapter 3, section 2.9 for further details.

2.3 NEX Exchange

Acquis operates two 'markets' or 'exchanges'. Aquis Stock Exchange (AQSE) provides primary and secondary markets for equity and debt products. The AQSE Growth Market is divided into two segments 'Access' and 'Apex', with different levels of admission criteria. The Access market focuses on earlier stage growth companies, while Apex is the intended market for larger, more established businesses.

2.4 Commodities Exchange

The term 'commodities' means physical goods such as agricultural products, metals and energy commodities (ie, oil/gas). Commodities exchanges operate with both spot markets (immediate delivery) and futures markets (prices agreed for delivery in the future, on an agreed date now).

The following are UK exchanges where commodity futures are traded:

- **ICE Futures Europe** – for trading energy derivative products, for example, Brent Crude Oil, ICE Futures.
- **LME** – for trading base metal derivative products.



3. Multilateral Trading Facilities (MTFs)

An MTF is a specific type of UK and European financial trading system. The concept was introduced in 2007 by MiFID I, which describes a trading venue that brings together buyers and sellers in a non- discretionary way, according to a defined set of rules resulting in trades. The United States equivalent is an alternative trading system (ATS).

The MiFID I legislation laid out a number of obligations for an MTF to operate:

- It must be **pre-trade transparent** – the price of existing orders must be made available on market data feeds.
    - An MTF may be exempted from pre-trade transparency via the use of an appropriate waiver, such as a large-in-size waiver or price referencing waiver: in this case the MTF will be known as a 'dark pool'.
- It must be **post-trade transparent** – any trades carried out on the platform must be published in real time.
- **Prices and charges** must be public and applied consistently across all members.
- There must be a **rule book** advising how the system works and a means for applying for membership.

MTFs are notable for the following:

- High trading speeds, using technology to make their platforms attractive to high-frequency traders.
- Low cost-bases, running their organisations with minimal headcount.
- Maker/taker pricing, paying members to trade on the platform as long as the trading adds liquidity rather than takes it.
- Trading incentives, often called jump-balls, in which stakes are given to trading members in return for volume traded.

This made them highly attractive and enabled them to take market share. In turn, existing venues were forced to discount heavily, significantly impacting revenues.

Following the implementation of MiFID II, a number of previously unregulated platforms converted to MTFs, across a range of asset classes (ie, interest rate derivatives, FX derivatives). MTFs are offered by companies such as Bloomberg, MarketAxess, Tradeweb, 360T and FX Connect.

At the time this workbook was published there were 37 MTFs regulated and approved by the FCA.

Source of information: FCA website (financial services register/other registers)

Find out more about Multilateral Trading Facilities or MTFs...



4. Organised Trading Facilities (OTFs)

MiFID II introduced a new category for trading venues, called an 'organised trading facility (OTF), which is a multilateral system that is not a regulated market nor an MTF.

Within an OTF, multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in a way that results in a contract. Equities are not permitted to be traded through an OTF. MTFs and OTFs are similar multilateral systems that bring together third-party buying and selling interests in financial instruments in a way that results in a contract.

The requirements that apply to OTFs and their transactions are generally the same as the requirements for MTFs. As with MTFs, OTFs must establish clear rules and processes around trading under MiFID. OTFs are also subject to the same transparency requirements as regulated markets and MTFs, and are required to establish and maintain effective arrangements and procedures to enable the regular monitoring of compliance by the members.

At the time this workbook was published there were 16 OTFs regulated and approved by the FCA.

Source of information: FCA website (financial services register/other registers)



5. Systematic Internalisers (SIs)

The systematic internaliser regime, or trading on own account acting on a 'principal' basis, was not a new concept. It was introduced by MiFID in 2007, but only applied to shares and did not have a quantitative test. The reason behind amending the SI regime to include post-trade reporting requirements was to enhance transparency around trading undertaken outside of trading venues (ie, OTC), thus helping with the price discovery process for investors.

MiFID II enhanced the SI regime and applied it to non-equity financial instruments (such as bonds and derivatives).

An 'SI' is defined as an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account by executing client orders outside a regulated market, MTF or OTF without operating a multilateral system in financial instruments that are admitted to trade or are traded on a UK trading venue (sometimes referred to as 'ToTV' – traded on a trading venue).

Furthermore, UK MiFID introduced quantitative criteria to make the definition more objective. The relevant period for assessment of the conditions detailed is quarterly based on the previous six months' trading activity in the UK.

However, from 1 December 2025 the FCA removed the SI regime for non-equities.

5.1 Pre-Trade Requirements

- **Equities** – the quantitative thresholds are:
    - **frequent/systematic basis (liquid instrument)** – the number of OTC transactions undertaken by a firm is equal to or larger than 0.4% of transactions in the same financial instrument in the UK (on a venue or OTC) and the firm carries out a transaction in the financial instrument at least daily
    - **frequent/systematic basis (illiquid instrument)** – the firm carries out a transaction in the financial instrument at least daily
    - **substantial basis** – the size of OTC trading carried out on own account or on behalf of clients in last six months is equal to or larger than:
        - 15% of the total nominal amount in the same financial instrument executed by a firm on a trading venue or OTC
        - 0.4% of the total of the total nominal amount in the same financial instrument executed in the UK by the firm on a trading venue or OTC.

The extent to which an investment firm meets the organised, frequent, systematic and substantial benchmarks will be determined per financial instrument (eg, at an ISIN code level).

Registration as an SI is undertaken at the asset class level rather than the legal entity level. An entity can determine that it wishes to opt into the SI regime where it does not meet the specified thresholds; there is, however no opt-out once the criteria are met. The obligations introduced can essentially be summarised as follows:

- **pre-trade** – the provision of quotes:
    - equities:
        - continuous two-way 'firm' price quotes for liquid instruments

        - disclose 'firm' quotes upon request to the client for illiquid instruments
    - non-equities:
        - provide 'firm' quotes to all clients and make public for liquid instruments
        - provide 'firm' quotes request from a client for illiquid instruments
- **post-trade** – the reporting of trades executed as near to real-time as possible:
    - reported to made public – 'price discovery'.

There are certain waivers in place when having to provide firm quotes to clients where the size of the order is deemed to be 'large in scale' and/or above the size specific to the financial instrument.

5.2 Post-Trade Requirements

There are a number of deferrals from the post-trade reporting requirements. The normal timeframe for reporting is within one minute for equity/equity like instruments.

Reporting is single sided, undertaken by the trading venue or by one of the firms for bilaterally (OTC) executed transactions (ie, the seller where both firms are registered with the FCA as designated reporters or both are not; otherwise where one of them is a designated reporter).

The FCA is responsible for maintaining the 'designated reporter' register.

Reporting identifies the firm reporting the trade and the trade economics of the transaction; **it does not contain any details on who the other counterparty to the trade was**.

Reporting only applies in respect of financial instruments that are subject to being traded on a trading venue/have been admitted to trading on a trading

venue (referred to as 'ToTV'). The following would be exempt transactions in respect of equity transactions:

- Primary market transactions.
- Allocations to underlying clients/funds.
- Two matching trades entered into at the same time and for the same price (only report one side).
- Where a trade is passed along a chain and concluded on a trading venue/with an SI.
- Equity give-ups when completed in the market (and not internally filled).

The following was exempt transactions in respect of non-equity transactions:

- Primary market transactions, securities financing transactions and UK listed exchange-traded derivatives.
- Allocations to underlying clients/funds.
- Certain transactions where the counterparty is a member of the European System of Central Banks.
- Certain transactions where the counterparty is one of a number of specified third country central banks.

5.3 SI Calculation

In order to assess whether a firm is captured by the SI regime, it must undertake a quarterly calculation to assess the quantitative threshold limits. However, the FCA is only undertaking these calculations annually – as noted in their 'UK MiFID transparency calculations' webpage *https://www.fca.org.uk/regulation-markets-financial-instruments/uk-mifid-transparency-calculations*.

The FCA is now responsible for publishing this data for firms to use to determine whether they would qualify as an SI based on the SI calculations.

Firms cannot opt out of the SI regime if they meet the quantitative threshold conditions.

5.3.1 Why would Firms be a Systematic Internaliser?

Being an SI identifies the firm as being a liquidity provider in a range of financial instruments and indicates that it is willing to trade with clients outside a trading venue. It also used to mean that clients who trade with a SI will not have any post-trade reporting obligations – something of interest to buy- side clients and non-financial entities who would otherwise need to develop the framework to be able to undertake reporting obligations where they would apply. Although that has now changed with the implementation of the DRR, as noted above in section 5.2.1.

Obviously, best execution obligations would apply and could determine whether a buy-side firm would trade on a trading venue or outside a trading venue with an SI.

5.3.2 SI Commercial Policy

The legislation creates the concept of a commercial policy that firms must have in place and provide to clients. As a systematic internaliser, the firm can decide in an objective non-discriminatory way:

- the clients to whom it will grant access to its quotes
- the process and circumstances for updating/withdrawing quotes
- the length of time a quote is 'firm' and can be dealt against by clients
- the number of transactions the firm will undertake with clients for any given quote
- the circumstances under which the firm will provide a quote for financial instruments deemed to be 'illiquid', and
- the obligations when dealing in sizes above the 'size specific to the financial instrument'.

The commercial policy needs to be provided to clients in advance of trading with them in the capacity of an SI. One way would be to put this on the firm's website.

5.4 Developments with the SI Regime

5.4.1 Definition of a Systematic Internaliser

In 2023 the FCA published some proposals on amending the definition of the SI regime, with the Financial Services and Markets Act 2023 amending the definition as follows:

> *'systematic internaliser' means an investment firm which deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system and which:*
>
> *a. does so on an organised, frequent, systematic and substantial basis, or*
> *b. has chosen to opt in to the systematic internaliser regime;*
>
> *for the purposes of whether dealing is taking place on a basis that is organised, frequent, systematic and substantial is to be determined in accordance with rules made by the FCA.'*

The FCA will be removing the quantitative criteria, keeping the qualitative criteria as noted above.

In the FCA's proposed glossary definition, the FCA defined dealing as organised, frequent, systematic, and substantial when the following are true.

- It is carried on in line with rules and procedures in an automated technical system, such as an electronic execution system, which is assigned to that purpose.
- It is available to counterparties on a regular or continuous basis.
- It is held out as being carried on by way of business, in a manner consistent with Article 3 of the Business Order in respect of the relevant financial instrument. On this point, firms may refer to our new proposed guidance in PERG 13.2 Q10a for guidance on meaning.

However, to ensure a consistent approach is adopted, the above will not come into effect until 1 December 2025 – which is the same timeframe for the implementation of the FCA's transparency requirements for bonds and derivatives markets (PS24/14).

5.4.2 FCA Discussion Paper on the Future of the SI Regime

In July 2025 the FCA published a consultation paper on the future of the SI regime for bonds and derivatives, which as noted above, resulted in the SI regime being removed by the FCA from 1 December 2025 for non-equity financial instruments.

Also in the consultation paper was a discussion paper on the equity markets, and the future of equity SI regime. The FCA noted that the responses to the discussion paper on 'equities' would help them to develop their policy, with a consultation on the future of the equity SI regime to be published during 2026.

With regards to the discussion paper on the equity markets SI regime, the FCA noted:

> *'the structure of the UK market in shares has changed significantly over the past two decades, driven by technological innovation, structural trends and the evolving regulatory environment. In particular, secondary market trading activity has become more dispersed across the different ways of executing trades, with a smaller proportion of trading now conducted on the central limit order books (CLOBs) operated by exchanges'.*

Source of information: FCA website (consultation Paper CP25/20 – Chapter 4)

The equity SI regime was designed to ensure that liquidity outside regulated trading venues could continue to support price formation.

As noted in chapter 4 of consultation paper CP25/20, 4 the equity SI regime applies to shares, depositary receipts, exchange traded funds (ETFs), certificates, and similar instruments. However, only those deemed 'liquid' are subject to transparency obligations. This approach is designed to avoid exposing SIs to

undue risk and to ensure they can continue providing risk capital in less liquid markets. The FCA noted that of around 12,000 shares, only 543 are classified as liquid – and just 300 of those have a UK ISIN. There are 505 liquid ETFs, but only five liquid depositary receipts, certificates, or similar instruments.

The FCA noted that it will retain the SI regime for shares and ETFs, but is seeking views on whether it should continue to apply to depositary receipts, certificates, and similar instruments, given their limited presence in the liquid category.

Currently liquidity is assessed through annual quantitative calculations. The FCA noted that it support limiting the regime to liquid instruments, but is interested in industry views on whether there are simpler, more cost effective, or more accurate ways to define liquidity (such as inclusion in major indices or issuer market capitalisation).

Source of information: FCA website (consultation Paper CP25/20 – Chapter 4)

At the time of the publication of this workbook the FCA had not published its consultation paper on reforms to the equities SI regime.



6. Derivatives Markets

The main purposes and aims of regulation, in all markets globally, are to:

- maintain and promote the fairness, efficiency, competitiveness, transparency and uniformity of the securities and futures industry
- promote understanding by the public of the operation and functioning of the securities and futures industry
- provide protection for members of the public investing in or holding financial products
- minimise crime and misconduct in the securities and futures industry
- reduce systemic risks in the securities and futures industry, and
- assist in maintaining the market's financial stability by taking appropriate steps in relation to the securities and futures industry.

6.1 UK and EU

While each country has its own financial regulator (such as the FCA in the UK), which sets out the rules for all, including the derivatives markets, the EU, through EMIR and MiFID II, introduced more extensive rules and regulations regarding the

conduct of business and organisational requirements of firms within the financial sector.

Following Brexit, UK firms must comply with the onshored version of EU regulations. Therefore, UK firms would have to comply with UK EMIR and UK MiFID and UK MiFIR.

6.2 Global Regulatory Reforms

At international level, the Financial Stability Board (FSB) set up a work stream in order to address the challenges related to the implementation of the G20 commitments. In addition, the OTC Derivatives Regulators' Forum was established to promote cooperation between regulators.

In line with the EU's G20 commitments, there have been a number of initiatives both by individual jurisdictions and international bodies.

6.2.1 OTC Derivatives

With OTC derivatives, settlement is direct with the counterparty rather than through an exchange.

Since 2009, there have been moves, not just in the US and Europe, but also in G20 countries more widely, for OTC derivatives to be cleared through clearing houses/CCPs. This increases transparency and reduces the risk of counterparty default, therefore reducing systemic risks arising from trading in OTC derivatives.

Before the financial crisis of 2007–08, the derivative OTC market grew rapidly without significant regulatory scrutiny.

In late 2009, the G20 concluded that four changes to such markets were needed:

- All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate.
- All standardised OTC derivative contracts should be cleared through CCPs.
- OTC derivative contracts should be reported to trade repositories.

- Non-centrally cleared contracts should be subject to higher capital requirements.

6.3 European Market Infrastructure Regulation (EMIR)

The EU implemented a regulation aimed at increasing transparency in derivatives and reducing risk in the OTC derivatives market.

UK EMIR applies to UK firms and requires the following:

- The **clearing** of standardised OTC derivative contracts through CCPs in order to reduce counterparty risk. This is aimed at preventing the default of one market participant causing the collapse of other market players, thereby putting the entire financial system at risk. To be authorised, a CCP will have to hold a minimum amount of financial resources.
- The **reporting** of all derivative contracts to trade repositories (ie, central data centres). Trade repositories will have to publish aggregate positions by class of derivatives, thereby offering market participants a clearer view of the derivatives market.
- To put in place certain **risk management procedures** for OTC derivative transactions that are not cleared through a CCP, for both financial and non-financial counterparties.

The FCA is now responsible in the UK for the surveillance of trade repositories and for granting and withdrawing their registration. It is also responsible for the identification of contracts subject to the clearing obligation, while national competent authorities will be responsible for the authorisation and supervision of CCPs, except in the case of CCPs from third countries, which will have to be recognised by ESMA, providing that they meet certain conditions.

If a contract is not eligible for clearing by a CCP, the regulation requires the application of different risk management techniques, including the exchange of collateral and the holding of additional capital.

The regulation applies to CCPs and their clearing members, to financial counterparties and to trade repositories, as well as to non-financial

counterparties and trading venues where so provided.

6.4 US: Dodd-Frank Act

Following the end of the global financial crisis of 2007–08, after a lengthy and sometimes contentious legislative process, the US Senate approved the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). Title VII of the Act sets forth the legislative framework for derivatives.

The Act creates an extensive regulatory framework for swaps and security-based swaps, capturing substantially all derivatives transactions that previously were exempt from regulation under the Commodity Futures Modernization Act.

The Act provides for mandatory clearing and trading on regulated facilities for many derivatives contracts, with an exception for non-financial end users.

Swap dealers and major swap participants are subject, among other things, to capital and margin requirements, business conduct rules and special duties in their dealings with governmental entities, the Employee Retirement Income Security Act (ERISA) and governmental plans and endowments. While many end users will not be directly regulated, they often will be affected indirectly as their counterparties are subject to the requirements, in particular with respect to margin rules.

Other significant provisions include the swaps 'pushout' rule, collateral segregation and real-time swap transaction reporting requirements, position limits and large trader reporting, and the application of the securities laws to security-based swaps.

6.4.1 Swaps and Security-Based Swaps

The Act aims to sweep the universe of previously unregulated derivatives into the new regulatory framework, and divide this universe into two broad categories:

- **Swaps** – the term 'swap' is defined broadly and includes options, swaps and other transactions based on rates, commodities, securities, debt

instruments, indices, quantitative measures and other financial or economic interests, subject to certain exceptions. Building upon the definition of previously exempt swap agreements under Section 206A of the Gramm-Leach-Bliley Act, the Act brings previously unregulated derivatives into the new framework. Swaps are subject to Commodity Futures Trading Commission (CFTC) jurisdiction. Swaps do not include security-based swaps, as discussed below.

- **Security-based swaps** – swaps based on individual securities or loans, on narrow-based securities indices, or on events affecting individual issuers of securities, or issuers of securities in a narrow- based securities index. Security-based swaps are subject to Securities and Exchange Commission (SEC) jurisdiction.

The Act seeks to establish parallel rules for swaps and security-based swaps. Mixed swaps, which combine features of swaps and security-based swaps, are to be regulated jointly by the CFTC and SEC. Parties seeking to list or trade novel derivatives products having both commodities and securities features, may petition the CFTC and SEC for a determination of the product's regulatory status. The CFTC and SEC are required to consult and coordinate with one another (and with the federal banking regulators) in exercising their jurisdiction over swaps, and may challenge each other's actions in court in the event of a dispute.

While the basic approach is comprehensive and quite straightforward, the definitional provisions are complex in detail. Care must be taken in evaluating the status of individual derivatives products. For example, the swap definition excludes certain transactions that are already regulated as securities, including options on securities and foreign exchange options traded on registered securities exchanges.

Other exclusions remove from the scope of the Act commodity and security futures, leverage contracts, and forward transactions for non-financial commodities intended for physical settlement, as well as deposit and savings accounts, certificates of deposit and other 'identified banking products'. Swaps based on government securities (other than municipal securities) are excluded from the security-based swap definition, and thus are subject to regulation by the CFTC.

Foreign exchange swaps and forwards, which were the subject of considerable debate during the legislative process, will be considered swaps.

6.4.2 Clearing and Trade Execution

The effort to require central clearing and exchange trading for many derivatives transactions is at the heart of two basic purposes of the Act, reducing systemic risk and increasing market transparency. At the same time, the mandatory clearing and exchange-trading provisions have been controversial, in particular due to the increased margin requirements (and hence increased costs) associated with central clearing.

The Act requires the CFTC and SEC to, on an ongoing basis, review swaps and categories or classes of swaps with a view to determining whether clearing should be mandatory. Factors to be considered include the existence of significant outstanding exposures, trading liquidity and the availability of appropriate operational expertise and resources. When the CFTC or SEC determine that a particular type of swap should be cleared, but no clearing organisation accepts the swap for clearing, the CFTC or SEC are directed to investigate and take appropriate action. Mandatory clearing will not be applied to existing swap positions, so long as the positions are reported to swap data repositories in a timely fashion under rules to be published by the CFTC and SEC.

Clearing organisations will be required to offset swaps with the same terms and conditions on an economically equivalent basis within the clearing organisation, and to provide for non-discriminatory clearing of transactions executed bilaterally or on unaffiliated facilities. In a similar vein, the Act calls on the CFTC and SEC to adopt rules, including possible ownership and control limitations, to mitigate conflicts of interest that may arise with respect to ownership of regulated clearing, and trading facilities by bank holding companies, certain non-bank financial institutions, swap dealers, and major swap participants.

6.5 Clearing and Settlement

LCH, as a central clearing counterparty (CCP) acts as principal to trades, therefore members of exchanges who buy or sell a contract end up with a position with the LCH either directly, if they themselves are clearing members, or indirectly, through the clearing member of the exchange who clears their trades.

LCH takes the risk of counterparties failing to honour obligations. The LCH reduces its risk by requiring cash or collateral deposits (initial margins) for the clearing members' positions.

Looking at how this operates from a practical perspective for NYSE Liffe, only members can trade on NYSE Liffe, and anyone else wishing to trade a Liffe contract must do so through such a member who takes responsibility for the registration, margining and settlement of the trade.

Individuals using the services of NYSE Liffe members include the following:

- **Traders** – acting on their own behalf, commonly known as 'locals', or on their company's behalf. Traders make a profit from the positions taken.
- **Brokers** – acting for a third party and making profits by charging commission to trade.

Day-to-day supervision on NYSE Liffe is carried out by the Market Supervision Department of the exchange.



7. Codes

The Non-Investment Products Code (NIPS), which covered trading in the UK on the sterling, foreign exchange and wholesale deposit markets, and spot and forward foreign exchange and bullion markets was replaced by the following new codes:

7.1 FX Global Code

The FX Global Code was developed by a partnership between central banks and market participants from 16 jurisdictions around the globe. It is a voluntary code.

The purpose of the FX Global Code is to promote a robust, fair, liquid, open, and appropriately transparent market in which a diverse set of market participants, supported by resilient infrastructure, are able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behaviour.

The FX Global Code does not impose legal or regulatory obligations on market participants, nor does it substitute for regulation, but rather it is intended to serve as a supplement to any and all local laws, rules and regulations by identifying global good practices and processes.

The FX Global Code covers topics such as ethics, governance, information sharing, as well as risk management and compliance and confirmation and settlement.

In 2021, the FX Global Code was revised following a formal review. Although there were no updates to the leading principles, there were minor updates made to 11 of the 55 principles and some of the guidance text in the FX Global Code – further strengthening guidance on anonymous trading, algorithmic trading and transaction cost analysis, disclosures and settlement risk.

A copy of the FX Global code can be located at *https//www.globalfxc.org/docs/fx_global.pdf.*

A revised FX Global Code was published in December 2024, although there were no changes to the overarching principles, additional text and guidance was provided to assist market participants.

7.1.1 Ethics

Market participants are expected to behave in an ethical and professional manner to promote the fairness and integrity of the FX market. They should:

- act honestly in dealings with clients and other market participants
- act fairly, dealing with clients and other market participants in a consistent and appropriately transparent manner, and
- act with integrity, particularly in avoiding and confronting questionable practices and behaviours.

Maintaining high standards of behaviour is the responsibility of:

- firms, which should promote ethical values and behaviour within the organisation, support efforts to promote high ethical standards in the wider FX market, and encourage involvement by personnel in such efforts
- senior and front-line management, who should be proactive in embedding and supporting the practice of ethical values within the firm's culture and be prepared to give appropriate advice to personnel, and

- personnel, who should apply judgement when facing ethical questions, expect to be held responsible for unethical behaviour, and seek advice where appropriate. Personnel should report and/or escalate issues of concern to appropriate parties internally or externally, having regard to the circumstances.

7.1.2 Governance

Market participants should have sound and effective governance frameworks to provide for clear responsibility for, and comprehensive oversight, of their FX market activity; and to promote responsible engagement in the FX market.

7.1.3 Execution

Market participants must exercise care when negotiating and executing transactions in order to promote a robust, fair, open, liquid, and appropriately transparent FX market.

Irrespective of their role, market participants handling orders should:

- have clear standards in place that strive to ensure a fair and transparent outcome for the client
- be truthful in their statements
- use clear and unambiguous language
- make clear whether the prices they are providing are firm or merely indicative
- have adequate processes in place to support the rejection of client orders for products they believe are inappropriate for the client
- not enter into transactions with the intention of disrupting the market, and
- provide all relevant disclosures and information to a client before negotiating a client order, thereby allowing the client to make an informed decision as to whether to transact or not.

7.1.4 Information Sharing

Market participants must be clear and accurate in their communications and must protect confidential information to promote effective communication that supports a robust, fair, open, liquid, and appropriately transparent FX market.

7.1.5 Risk and Compliance

Firms should have appropriate risk management, compliance, and review structures to manage and mitigate the risks that arise from a market participant's activities in the FX market.

7.1.6 Confirmation and Settlement

Market participants must have robust, efficient, transparent, and risk-mitigating post-trade processes to promote the predictable, smooth, and timely settlement of transactions in the FX market.

7.2 UK Money Markets Code

The UK Money Markets Code is a voluntary code, written by market participants. It was originally published in 2017; the current version was published in 2024.

The UK Money Markets Code sets out the standards and best practice expected from participants in the deposit, repo and securities lending markets in the UK.

The UK Money Markets Code is endorsed by the Bank of England's Money Markets Committee (MMC), which is made up of market participants from a wide range of banks and other financial and non-financial institutions. The high standards it promotes are designed to build greater trust and certainty throughout these markets, bringing clear benefits for all involved.

The UK Money Markets Code applies to:

a. execution of transactions in the deposit markets, specifically in the sterling and foreign currency wholesale unsecured deposit market (including certificates of deposits and commercial paper:

- but not general transactional banking activity (ie, an individual's deposit or savings account with their bank)

b. the repo market, and
c. securities lending transactions.

The UK Money Markets Code was first updated in 2021 to reflect 'new' remote working practices following the COVID-19 pandemic, the ongoing development of environmental, social and governance criteria, and the increasing electronification and use of platforms in money markets.

The 2024 update reflected changes following developments in UK Money Markets, such as reminding market participants of the importance of making every reasonable effort to settle transactions conducted in UK Money Markets, including a new section on settlement discipline being added to the *'Securities Lending'* chapter.

7.3 Global Precious Metals Code

The London Bullion Market Association (LBMA) introduced the Global Precious Metals Code in 2017; the current version was published in December 2022. The Code applies to all precious metals market participants, and provides participants with guidance on best practice; again, it is a voluntary code.

The Global Precious Metals Code sets out best practice in the market with a high level of detail and therefore will be more comprehensive than the previous version. In addition to market conventions, the Code covers principles that should be adopted by members, including compliance, governance, risk management and pre- and post-trade execution. Illustrative examples of acceptable practices will be included.

All market participants involved in the global wholesale precious metals market are expected to act according to the principles of the Global Precious Metals Code.

Chapter Five

Current and Future Regulatory Developments

Section 1 | Current UK Regulatory Developments

Section 2 | International Regulatory Developments



Overall Learning Objective

Candidates are required to keep up to date with UK and international regulatory developments. Candidates should specifically be aware of any significant directly applicable European measures in the financial services sector

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There is a general requirement for candidates of the Regulation and Compliance exam to keep up to date with UK regulatory developments, as well as international developments to the extent that they may/will impact UK regulated entities. There is no set syllabus for this section and there will be no explicit questions on specific content of developments that could fall into this area. However, generic questions, where specific reference to current regulatory developments will be credited, may occur.

The following is a selection of relevant regulatory changes or developments that would be of interest to candidates. Some minor changes are covered elsewhere in the workbook. This is not an exhaustive list, and therefore candidates will need to stay up to date with regulatory developments by accessing the HM Treasury, FCA and PRA websites.

1. Current UK Regulatory Developments

1.1 Accountability – SM&CR and NFM

SM&CR Reforms

The December 2022 Edinburgh Reforms included an initiative for HM Treasury, the FCA and the PRA to commence reviews of the SM&CR drawing on experience of the operation of the regime. Consequently, HM Treasury issued a call for evidence in March 2023 on the legislative framework underpinning the regime. Alongside this, the FCA and the PRA published discussion papers – seeking responses from stakeholders on how the SM&CR has been made operational by the regulators.

HM Treasury noted that the responses it received to its call for evidence, there was general agreement that the SM&CR has delivered significant benefits in driving up standards in the UK financial services sector.

The FCA and the PRA noted that responses to their discussion papers showed wide support for the SM&CR and its aims, and a general agreement that the regime is meeting its objectives. But respondents also highlighted specific areas where they considered the effectiveness and efficiency of the regime could be improved and regulatory burden reduced. A clear message was that many stakeholders were concerned about delays in regulatory determinations of SMF applications. While some operational changes have delivered improvements in SMF determination timelines, respondents saw scope to streamline elements of the regime and felt its effectiveness and efficiency could be enhanced through targeted changes.

In July 2025 the eagerly awaited consultations papers from HM Treasury, the FCA and the RA were published, these are summarised below.

1.1.1 HM Treasury Consultation

The consultation sought views on how the legislation establishing the SM&CR can be changed to retain the regime's strengths while addressing these issues around its practical operation and easing the regulatory burdens it imposes on

firms.

Senior Managers Regime

The Senior Managers Regime is set out in FSMA and in regulator rules. The FCA and PRA regulate the regime by specifying which roles (within the legislative definition) are treated as a Senior Management Function, considering applications from firms for individuals to perform these roles and supervising the conduct of those individuals approved. Senior Managers are subject to an enhanced standard of accountability, in addition to individual conduct rules.

HM Treasury proposes significant changes to the regime's framework, as provided for in FSMA, which would enable the FCA/PRA to apply the regime in a more flexible and proportionate way, to reduce costs and improve competitiveness. This means that in the future the FCA and the PRA would have greater flexibility through rulemaking powers both to reduce (or increase) the number of roles which fall within the regime, and to reduce (or increase) the number of roles within the regime for which pre-approval is required before an individual can be appointed.

Certification Regime

The legislative requirements in FSMA have led to significant administrative burdens and high regulatory costs for firms, particularly in relation to the annual assessment of fitness & propriety, and the additional burden to produce a certificate.

The Certification Regime applies to staff in roles below senior manager level which involve, or could involve, a risk of significant harm to the firm or its customers. FSMA requires that individuals performing these roles are assessed and certified as 'fit and proper' before they commence their role.

HM Treasury is proposing to repeal relevant sections in FSMA which will allow the FCA and the PRA to use their rule making powers to set up a replacement regime in rules – one that is more proportionate and flexible.

These proposed changes would remove from FSMA:

- The duty for firms to take reasonable care that no employee performs a Certification Function unless certified by the firm as 'fit and proper' to do so.
- The FCA and PRA function of deciding which roles should be specified as Certified Functions, according to whether the function involves, or might involve, a risk of significant harm to the employing firm or any of its customers.
- The requirement for the FCA and PRA to keep the exercise of that function under review, and to exercise it in a way which minimises the risk of employees performing Certification Functions that they are not fit and proper to perform.

HM Treasury Proposals	Details/application
Senior Managers	
Reducing the number of senior manager roles Reduce the overall number of senior managers within the regime, by providing greater flexibility for the PRA/FCA in specifying the list of Senior Management Functions, which require regulatory pre-approval. *[This is being called 'Phase Two']*	The objective of changes to these legislative provisions would be provide greater flexibility to regulators in how they define Senior Management Functions, allowing for them to be more focused a facilitating an overall reduction in roles that fall within the regime
Removing requirement for pre-approval for some roles Allow firms to appoint certain senior managers without pre-approval by the PRA/FCA. It would modify the statutory requirement in FSMA that currently requires firms to ensure that all senior managers are subject to prior approval. Changes could be made to enable the PRA/FCA, via rules, to develop different mechanisms to manage senior manager appointments.	Some senior managers would continue to require the pre-approv of PRA/FCA, as is currently the case. But there would also be the ability for them to specify certain senior manager roles for which approval is no longer required. For these senior manager roles, firms would be required to ensur that the individuals meet fitness and propriety standards and wo then be required to notify the PRA/FCA of such appointments, thereby enabling them to maintain oversight. In addition, they would be able to introduce proportionate systems and controls t vary the process if necessary and monitor firms' processes and

[This is being called 'Phase Two']	compliance. This change is expected to reduce friction and administrative burdens for firms, allowing them to appoint senior managers mo efficiently while maintaining high standards and clear accountab
Statements of Responsibilities (SoR) Changes to these requirements that would support the PRA and the FCA in taking a more flexible approach, beyond what is currently possible.	FSMA includes a number of prescriptive requirements around ho these are provided, maintained and updated. It also requires that 'significant' change in allocation of these responsibilities must be reflected in an updated Statement and provided to the PRA/FCA.
Certification Regime	
Removal of the Certification Regime Repeal the statutory requirements in primary legislation (FSMA), to allow the PRA and the FCA to use their rule-making powers to set up a replacement regime in rules. *[This is being called 'Phase Two']*	A rules-based regime would allow the PRA/FCA more flexibility to adapt the regime so that it better reflects the risks posed by diffe roles and different firms. The PRA/FCA would also be able to adjust the rules more easily o time, responding to changes in the sector. This would reduce regulatory burdens for firms while still ensurin that people in the most significant roles would need to be conformed as meeting the 'fit and proper' requirement.

1.1.2 PRA Consultation

The proposals seek to make the process for onboarding new SMFs more efficient, help firms navigate the regime more easily, and ensure that those individuals who should be accountable for key decisions are clearly identified.

The changes also complement recently proposed amendments to the remuneration regime, which are also aimed at reducing unnecessary burden on firms and individuals.

PRA Proposals	Details/application
Senior Managers Regime	
Changes to its operations to ensure greater proportionality and consistency, including reviewing its interview processes and decision-making framework.	The PRA will ensure that appropriate determinations continu to be undertaken, as efficiently as possible, for each SMF application in keeping with the current FSMA requirement t all SMF holders are assessed by the PRA as fit and proper persons in relation to the SMF they hold.
12-week rule 1. Amend the rule so that firms must submit a complete SMF application within 12 weeks of the unforeseen departure or temporary absence of the current SMF holder, rather than requiring that the full approval process (including regulatory approval) is completed within 12 weeks. 2. Apply the Senior Manager Conduct Rules to individuals operating under the 12-week rule.	To improve clarity on the use of the rule, the PRA proposes t add non-exhaustive examples in SS28/15 regarding the circumstances in which the rule can be used in a new sectio titled 'operation of the 12-week rule'. The PRA will not expect firms to submit updated SoRs to the regulator until an absence has reached 12 weeks. At present, while the Individual Conduct Rules apply to individuals operating under the 12-week rule, the Senior

[SS28/15 – strengthening individual accountability in banking]	Manager Conduct Rules do not. Applying the Senior Manager Conduct Rules to any individu holding the role under the 12-week rule, whether already an SMF holder or not, enhancing accountability by ensuring tha those who are appointed to new roles where they are able t take key operational decisions in respect of a firm have to m these additional, higher conduct standards
Clarifications on fitness and propriety tests Adding additional text to SS28/15 to underline this point in its communications with firms and stakeholders.	Clarification will give firms and individuals a better understanding of and clarity about the SMF determination process, supporting UK firms' ability to attract talent from th and abroad.
Industry engagement on the SM&CR approval process Continue engagement with industry to understand challenges and trends with regards to SMF application submissions and, alongside the FCA, work with trade bodies to help improve understanding of requirements and expectations.	Responses to the PRA and FCA discussion paper, and discussions with trade bodies, suggest that the industry is interpreting specific expectations and requirements inconsistently and would benefit from revised, streamlined guidance to avoid unnecessary costs.

Individuals in scope of the Senior Managers Regime
 	
'Group Entity Senior Manager (SMF7)'
 	
Amend the SMF7 definition to bring in scope controllers, and their representatives, who apply significant influence over the day-to-day management or conduct of the firm's affairs in relation to its regulated activities, regardless of the legal structure of the group.
 	
Proposed new definition of a Group Entity Senior Manager (SMF7)
 	
The Group Entity Senior Manager function (SMF7) is the function of having a significant influence on the management or conduct of one or more aspects of the affairs of a firm in relation to its regulated activities (other than in the course of the performance of another PRA senior management function) and which is performed by:
 	
• *(1A) an employee, or an officer of:*
  a. *a parent undertaking or holding company of a firm; or*
  b. *another undertaking which is a member of the firm's group, or*
• *(2A) a controller or a nominated representative.*
	The SMF7 role currently applies to individuals who have significant influence over the management or conduct of on more aspects of the affairs of a firm in relation to its regulate activities and who are employed by (or are an officer of) a parent undertaking or holding company of a firm, or anothe undertaking which is a member of the firm's group.
	
	While the SMF7 scope is broad to address a variety of busine models and governance arrangements, the PRA agrees that there are benefits in providing further guidance.
	
	The guidance will ensure that this function is applied consistently and appropriately to those key decision makers scope.
	
	[PRA noted that they have seen situations where individuals have significant influence over a PRA-authorised firm's management and decision making but, as they are not employed by group entity they do not fall within the current SMF7 definition]

Application and operation of the SM&CR	
Statements of Responsibilities (SoR) Amend SS28/15 to set an expectation that the submission of the updated SoR should happen no later than six months following a significant change in responsibilities.	With regards to the frequency of submitting SoRs, FSMA requires firms to provide an updated SoR if there has been a significant change in the responsibilities of a SMF holder.

Management Responsibilities Maps (MRM) Amend SS28/18 to set an expectation in SS28/15 that such documents should be submitted no later than six months following a significant change in the set of management responsibilities. *[SS28/15 – strengthening individual accountability in banking]*	However, it does not, state a timeframe for firms to provide t revised SoR to the PRA/FCA. MRMs are 'living documents' and as part of its proposed expectation the PRA notes that firms should amend MRMs internally as significant changes in Senior Manager responsibilities occur and not delay this until the document due to be submitted. The revised timeframe for SoRs and MRMs will not apply in c where the firm has been notified of the need for earlier submission by the PRA, where the revised 12-week rule is be utilised or earlier submission is required in order to comply v PRA Fundamental Rule 7 *(eg, a significant and wide realloca of responsibilities across the firm's Senior Managers).*
Criminal Record Checks Amend relevant application forms, including 'Form A', to extend the period for requiring a check to be undertaken from up to three months to up to six months prior to an application submission.	While the PRA does not anticipate that many firms will requi additional flexibility and expects firms to conduct all checks determine fitness and propriety of their candidates in a time manner, it appreciates that in certain circumstances, additio time may be required. Under existing rules, a Form E submission does not require a criminal records check to be completed providing the firm is to date with their annual F&P cycle.

1.1.3 FCA Consultation

The outcomes that the FCA are seeking from their proposals include:

Increased proportionality of SM&CR requirements

- Proportionality is already a key feature of the SM&CR with different requirements applying to different firms depending on size and complexity.
- Reduction in the administrative burden of compliance, while standards of governance and accountability are maintained.
- Expecting to see:
    - reduction in compliance costs for firms.
    - fewer requests for forbearance from firms seeking to manage changes in SMFs.
    - Statement of Responsibility (SoR) submissions to be less frequent.
    - fewer cases of inappropriate allocation of PRs to SMFs.
    - fewer firms in scope of the Enhanced Regime thresholds.

Improved efficiency of SM&CR requirements

- Reduced compliance burden and costs.
- Firms and the FCA can redirect resources.

Greater clarity on the application of some SM&CR requirements

- Higher levels of compliance in the SM&CR areas where they have updated or provided new guidance.
- Reduced administrative burden placed on firms, with no consequential reduction in the benefits of the regime.

FCA Proposals	Details/ application
Operation of the SM&CR	
12 week rule **Amend the 12 week rule so that firms that use it would have 12 weeks to submit an application for an SMF, rather than 12 weeks to get a decision on an application.** Guidance on when the proposed new 12 week rule can be used: • Use the rule reasonably. • Use the rule as infrequently as reasonably possible. • Have in place and operate effective and up to date succession plans as appropriate. • Use notice periods effectively to identify candidates to fill the place of the departing SMF. • Apply for approval for the permanent SMF replacement as soon as reasonably possible. **Applying the Senior Manager Conduct Rules to the individual performing the SMF role under the proposed new 12 week rule** **Measures to further strengthen the rule and avoid misuse – new rules and guidance that firms should:** i. ensure the individual performing the role under the 12 week rule is fit and proper ii. submit a good quality application	The intention is to improve the efficiency of the 12 week rul which allows individuals to cover for a senior manager witho being approved, under certain conditions. To ensure that when a firm uses the 12 week rule, it maintair high standards of governance and accountability. This would mean that the individual providing cover under t rule would be personally accountable for their conduct in overseeing the areas under their responsibility. It would also avoid potential gaps in individual accountabilit during the period.
Streamline the SMF approval process, including planning potential changes to processes and communications.	The SMF assessment process should be proportionate. Proportionality exists in parts of the SMF assessment proces the FCA already applies differing levels of scrutiny to applications using a risk based approach. *Changes to Form A* The documentation requested in the form can be reduced o consolidated where appropriate. The FCA will make clear that the evidence setting out the sk gap analysis, competency assessment and learning and development plan can be included in a single document rat than separate ones, where appropriate.
Criminal Records Checks (CRC) and disclosure ***The length of time CRCs are valid for*** Increase the validity period of criminal record checks for SMF applications. (*from 3 months to 6 months)* **Criminal Records Checks for individuals already approved by the FCA** Remove the requirement for firms to undertake CRCs where an existing SMF holder is applying for an SMF in the same firm or	There is no rule or guidance on the validity period for crimin records checks. However, the SMF application forms ask for an explanation i check was not undertaken within the 3 months prior to the submission of the application. Following feedback to the discussion paper, the FCA propos extra guidance. This would reduce burden and costs for firms for internal mc by expediting the application process and removing the cos getting the criminal records checked.

group.	Firms would remain responsible for determining whether th individual is fit and proper for the SMF role. So, they may choose to undertake CRCs where needed, especially where they have not conducted one for some tim
Statements of Responsibilities (SoR). Allow more time to report updates to Statements of Responsibilities (SoR). [For dual regulated firms, the PRA proposes in its CP that these firms would have up to 6 months to submit updated SoR/MRM, but if more than one change was made during the period would still be required to submit all the relevant versions] **Management Responsibilities Maps (MRM)** Completion of MRMs when making SMF applications.	Firms would still have to keep SoRs (and, for relevant firms, MRMs) up to date at all times at the firm, but they would not need to submit them to the FCA each time they make a char Rather, firms would make a allow submission of changed So on a periodic basis and no later than every 6 months after th last submission. No changes to the scope of what should be included in MRM The FCA will provide guidance to clarify that firms can subm just 1 MRM showing the future state that will apply assumin the changes are approved.
The Directory Allow more time for firms to update specified Directory information.	Providing more time for firms to update most of the informa on the Directory, extending this to 20 business days for mos updates. Striking a balance between giving firms more time to make updates to reduce regulatory burden and ensuring that the Directory is kept sufficiently up to date.
Provide guidance in areas such as: **The applicability of key SMF roles** • further guidance on SMF18 – Other overall responsibility function. **Allocation of Prescribed Responsibilities (PRs):** • allocation of FCA designated PRs (including, for dual regulated firms, PRs shared with the PRA) **Application of Conduct Rules and related reporting requirements:**	The FCA noted they have seen that some firms allocate SMF to individuals whose role might not fit the definition of the function. For example, where the application is for an individual who not the most senior person responsible for a business area o activity. To help firms avoid this and to reduce burdens on firms, the is proposing Handbook guidance to emphasise the considerations a firm should have when determining if the SMF18 function applies. Providing transparency on what is considered appropriate a reduce the likelihood of firms and the FCA needing to discus proposed PR allocations Provision of guidance to: • reiterate that only Conduct Rule breaches where specif disciplinary action was taken by the firm need to be notified to the PRA/FCA. • highlight that the notification requirements for breache under SUP (SUP 15.11) are separate to any other report requirements. • outline matters that the PRA/FCA might expect notification about pursuant to Senior Manager Conduc Rule 4. • clarify the impact of legal privilege and Senior Manage Conduct Rule 4.

	• clarify when cases in which the firm suspended an individual, or reduced or recovered their remuneration, need to be notified to the PRA/FCA. • clarify regulatory reference expectations where an individual has breached a Conduct Rule and disciplinar action was not taken.
Regulatory References: Amend guidance about the period in which firms should provide regulatory references about individuals upon request from a hiring firm.	Amend the guidance to firms to provide regulatory referenc to within four weeks of the request, to speed up the process This will be in 'guidance' and not a rule to allow for circumstances when a greater period of time is required to complete a regulatory reference. The PRA is not proposing the same change, therefore the FC proposals will only apply to solo-regulated firms.

All three consultations papers closed for comments on 7 October 2025.

- HM Treasury did not make comments about the steps in terms of timing; they note that they will proceed with changes to FSMA (primary legislation) when parliamentary time allows.
    - this has a knock-on effect to the PRA and FCA 'Phase Two' work, for which they will need to consult on.
    - this cannot happen until HM Treasury has laid before Parliament the necessary changes required to FSMA.
- The PRA and the FCA have noted that the implementation date for the changes resulting from their consultations would likely be mid-2026.

1.1.4 Non-Financial Misconduct

In July 2025 the FCA has published its approach in relation to non-financial misconduct. This consists of:

- A Policy Statement amending its Code of Conduct ('COCON') sourcebook to set out new rules for Non-Financial Misconduct ('NFM') in the Financial Sector.
    - It is aimed at aligning non-banking firms with the scope of certain NFM that applies to banking firms.
    - The NFM Rules will apply from 1 September 2026.
- A consultation on possible accompanying guidance to support all firms in applying rules in COCON and FIT consistently, in so far as they relate to NFM.
    - guidance in the COCON and the Fit and Proper Test for Employees and Senior Personnel ('FIT')
        - the FCA consultation closed for comments in September 2025
        - in December 2025 the FCA published their Policy Statement and final Guidance – which comes into effect on 1 September 2026.

The NFM Rules are part of the FCA's 2025 to 2030 strategy that aims to raise standards, increase accountability and build trust in financial services. The FCA considers that COCON now makes it clear that serious, substantiated cases of poor personal behaviour such as bullying, harassment and violence is a matter of regulatory concern, and this includes but is not limited to conduct that would be in breach of the Equality Act 2010.

In the past, there has uncertainty among firms around the extent to which NFM can and/or should be taken into account for the purposes of assessing individual fitness and propriety, whether the FCA Conduct Rules/the PRA Rulebook have been breached and what (if anything) should be included in a firms regulatory reference.

The FCA are clear about their objectives regarding NFM, where they see robust and appropriate action to tackle NFM within firms helps foster healthy and inclusive workplace cultures where people are empowered to speak up and raise concerns. This supports their objectives by:

- deterring wrongdoing that can harm individuals and contribute to an unhealthy workplace culture
- preventing the development of workplace cultures that facilitate further wrongdoing and regulatory breaches that result in consumer harm and damage to market integrity
- countering 'rolling bad apples' by including NFM in the regulatory references provided to prospective employers
- attracting and retaining a wider range of people in financial services, increasing diversity of thought and experience
- fostering psychologically safe workplaces that nurture creativity and promote innovation in the interests of consumers
- promoting constructive challenge and better decision-making, supporting good governance and appropriate risk taking, and
- upholding regulatory standards and public confidence in the financial sector.

Below are some of the key elements of guidance for consultation and proposals not taken forward by the FCA from their previous consultation on Diversity and Inclusion in the financial sector:

Guidance	Key Elements	Included in th consultation pa
Code of Conduct (COCON)	Guidance on the scope of COCON, including guidance and examples of: • the boundary between work and private life • when conduct is outside of a firm's SMCR financial activities • when NFM may be out of scope in a non-bank factors to consider when determining whether NFM breaches the conduct rules, including whether: • the misconduct was 'serious' • it was reasonable for it to have the perceived effect • it related to Individual Conduct Rule 1 or Rule 2 Examples of reasonable steps for managers to protect staff against NFM.	Yes
Fit and Proper test for employees and senior personnel (FIT)	Explanatory material on how various types of conduct, including NFM, are relevant to the FIT section of our Handbook, including: • regulatory breaches, eg of COCON • conduct connected to work • behaviour in private or personal life • social media and employee monitoring • relevance to competence and capability.	Yes
Threshold Conditions (COND)	Guidance on the relevance of NFM and discriminatory practices in firms to FCA's assessment of their suitability to undertake regulated activities.	No
Senior Management Arrangements, Systems and Controls (SYSC)	Guidance to remind firms they may need to disclose NFM at work or in private life in a regulatory reference.	No

The FCA will not be updating its rules in relation to regulatory references to clarify that it might be necessary to provide information on NFM or misconduct outside work.

In addressing concerns on the implications of the NFM Rules for regulatory references, the FCA clarified, in its feedback, that where a firm has taken disciplinary action for misconduct that was also a conduct rule breach it must be disclosed in a regulatory reference.

'NFM' Definition

Unwanted conduct of the following kind in relation to an individual:

a. Conduct that has purpose or effect of:

    a. Violating an individual's dignity
    b. Creating an intimidating, hostile. Degrading, humiliating or offensive environment for an individual, or

b. Conduct that is violent to an individual.

The purpose of the FCA's proposed guidance, if made, is to:

- make it easier for SM&CR firms to interpret and consistently apply the conduct rules
- clarify statutory and FCA requirements for fitness and propriety.

1.1.5 Code of Conduct (COCON) Rules

The draft COCON guidance consulted on includes the types of behaviour that would fall within the expanded scope of COCON, general factors for assessing compliance and what conduct is deemed out of scope because it relates to an employee's personal or private life (which is outside the scope of COCON). If the guidance is taken forward, firms will need to consider documenting decisions not to classify NFM as a COCON breach by reference to these factors.

NFM in a person's private or personal life that does not come within the scope of COCON may, however, be relevant to the assessment of their fitness and propriety as elaborated in the draft FIT guidance (see below).

The draft COCON guidance includes factors that are relevant when deciding whether conduct will be regarded as personal or private and whether it falls within COCON.

These examples are similar to those set out by the FCA in CP23/20 but with some additional ones (eg, regarding social media use). The examples are useful but invariably not exhaustive.

There will always be grey areas, which the FCA acknowledges.

Firms will need to notify the FCA if they take disciplinary action for NFM that is a breach of the Conduct Rules in accordance with their notification obligations for Senior Management Functions, certified persons and conduct rules staff.

Factors to consider when determining whether NFM breaches the Conduct rule, including whether:

- the misconduct was 'serious'
    - need to take into account
        - pattern or repetition
        - duration
        - seniority
        - warnings
        - vulnerabilities
    - potential defence
        - proportionate to the intended aim

        - no intended negative effect and not reckless
- it was reasonable for it to have the perceived effect
- it related to Individual Conduct Rule 1 or Individual Conduct Rule 2

    - ICR 1 – *'you must act with integrity'*
    - ICR2 – *'you must act with due skill, care and diligence'.*

Below is a list of conduct related issues that would be in scope of COCON when the NFM took place:

- on the firm's premises/office
- working on the firm's business
- involving a client, professional acquaintance, staff or supplier
- using work equipment or the involvement of staff
- in a business context (official or informal) inside or outside of the office
- at an event attended for work
- staff membership aided the conduct, and
- the purpose of the conduct was to benefit the firm.

1.1.6 Fitness and Propriety (F&P)

The draft guidance to FIT sets out, in more detail, how NFM forms part of the F&P test. It clarifies that misconduct in a person's private or personal life or in their working life outside the regulatory system may be relevant to their fitness and propriety even though it does not of itself involve a breach of standards that are equivalent to those required under the regulatory system.

The draft guidance gives the examples of dishonesty, lack of integrity and violence or sexual misconduct in an individual's private or personal life as relevant to the assessment of F&P. It also provides that repeated breaches of a law may raise doubts as to whether the individual will follow the requirements of the regulatory system.

The draft guidance provides the example that a minor driving offence would not normally be relevant to F&P but that a frequent repetition of such an offence would be potentially relevant.

The draft FIT guidance provides that even if there is little risk of an individual's misconduct in their private or personal life being repeated in their work it will nevertheless be relevant to their F&P if it demonstrates a willingness to:

i. disregard ethical or legal obligations
ii. abuse a position of trust
iii. exploit the vulnerabilities of others, and/or
iv. it is sufficiently serious such that, were the person permitted to work at a firm, it could undermine public confidence in the regulatory system (or any part thereof) or otherwise impact the FCA's statutory objectives.

The draft guidance in relation to F&P and conduct leaves room for interpretation in specific cases. However, for firms who have been used to having the latitude to form a 'house view' this may be reduced if the guidance is introduced.

The draft FIT guidance provides that generally a firm need not monitor the private lives of its staff to assess whether there is conduct that is relevant to fitness. A firm would need only look into the private life of a member of staff being assessed under FIT if there is a good reason to (eg, if the firm becomes aware of an allegation which, if true, would call into question their fitness under FIT).

However, the draft guidance considers that a firm should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety.

Firms may wish to address, in their policies and procedures, the draft COCON guidance that senior conduct rules staff members should disclose matters about their private or personal life if they are material to their assessment of F&P.

The FCA stated that the NFM Rules will not apply retrospectively, nor does it expect firms to do any retrospective analysis of whether it had incorrectly determined a conduct rule breach in the past.

Following the consultation, the FCA published its revised Guidance on 'NFM' in December 2025, coming into effect from 1 September 2026.

The following is a summary of the new text that the FCA had added to COCON:

1.1.7 Scope of COCON

In section 1.3 (Scope of COCON), the FCA has made it clear that 'COCON' does not cover private or personal life.

- The application of COCON is limited to conduct that relates to a function carried out by a member of the conduct rules staff where in turn that function relates to the carrying on of an activity by the firm. The firm's activity may be a regulated activity or an unregulated activity
- However, this does not mean that an individual who is a Senior Manager (SMF) is not required to disclose information about their private or personal life under COCON 2.2.4R (Senior Conduct Rule 4).
- Individuals subject to the senior conduct rules (ie, they are SMFs) should disclose such matters if they are material to an assessment of fitness and propriety under the FIT Sourcebook.

Factors that point towards conduct being within the scope of COCON include:
(COCON 1.3.4G)

1. The conduct occurred when the conduct rules staff member was present on the firm's premises.
2. The conduct occurred when the conduct rules staff member was working on the firm's business.
3. The conduct involved a client, a professional acquaintance, another member of the firm's staff or someone the conduct rules staff member had dealt with on behalf of their firm.
4. The conduct was carried out using equipment supplied by or made available by the firm or by involving the firm's staff.
5. The conduct arose in a business context, including an official or an informal event organised or supported by the firm or in which the firm participates, whether it is held at the firm's premises or at another location.
6. The position of the conduct rules staff member as a conduct rules staff member of the firm helped them to carry out the conduct,.
7. The purpose (misguided or not) of the conduct was to benefit the firm.

Whether conduct is within the scope of COCON depends on the specific facts of each case. Therefore, the FCA noted that it is not possible to set out scenarios in the Handbook and say whether in all cases the conduct in question will be within the scope of COCON.

- the list of factors in COCON 1.3.4G is not exhaustive, and
- the presence or absence of one of the factors noted above (COCON 1.3.4G) is not by itself conclusive.

Private or Personal Life and COCON I (COCON 1.3.7G)

Description of conduct	Whether generally within the scope of COCON (COCON 1.1.6R to 1.1.7R)
Misconduct by M in relation to a fellow member of the workforce while both are on their firm's premises.	Yes
Misconduct by M in relation to a fellow member of the workforce while M is working remotely for their	Yes

firm.	
Misconduct by M in relation to a family member while M is working remotely for their firm.	No
Misconduct by M in relation to a member of the public while M is commuting to or from their firm's place of business for work.	No
Misconduct by M in relation to a fellow member of the workforce when both are travelling to a meeting in which they will represent their firm.	Yes
Misconduct by M in relation to a client at a business meeting in which M is representing their firm.	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by their firm.	Yes
Misconduct by M in relation to a fellow member of the workforce at a social occasion organised by M or another member of the workforce in their personal capacity.	No However: 1. An occasion organised by a manager may be within the scope of COCON, taking into account that the manager's direct reports may feel obliged to attend. 2. If the event takes place after a firm event but at a separate location venue, it may be within the scope of COCON if it is a continuation the first event or if the conduct started at the first event and continued in the new venue. Otherwise, COCON is likely to cease to apply because the connection between the event and the activities of the firm has been lost.
Misconduct by M at a social occasion, a meeting, a round table, an awards ceremony, a training course or a workshop, in each case organised by a client of their firm, another firm, an industry body, a training organisation or a regulator, in which they will represent their firm or where the main reason for the invitation is their working for their firm.	Yes
M is a member of a profession (such as an accountant, actuary or lawyer) and practises that profession in their job with their firm. M carries out misconduct at an event organised by a third party to meet the professional requirements of that profession or by the regulator of that profession.	Yes
M publishes material on a personal social media account (including sending it on a messaging app) held by M. As this table only covers whether conduct takes place in M's private life (and hence is outside the scope of	This is an example of how it is not possible to give a definitive answer to scenario based on a single element. Factors to take into account include:

COCON under COCON 1.1.6R to COCON 1.1.7R), this example assumes that the publication would otherwise breach COCON.	• whether the material is directed at a fellow member of the workfo (if it is, that points towards the conduct being within scope); • whether there is another connection between M and the subject c the misconduct that is not based on M's work with their firm (if the is such a connection, that may point away from the application of COCON); • whether it is part of a course of conduct that includes other incide that are more closely connected with M's work at the firm; • whether the content of the social media posts is related to work at the firm; • whether M uses a work-issued device. The fact that M uploads the posts during working hours or while on the firm's premises is not a strong factor pointing towards the application o COCON. If the conduct takes place over the firm's systems (for instance through firm's e-mail system) it is likely to be within the scope of COCON.

Notes to the table:

1. *When the table in COCON 1.3.7G says that conduct is generally within the scope of COCON, that means that the facts of the scenario are ones that point towards the conduct coming within the scope of COCON.*
2. *When the table in COCON 1.3.7G says that conduct is generally outside the scope of COCON, that means that the facts of the scenario are ones that point against the conduct coming within the scope of COCON, but that in an individual case all the other features of the case are also relevant.*
3. *Conduct to which 'Yes' applies is not necessarily within the scope of COCON as it may be excluded by one of the other scope rules in COCON 1.1 (Application).*
4. *Another example of the point in (2) is that if M (as referred to in the notes to the table) is based in an overseas office of the firm and carries out the conduct from there (or from their home in the country where the overseas office is located), the conduct will be outside the scope of COCON under COCON 1.1.10R (Where does it apply?) unless M comes within COCON 1.1.9R (which deals with senior conduct rules staff members and material risk takers) or within COCON 1.1.10R(2)(b) (which deals with clients in the United Kingdom).*

The scope of COCON is not limited to conduct that is authorised by the firm or carried out with a view (misguided or not) that it is for the firm's benefit. Conduct is not excluded from the scope of COCON just because the firm forbids it (for instance, in a staff handbook) or it is calculated to harm the firm.

Therefore, for example, the following conduct is within the scope of COCON:

- misappropriating a client's or the firm's assets
- providing false or inaccurate details about the member of the conduct rules staff's training, qualifications, past employment record or experience
- misusing the assets or confidential information of a client or the firm to make a personal profit
- misconduct against a client
- harassment of a fellow member of the workforce, and
- maliciously sabotaging a firm's information technology systems or altering or erasing its data.

SM&CR Financial Activities (COCON 1.3.11G)

When COCON is restricted to SM&CR financial activities, it covers more than conduct involving direct dealings with counterparties and customers (and potential ones) or their assets at the point of sale or at the time of the transaction or service. It can also cover matters such as the following:

1. conduct arising out of such direct dealings, such as record-keeping, valuations and reporting

2. after-sale or post-transaction activities such as settlement, queries, dealing with the exercise of rights by the firm or the customer, complaints, cancellations, renewals and generally dealing with the customer or counterparty through the lifecycle of the product or relationship
3. designing and operating policies and procedures relating to the conduct of the firm's relationship with counterparties and customers, such as:
    a. product or services design
    b. policies and procedures about what services and products to sell or buy
    c. policies and procedures about product distribution
    d. policies and procedures for the conduct of the relationship between the firm and a customer in relation to products and services already sold or delivered, and
    e. policies and procedures for the monitoring of customer outcomes for products and services already sold or delivered; and
4. management and monitoring of these activities
5. participation in meetings of the firm's governing body and its committees and other management forums
6. conduct in relation to internal systems, controls and operations supporting the activities noted above
7. conduct in relation to acquisition and management of resources used to support the activities noted above
8. conduct in relation to systems and controls to monitor and control risks such as liquidity, operational, solvency, market and trading risks.

Individual Conduct Rule 2 (*'You must act with due skill, care and diligence'*)

Added to the list on non-exhaustive examples of conduct by any conduct rules staff that would be in breach of ICR 2 is *'Harassment of a fellow member of the workforce'*.

The following is a non-exhaustive list of examples of conduct by a manager in relation to harassment that would breach ICR2:

1. failing to take reasonable steps to protect staff against misconduct of that kind, including failing to:
    a. intervene to stop such behaviour where appropriate if the manager knows or should reasonably have known of it
    b. appropriately operate the firm's policies, systems and controls to detect and prevent such behaviour, and
    c. set up and maintain such policies, systems and controls (if the manager has sufficient authority to do this)
2. failing to take seriously or to deal appropriately with complaints of misconduct of the type referred to in COCON 4.1.8-AG, and
3. failing to take reasonable steps to provide a safe environment for people to raise concerns about such treatment.

The factors that the FCA will take into account when deciding whether misconduct in relation to a fellow member of the workforce is serious enough to amount to a breach of COCON include:

1. whether the conduct is repeated or part of a pattern
2. the duration of the conduct
3. the size of the impact on the subject of the conduct (the rule applies to effects which are serious and marked, and not to those which are, though real, of lesser consequence)
4. the seniority of the person whose conduct is in question
5. the difference in seniority between the person whose conduct is in question and the subject of the conduct and whether the person whose conduct is in question has control or influence over the other's career
6. mitigating and aggravating factors even if they take place subsequently
7. whether the person whose conduct is in question has been warned or disciplined for similar conduct by the firm, a previous employer, the police or a regulator
8. whether the person whose conduct is in question has previously undertaken not to do the act or engage in the behaviour in question
9. whether the conduct is criminal or would justify dismissal.

1.2 Consumer Duty – 'Application to Wholesale Firms'

In September 2025 the CEO of the FCA wrote to the Chancellor of the Exchequer to explain and set out the FCA's plan of action regarding the Consumer Duty's application to wholesale firms.

In the letter, the FCA's CEO agreed that they should distinguish between different types of activities, and protections should be proportionate to the client's sophistication and risk appetite and that the Consumer Duty focuses on activities which have a material impact on retail customer outcomes, and wholesale market activity is largely outside its scope.

The FCA's CEO stated that they plan to amend the Consumer Duty's rules to remove disproportionate burdens from wholesale firms and give them confidence to act proportionately. The letter set out a four-point action plan:

- Provide more clarity on our supervisory approach and expectations under the Consumer Duty when firms work together to manufacture products for retail customers.
    - reduce the potential for misunderstanding leading to excessive compliance costs, duplication of effort between firms and adverse impacts on business models where firms work together.
- Consult on plans to update the client categorisation framework.
    - provide clearer, up-to-date standards for firms to identify individuals capable of being treated as professional clients.
- Consult on changes to rules on the application and requirements of the Consumer Duty, including through distribution chains.
    - provide clarity for firms where the Consumer Duty applies, drawing a clear line when it doesn't
    - consider if there are cases for further exemptions from elements of the Consumer Duty where firms are subject to other regulatory obligations
    - consider changes to make clear when and how firms can rely on each other when they work together in distribution chains, such as when designing and selling structured products.
- Propose to remove business with non-UK customers from the scope of the Consumer Duty.

At the end of 2025 the FCA published a consultation paper on changes to the UK client categorisation regime.

Under FCA rules, a higher level of protection applies to retail clients than professional clients. This means that (among other requirements) firms providing products and services to retail clients are subject to enhanced financial promotion requirements, need to conduct appropriateness assessments and (for certain products) need to produce risk warnings. The Consumer Duty is also relevant to interactions with retail clients.

The FCA is proposing that the existing prescriptive quantitative tests for elective professional clients (ie, retail clients recategorised as elective professional clients) would be replaced with

i. an '*enhanced qualitative assessment*', where '*relevant factors*' which firms should consider as part of a holistic assessment, or
ii. a new wealth assessment test of £10 million investable assets, in which case no further assessment would be required.

What does 'Qualitative assessments' really mean to firms – the FCA proposes that they should use information it already holds (such as clients' trading history). In addition, they have put forward a set of 'Relevant Factors' that firms must consider - with firms required to collate information from clients to support the assessment:

- Occupational experience
    - Focus on ability to assess investment risk rather than employment history within financial services.
    - Experience gained in other sectors may be relevant. On the other hand, not all experience in the financial services sector may be sufficient.

- Client's own account investment history
    - Broader than simply transaction frequency, recognising that buy-to-hold strategies may be an indicator of relevant expertise for certain products.
- Financial resilience
    - No minimum quantitative threshold is proposed. Firms should consider financial capacity, risk-tolerance and understanding of potential losses, as well as the client's ability to bear these.
- Knowledge, understanding and ability to assess risk
    - Must cover fundamental investment concepts such as the benefits of risk diversification, as well as complex or higher risk features of the anticipated activity.
- The client's reason for opting up
    - Understanding the implications of doing so

The FCA has also proposed simplifications to the 'per se' professional client criteria – to make it easier to treat SPVs (special purpose vehicles) controlled by authorised entities as per se professional clients, and to align the per se professional criteria applicable to MiFID vs. non-MiFID business.

These proposals (if finalised) are significant and would make it easier for firms to opt retail clients with the right experience and financial resilience/wealth up to elective professional client status.

Firms would need to review and amend their client categorisation processes, including the information that is obtained from clients to ensure that appropriate information is received for the purposes of the enhanced qualitative assessment.

The consultation also noted that firms should be able to proactively reach out to retail clients to offer them the option to 'opt up' – provided certain safeguards are complied with.

However, the proposals still apply stricter opt up criteria for UK local public authorities and municipalities – which seems to be an odd policy decision, as it would seemingly become easier to opt up a natural person vs. a UK local public authority or municipality under the new rules.

There is an expectation for firms to reassess the categorisations of (i) existing elective professional clients; and (ii) in respect of non-MiFID business, existing per se professional clients (because of changes to the criteria), in each case within one year of the rules coming into effect.

The FCA did not state that firms must undertake periodic reviews of clients' opt up status, rather it is adopting a more risk-based approach where firms would only need to perform reassessment if they became aware, or had reasonable suspicion, that a client no longer met the threshold of a professional investor.

Informed consent is viewed as an important safeguard. The FCA plans to clarify the rules by expressly requiring firms to obtain informed (rather than basic) consent, by (wet or electronic) signature, before categorising a client as elective professional.

Consent will not be informed unless:

- the client is given sufficient information about the protections they are opting out of and sufficient time to consider the implications, before they are asked to consent to opting out, and
- the client is given a clear and prominent warning that they are consenting to opt out of retail protections including, where relevant, access to regulatory redress.

The FCA is proposing enhanced record-keeping requirements, requiring firms to retain records that would include the basis for the categorisation and evidence of how the assessment has been undertaken.

The consultation closed for comments on 2 February 2026. The FCA did not indicate when a policy statement on the changes to client categorisation would be published – this will depend on the feedback received.

1.3 Wholesale Reforms – 'Transaction Reporting'

In November 2025 the FCA published the eagerly awaited consultation titled *'Improving the UK transaction reporting regime'*.

The consultation paper outlines the FCA's proposed changes to reduce the regulatory burden on firms, support UK economic growth, increase their ability to fight financial crime and protect market integrity.

In addition, the FCA outlines a cross-authority vision on a new long-term approach to streamlining transaction reporting requirements across different regimes. These include requirements for UK European Market Infrastructure Regulation (UK EMIR) and UK Securities Financing Transactions Regulation (UK SFTR) – for which the FCA will work with the Bank of England and HM Treasury.

In the consultation paper the FCA noted that transaction and post-trade reporting requirements are part of a wider group of data firms submit, which include reporting requirements under the UK Alternative Investment Fund Managers Regulations (AIFMD) and UK Regulation on Wholesale Energy Market Integrity and Transparency (REMIT).

The FCA noted in the consultation paper that complete, accurate and timely transaction reports help them identify and disrupt financial crime. Therefore, they are looking to clarify and streamline transaction reporting requirements so firms can improve the quality of data they submit. The FCA expect the proportion of complete, accurate and timely transaction reports to increase because of their proposed changes to the UK MiFIR Transaction Reporting data fields.

The FCA are establishing a new, long-term approach to address the issue of duplication of reporting. The industry has highlighted on numerous occasions with the FCA that some transactions are reported multiple times.

Along with the Bank of England, the FCA noted that they aim to:

- Reduce unnecessary duplication in transaction and post-trade reporting, ensuring all requirements are proportionate to their benefit.
- Maintain their ability to gain actionable insights from data needed to support respective statutory objectives.

The FCA stated that their goal is to create a streamlined and harmonised framework for transaction reporting across regimes, free from unnecessary duplication. This will involve future consultations alongside the Bank of England on the UK EMIR and SFTR regimes. Although no specific dates were noted in the consultation, but they are expected to be published in H2 2026/H1 2027.

Together with the Bank of England, the FCA considered if they could achieve their aims by replacing the transaction reporting regimes in UK MiFIR, EMIR and SFTR with a new, single-template reporting regime. This 'report once' principle could maximise reporting efficiency by ensuring that firms report data on all financial transactions once to a central data repository.

However, they noted that initial work suggests implementation costs for a major restructure of reporting systems and processes would not be proportionate to the benefits of a more streamlined regime.

Whilst the current regulatory framework for transaction and post-trade reporting requires some firms to report information more than once, it allows the FCA to tailor requirements more efficiently to different firms, transactions and risks.

- For example, the majority of the reporting requirements for securities financing transactions in UK SFTR are distinct from those for derivatives under UK MiFIR and UK EMIR.

Therefore, the FCA is proposing a gradual transition towards a more streamlined framework for reporting across regimes. This approach will reduce duplication, harmonise requirements and ensure our rules are proportionate, while maintaining the existing, well-established reporting structure under UK MiFIR, UK EMIR and UK SFTR.

The approach aims to minimise change costs for firms will be consistent with the following set of principles:

Data should only be collected where needed	A firm should only report data once	Data should be shared where appropr

The FCA will be clear when, where and why they need data. • The FCA will stop collecting data where it is disproportionate to do so. This principle will not stop the FCA from collecting more data where there are gaps and regulatory needs. • The FCA must maintain the ability to get actionable insights from data to deliver their statutory objectives.	The FCA will use data smartly to serve multiple purposes. • This will reduce the need for firms to report data more than once. The FCA will enrich and supplement reports with publicly available data where possible to reduce reporting costs.	The FCA will continue to share data wi public and overseas authorities where gateways and agreements exist, improving their oversight of markets a enabling them to reduce the burden c firms. The FCA will harmonise data definitior and support alignment with internatic data standards for efficient data sharir

The FCA also confirmed that the model for reporting to them, either by trading venues or firms, via an ARM or directly by firms via the FCA's MDP will not change.

The FCA were clear in the consultation paper that they want to ensure close alignment with global data standards to increase transparency, reduce reporting burdens, enable more effective market monitoring and efficient intelligence and data-sharing between public authorities.

In addition, they also noted the recent ESMA 'Call for Evidence' on a comprehensive approach to simplifying financial transaction reporting, noting that it highlighted many similar themes to those in their consultation, and that they will review future developments to EU transaction and post-trade reporting requirements when they decide their final policy choices.

The FCA noted that there will be regulatory divergence between the UK and EU MiFIR Transaction Reporting regimes.

The below is a summary of the FCA proposed changes to UK MiFIR Transaction Reporting:

Sope of Reportable Instruments

- UK MiFIR requires UK investment firms to submit transaction reports for transactions executed in financial instruments admitted to trading or traded ('tradeable') on a trading venue in the UK or EU (or for which a request for admission has been made).
    - this is the same scope that applied before Brexit.
- The FCA proposes to limit the scope of the transaction reporting regime to financial instruments tradeable on UK trading venues only.
- Firms will still be required to report STORs for instruments which are admitted to trading or traded on EU trading venues.
    - as the FCA's market abuse enquiries primarily focus on UK markets, it will generally refer suspicious activity in non-UK financial instruments to the relevant overseas regulator.

Meaning of a 'Transaction'

- To determine whether a transaction is reportable, Article 2 of RTS22 defines the meaning of 'acquisition' and 'disposal'.
    - The FCA is providing clarity in rules and guidance in their MAR Sourcebook to determine when a transaction should be reported:
    - a 'transaction' means:
        - the conclusion of an acquisition or disposal of a reportable financial instrument
        - a simultaneous acquisition and disposal of a reportable financial instrument where there is no change in the ownership of that reportable financial instrument but post-trade publication is required under Articles 6, 10, 20 or 21 of MiFIR, or

        - entering into or closing out a derivative contract.
    - an acquisition refers to:
        - a purchase of a reportable financial instrument, and
        - an increase in the notional amount of a derivative contract.
    - a disposal includes:
        - a sale of reportable financial instruments, and
        - a decrease in the notional amount of a derivative contract.

Branch Execution

- The FCA is proposing to add new rules and guidance in their MAR Sourcebook to provide clarity as to when a UK Branch has a reporting obligation under UK MiFIR.
    - when a UK Branch would be required to submit a report under UK MiFIR:
        - Where a transaction reporting firm executes a transaction wholly or partly through its branch, it shall report the transaction to the FCA.
        - Where the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client it is deemed to have executed a transaction.
        - Where the branch has supervisory responsibility for the person responsible for execution of the transaction that results in the execution of a transaction, the branch should submit a transaction report.
        - Where the transaction was executed on a trading venue or an organised trading platform located outside the UK using the branch's membership of that trading venue or an organised trading platform, the branch should submit a transaction report.

OTC Derivatives ('Traded on a Trading Venue')

- Following Brexit, the FCA set out their approach to EU non-legislative materials. This stated that we would continue to have regard to EU non-legislative material where and if they are relevant.
- To provide more certainty for firms when determining their reporting obligations, the FCA will provide new guidance (in MAR 14.5.4G) to support the definition of a reportable financial instrument:
    - there will be significantly less complexity based on their proposals to remove the reporting of FX derivatives.

OTC Derivative Identifiers

- Financial instruments admitted to trading or traded on a UK trading venue must be identified with an ISO 6166 ISIN.
- The FCA is proposing to retain the OTC ISIN as the identifier for OTC derivatives in transaction reports.

Foreign Exchange (FX) Derivatives

- The FCA is proposing to remove FX derivatives from the scope of the UK transaction reporting regime – it views UK EMIR data as a better source of information for monitoring risk in FX derivative markets.
- Removing the reporting of FX derivatives will mean the FCA has less oversight of FX activity by firms who are required to report under UK MiFIR but not UK EMIR – ie, UK branches of third country firms.
- Although the FCA noted that removing FX derivatives from the scope of transaction reporting will not affect their ability to detect, investigate and prevent market abuse in this asset class – it did state that it may need to send more ad hoc requests for data as part of enquiries into FX derivative market abuse to third country branches as they are not subject to UK EMIR reporting.

Reporting Financial Instruments under UK MiFIR Article 26(2)(c)

- Under Article 26(2)(c) of RTS 22, investment firms must submit a transaction report where they trade a financial instrument based on a basket or index that contains at least one financial instrument admitted to trading or traded on a UK, EU or Gibraltar trading venue.

- therefore, the FCA is proposing to give firms the choice to 'over report' transactions executed in derivatives where the underlying is an index.

- The FCA will also provide more flexibility for reporting derivatives on a basket of instruments. The current rules state that RTS 22 Field 47 (Underlying instrument code) should be reported as many times as necessary to list all reportable instruments in the basket.
- The FCA will only reject transaction reports submitted where none of the ISINs reported in the underlying instrument field are in FCA Financial Instruments Reference Data System (FCA FIRDS).

Block and Fill Reporting

- Under current guidelines, individual transaction reports should be submitted for each 'fill'. This applies to the 'market side' (the firm receiving the order) and the 'client side' (the firm sending the order). It can result in many transaction reports being submitted.
- The FCA is considering whether reporting could instead take place at an aggregate or 'block' level. This would enable the client side to submit a single transaction report, reflecting the total quantity and average price of the fills executed by the market side.
    - however, the FCA noted that it will consider changes to guidelines around 'block' and 'fill' reporting when they consult on the transaction reporting user pack in 2026.

Back Reporting

- To strike a balance between the value of historic data and the cost imposed on firms, the FCA is proposing to apply a shorter default back reporting period of three years.
- The FCA noted that it will keep the ability to require back reporting on an ad hoc basis for up to five years.
- Firms are still required to keep transaction and order records for five years, under UK MiFID record keeping requirements (COBS 11 and SYSC 9).

Systems and Controls

- The FCA will develop a new transaction reporting user pack (TRUP) to help firms understand their reporting obligations – this will be based on existing EU non-legislative materials (ie, ESMA Guidelines and Q&As) where applicable and relevant, the FCA will add new examples for scenarios which are not currently covered.
- The FCA noted that it will consult on the new transaction reporting user pack in the Summer of 2026.

Accommodating New Technologies

- The FCA will retain ISO 20022 XML as the required messaging standard for transaction reporting.
- The FCA is currently building a single consolidated markets data platform within our Cloud Centre.

Transaction Reporting by Trading Venues

- Under UK MiFIR, trading venues must report transactions executed through their systems by firms that are not subject to UK transaction reporting requirements.
- The FCA noted that trading venues have said this reporting obligation attaches a high burden, as they must get and verify detailed information from their members while remaining responsible for data quality.
- Trading venues identified several fields they find particularly difficult to report accurately under Article 26(5). These include:
    - **Investment and execution decision makers** – trading venue members (firms) are sometimes unwilling to provide sensitive PII required to meet reporting obligations for these fields.
    - **Buyer/seller identification** – similar sensitivities apply to client identification and challenges around the reporting convention for aggregated orders.
    - **Trading capacity** – members often confuse their role as an executing entity with that of the client, giving venues incorrect information.
    - **Short selling indicator**.

- **Country of branch field**s – identifying UK branches remains complex, leading to challenges with the country of branch fields and potential under/over reporting of transactions.

- The FCA is proposing to remove the requirement for trading venues to report the 'investment decision maker' and the 'execution decision maker' in the transaction reports that they submit.
- The FCA is also proposing to amend their rules so that 'negotiated transactions' which are brought onto a trading venue will be in scope.

Article 26(5) Reporting for UK Branches of Third Country Firms

- UK branches of third-country firms must meet transaction reporting obligations when they execute transactions in reportable financial instruments. Trading venues are not subject to transaction reporting obligations for these transactions.
    - however, they are required to submit transaction reports for transactions executed on their venues by third country firms without involvement from a UK branch.
    - The FCA noted that feedback from trading venues highlighted challenges for trading venues to make that determination.
- The FCA is proposing to conduct further work to understand the challenges which prevent trading venues from reporting transactions on behalf of investment firms that are subject to transaction reporting requirements (including UK branches of third country firms).

FCA FIRDS

- The FCA will explore developing new functionality to improve the usefulness and accessibility of FCA FIRDS.
- The FCA is proposing to enable firms to treat FCA FIRDS as a 'golden source'.
    - this means investment firms could exclusively use FCA FIRDS for determining whether a transaction is reportable.

Admission to Trading

- Under UK MiFIR, the concept of 'admission to trading' only applies to regulated markets.
    - under UK MAR, the concept also applies to MTFs.

- The FCA is proposing to extend the concept of 'admission to trading' to MTFs which undertake primary market activities, such as initial public offerings, secondary public offerings, placings or debt issuance.
- The FCA also proposes to remove derivative instruments from the concept of 'admission to trading' where the trading venue is the issuer by specifying that in these cases.

Exclusions

- Expand the exclusion in Article 2(5)(g) of RTS22 covers the creation or redemption of units, regardless of whether it takes place directly with a manager or administrator of the collective investment undertaking.
- Exclude corporate events and actions from transaction reporting requirements regardless of whether an investment decision was made:
- Article 2(5)(m) of RTS 22 excludes transactions under an employee share incentive plan or residual instruments as a result of administrative action below a specific threshold:
    - The FCA is proposing to remove the one-off transaction cap and increasing the cumulative monthly limit, and change the reporting currency to 'GBP':
        - the proposed cumulative monthly limit is £1,500
        - the FCA is also proposing to allow firms to report activity under this threshold, if this is preferable to determining if the transaction is reportable.

Fractional Instruments

- The FCA is proposing to update the definition of a reportable financial instrument to:
    - a financial instrument which is admitted to trading or traded on a qualifying trading venue or for which a request for admission to trading to a qualifying trading venue has been made
    - a financial instrument where the underlying is a financial instrument traded on a qualifying trading venue
    - a financial instrument where the underlying is an index or a basket composed of at least one financial instrument admitted to trading or traded on a qualifying trading venue, or
    - an instrument which constitutes a right or interest under article 89 of the Regulated Activities Order in a financial instrument included in paragraph (a) above.

The consultation closed for comments on 20 February 2026. The FCA is expected to publish the Policy statement, with final rules, in the Summer of 2026, and the final rules will have an 18-month implementation period – meaning that they would potentially come into effect in the Spring of 2028.

1.4 Future Disclosure Framework

In 2022, the FCA published a discussion paper relating to the UK disclosure regime. In addition HM Treasury also published a consultation on Packaged Retail and Insurance-based Investments Products (PRIIPS) following the announcement in the Edinburgh Reforms that the PRIIPS legislation would be removed.

Retail investment disclosure in the UK consists of a patchwork of requirements that are largely derived from EU legislation – the FCA discussion paper is focused on the PRIIPs KID and UCITS KIID.

The FCA requested feedback on how they could deliver a good disclosure regime, which they noted would be supportive, engaging, accessible and flexible.

In addition, the FCA noted that they are looking to future-proof retail disclosure, so that it does not constrain innovation.

Therefore, the FCA invited view on the following:

- the delivery of retail disclosures
- the presentation of retail disclosure
- the content of retail disclosure.

With regards to the Treasury consultation on PRIIPs, this set out the plans to repeal the onshored legislation, which currently sits in the FCA Handbook. The consultation identified the following issues with the PRIIPS Regulation:

- confusing information, reduced choice and regulatory burdens
- comparability
- division of regulatory powers, and
- UCITS interaction.

The consultation set out the Treasury's views on a new UK regime, which include:

- removing prescriptive requirements and increasing flexibility
- comparability is no longer an appropriate objective
- improving the fit within the UK regulatory model, and
- integrating UCITS products into the new framework.

1.4.1 A New Retail Disclosure Framework

In 2023, HM Treasury published it long awaited UK retail disclosure framework, which will see 'Consumer Composite Investments' (CCIs) replace the UK PRIIPS regime.

HM Treasury announces plans to:

- replace the concept of a PRIIP and define products in scope of the UK framework as 'consumer composite investments'
- regulate manufacturing, advising and offering a CCI to a UK retail investor via the designated activities regime and provide the FCA with rule-making powers
- restate FCA supervisory and enforcement powers on product intervention and suspension
- set civil liability for pre-contractual disclosures, and
- provide a transition period for UCITS KIIDs.

Overall, the instrument scope of the new regime appears to be very similar to the existing UK PRIIPs rules. However, the draft Statutory Instrument could result in a much broader population of firms captured as 'manufacturers' of CCIs, as the published draft Statutory Instrument borrows from the Consumer Duty the definition of a 'manufacturer'.

The HM Treasury draft Statutory Instrument does not prescribe the actual disclosure requirements; this will be undertaken by the FCA.

In terms of timing, it is anticipated that the new framework will come into effect from 1 January 2027.

1.4.2 FCA Consultation Paper – A New Product Information Framework for Consumer Composite Investments

In 2024 the FCA published a consultation paper (CP24/30) with proposals, and draft rules, for the new Consumer Composite Investments (CCI) regime, which will replace PRIIPS.

The key parts of the CCI regime are contained in secondary legislation that was made by HM Treasury in 2024. It provides a definition of a CCI, along with exclusions. It also sets out the relevant designated activities under the regime and grants the FCA power to make rules for the new framework.

The legislation defines a CCI as

a. an investment
b. a contract of insurance, or
c. any right to or interest in anything listed in sub-paragraphs (a) or (b),

where the value or amount payable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor.

The below is a summary of the FCA proposals contained in the consultation paper:

The FCA will clarify the products it envisages to fall within scope, which include:

- structured deposits
- structured products — securities which embed a derivative, or include features equivalent to a derivative contract
- debt securities that are currently classified as PRIIPs
- securities issued by open-ended funds, or rights to or interests in such securities
- securities issued by closed-ended investment funds (including investment trusts and venture capital trusts)
- contingent convertible securities
- contracts for difference, and
- insurance-based investment products (with-profits polices, unit-linked policies, and Holloway sickness policies).

The FCA has acknowledged the difficulties issuers face ensuring that their securities intended for non-retail investors are not sold to any retail investors, therefore, the FCA is proposing to add rules disapplying the CCI when an offer of readily realisable securities meets all of the following criteria:

- The marketing materials (including prospectus, where relevant) feature clear and prominent disclosures that the product is not intended for retail investors, and the CCI is only being offered to professional clients or eligible counterparties.

- The issuer has taken reasonable steps to ensure the offer and associated promotional communications are only directed at non-retail investors.
- A minimum investment of £50,000 applies for each end-investor.

The FCA is proposing that the following requirements for manufactures and distributors, will include:

Manufacturers

- Calculate core product information in line with detailed methodologies in FCA rules.
- Core information disclosures would include basic information on the CCI, as well as more standardised information on costs and charges, risk, and performance.
- Prepare a machine-readable file.
- Produce a product summary for each CCI.
- Publish the machine-readable file and product summary on a publicly accessible website.
- Share additional detail with distributors and respond to feedback from distributors.
- Ensure the product summary and underlying core information that manufacturers produce remain accurate as long as a CCI continues to be distributed to retail clients.
- review and update product summary and core product information as necessary, and at least every 12 months.
- flag any material changes in the product information to distributors.

Distributors

- Review product information and product summary prepared by the manufacturer.
- Verify that the product summary remains up to date.
- Decide whether additional explanatory information is appropriate to support consumer understanding.
- Decide whether to use the manufacturer's product summary or amend it.
- Where the distributors create their own product summaries, they are responsible for ensuring they contain the required information and meet regulatory requirements.
- Communicate relevant information to customers pre-sale.
- Provide a durable medium product summary to customers after every sale.
- Share feedback and information with manufacturers on their communications and products.

Disclosure Obligations

The FCA proposes that the CCI product summary would replace the PRIIPs KID and UCITS KID.

The FCA is proposing that the product summary contains certain prescribed information:

- issue date
- investment objectives
- investment policy
- information about risk
- past performance
- costs and charges, and
- Financial Ombudsman Service/Financial Services Compensation Scheme eligibility.

With regards to the disclosure of costs and charges, the FCA's proposed rules will only to the calculation and presentation of product costs. The proposed costs and charges requirements:

- Provide distributors with the product's aggregated ongoing cost percentage for each CCI.
- **Summary cost illustration** must show product costs over a single holding period:
    - consists of entry costs, exit costs, ongoing costs, and transaction costs
    - presented as a percentage and as GBP figures over a 12-month period
    - £10,000 as the representative investment, or £1,000 each year for CCIs with regular contributions
    - performance fees or carried interest are not included in this figure.

- A **baseline cost methodology** for all products and specific considerations for certain product types. Firms must disclose all direct and indirect costs and charges associated with a product. The types of costs and charges to disclose would remain broadly unchanged from existing requirements:
    - one-off entry, one-off exit, ongoing and transactional costs, each of which would need to be calculated and disclosed as a percentage figure, alongside an aggregated summary of these costs
    - performance fees and carried interest, which would need to be identified and explained in easily understandable language.
- **Transaction costs** – while firms should calculate and disclose transaction costs for CCIs, the FCA will consult on amendments to the existing methodology (used under the PRIIPs regime) in early 2025.
- **Ongoing costs** – requirement to present a single, aggregated ongoing costs percentage for CCIs. The FCA is not proposing to require that specific ongoing cost components must be highlighted to investors.
- **One-off and other costs** – requirement for separate disclosure of any one-off entry or exit costs, contingent costs like performance fees and carried interest, and transaction costs:
    - transaction costs should be disclosed separately to other ongoing costs
    - performance fees or carried interest should be communicated through a simple explanation of how the performance fee is structured, alongside a practical example of what this fee could amount to.

Risk

In relation to risk, the FCA proposes that the existing 1–7 risk metric be replaced with a 1–10 risk metric based on product volatility, along with descriptions which balance the material risk and potential rewards to provide a more holistic picture. The FCA proposes a minimum risk score for certain products that are deemed high-risk or those of unknown volatility.

Past Performance

The FCA is proposing that product summaries would need to present past performance of products in a standardised graphic manner covering a ten-year period (unless that data is not available). The FCA is not proposing that firms provide general information about the key factors that determine the performance of the product for all products.

In April 2025 the FCA published a following up consultation, with further proposals on product information for Consumer Composite Investment (CP25/9).

The FCA consulted on remaining issues to support the 'CCI' regime:

- Proposals on the calculation of transaction costs to remove the requirement for firms to calculate and disclose implicit transaction costs:
    - this simplification would remove a significant compliance burden for firms, while ensuring that consumers are still provided with the most relevant information about the transaction costs of their chosen product.
    - Proposed revisions to simplify current cost disclosure rules reflecting assimilated requirements of the Markets in Financial Instruments Directive (MiFID) Organisation Regulation (MiFID Org Reg) and bring them into line with our proposals for CCIs.
    - Provide more detail, and set out proposed drafting, on transitional provisions to allow firms flexibility to move across to the new regime as soon as they are ready, and on basic complaints handling requirements in the Product Disclosure Sourcebook (DISC) for non-authorised persons in scope of the CCI regime.
    - Proposed consequential amendments to the FCA Handbook that result from the replacement of the previous regimes with new CCI rules.

1.4.3 FCA Publishes Final Rules for CCI

In December 2025 the FCA published its Policy Statement (PS25/20), containing final rules on CCI's.

Although the CCI regime will become effective from 8 June 2027, manufacturers will be able to switch from preparing (using) a PRIIPs KID/UCITS KIID to producing the new CCI product summary document from 6 April 2026.

The FCA has maintained its objective in the Policy Statement – aiming to achieve the proliferation of engaging, test-driven retail communications, albeit with standardised anchors for costs, risk/return and performance disclosure.

The FCA made a number of important refinements to its envisaged disclosure framework for CCIs, these are summarised below.

Clarifying Scope

- 'Plain vanilla listed bonds' (a new definition for certain simple corporate bonds that will be added to the FCA Handbook from 19 January 2026) and certain other floating rate notes referencing SONIA (or other equivalent risk-free reference rates in any currency) or EURIBOR (or any similar IBOR) are expressly out of scope.
- The FCA dropped the £50,000 minimum denomination or investment criteria for descoping products as non-retail; instead, a CCI is outside the DISC (Product Disclosure Sourcebook) rules where the offer materials and associated communications clearly state that the product is for professional clients and eligible counterparties only (and not for retail investors) and are clearly not directed to retail investors, and the distribution strategy and approach is consistent with this.
- Closed-ended investment funds (CEIFs), by contrast, are now clearly confirmed to be in scope.
- Retail investor is defined by reference to the client categorisation rules in COBS 3.

Manufacturers

- Manufacturers (including unregulated and overseas manufacturers) will be required to review and update both the CCI product summary and the 'underlying core information disclosures' annually, and whenever a material change occurs.
- Manufacturers that are not FCA regulated (ie, unregulated or overseas regulated manufacturers) will become subject to the Consumer Duty-like product governance rules (eg, obligations to have a product approval process and a consumer risk assessment), certain FCA principles of business (eg, acting with integrity, due skill, care and diligence, having adequate risk management systems and being open and cooperative with the FCA) and also complaints-handling requirements.
- Manufacturers become subject to certain Consumer Duty-like information sharing obligations with distributors.

1.5 Cryptoassets

1.5.1 HM Treasury Consultation and Call for Evidence – 'Future Financial Services Regulatory Regime for Cryptoassets'

In February 2023 HM Treasury published a consultation on its proposed financial services regime for cryptoassets. It is noted in the consultation that the UK's aim is to be the home to the most open, well- regulated and technology advanced capital market in the world.

HM Treasury's objective with the consultation is to establish a proportionate and clear regulatory framework which enables firms to innovate while maintaining financial stability and clearly focused regulatory standards. This will include bring into financial services regulatory scope centralised cryptoasset exchanges as well as core activities such as lending and custody.

The consultation closed in April 2023.

The below is a summary of the HM Treasury consultation and call for evidence:

Regulatory Framework

- The consultation proposed to expand the list of 'specified investments' in the Regulated Activities Order (RAO) to include cryptoassets, which forms the basis of the rest of the proposal.
- Amendments to FSMA, made through the Financial Services and Markets Act 2023 affirms the use of the RAO power for the financial services regulation of cryptoassets:
    - This clarifies that individuals who carry out certain activities involving cryptoassets would be performing regulated activities and therefore require authorisation under FSMA:

        - HM Treasury confirmed that it does not intend to expand the definition of 'financial instrument' in the RAO to include presently unregulated cryptoassets.

- The FCA will need to consider whether to update the SYSC sourcebook, which contains the SM&CR regime, and other financial crime rules to apply to the new cryptoasset activities that are outlined in the Consultation.
- HM Treasury confirms that firms which are FSMA authorised and intend to undertake these new activities will need to apply for a variation of their permission from the FCA (and the PRA for dual- regulated firms):
    - But, it noted that permission would not be automatically granted for firms which are already authorised:
        - it notes that the FCA will adopt a 'timely and proportionate authorisation process' for existing registered firms, in order to avoid duplicative information requests of businesses, taking into account the supervisory history of businesses during the authorisation process.

Proposed Scope of Cryptoasset Services to be Regulated

Activity category	Sub-activities (indicative, non-exhaustive)
Issuance activities	• Issuance and redemption of a fiat-backed stablecoin • Admitting a cryptoasset to a cryptoasset trading venue • Making a public offer of a cryptoasset
Payment activities	• Eg, execution of payment transactions or remittances involving fiat- backed stablecoins
Exchange activities	• Operating a cryptoasset trading venue which supports: ◦ the exchange of cryptoassets for other cryptoassets ◦ the exchange of cryptoassets for fiat currency ◦ the exchange of cryptoassets for other assets (eg, commodities) • Post-trade activities in cryptoassets (to the extent not already covered)
Investment and risk management activities	• Dealing in cryptoassets as principal or agent • Arranging (bringing about) deals in cryptoassets • Making arrangements with a view to transactions in cryptoassets • Advising (to the extent not already covered) on cryptoassets • Managing (to the extent not already covered) cryptoassets
Lending, borrowing and leverage activities	• Operating a cryptoasset lending platform
Safeguarding and / or administration (custody) activities	• Safeguarding or safeguarding and administering (or arranging the same) a fiat-backed stablecoin and/or means of access to the fiat- backed stablecoin (custody) • Safeguarding or safeguarding and administering (or arranging the same) a cryptoasset other than a fiat-backed stablecoin and/or means of access to the cryptoasset (custody)
Validation and governance activities	• Mining or validating transactions, or operating a node on a blockchain • Using cryptoassets to run a validator node infrastructure on a proof- of-stake (PoS) network (layer 1 staking)

Cryptoasset Activities

- Although it is proposed that cryptoassets be a specified investments, the consultation is clear that it is activities in relation to cryptoassets that will be regulated rather than the underlying tokens:
    - asset- and crypto-backed tokens, as well as algorithmic stablecoins are not given any special prominence, but will be subject to the same requirements as 'unbacked crypto assets'
    - a separate FCA regime (similar to the payments and e-money rules) will apply to fiat-backed stablecoins, which is to be defined in the statutory instrument expected to be laid in 2023:
        - HM Treasury confirmed that further details on the approach to fiat-backed stablecoins will be published
    - all cryptoassets, including NFTs and utility tokens, have the potential to be included in the future regulatory perimeter if a specified activity is carried out in relation to them.

Territorial Scope and Equivalence

- The consultation proposes to bring all activities in relation to cryptoassets within scope to the extent they are carried out in or to the UK:
    - under FSMA, a requirement to be authorised applies to firms that carry on activities by way of business 'in the United Kingdom'. When an activity is deemed to be carried on 'in' the UK is different for different activities.
- This is a significant shift, and will capture both activities provided by UK firms (whether to clients in or outside of the UK) as well as activities provided by overseas firms to UK persons:
    - the approach being proposed by HM Treasury is that the ability to operate offshore and service UK customers will be pretty limited.
- It is not clear yet whether firms carrying out these types of activities would be required to have a physical presence in the UK in order to obtain authorisation, the consultation does suggest that it may be possible for equivalence type arrangements, whereby firms authorised in third countries can provide services in the UK without needing a UK presence, provided they are subject to equivalent standards.

FSCS Protections

- The consultation suggests that it is not their intention for the FSCS protections to apply to investor losses arising from cryptoasset exposures – although this is a decision that the PRA and FCA will make.
    - However, FSCS protection could be available for claims against failed authorised cryptoasset custodians.

Exemptions

- The consultation also suggests formalising the concept of reverse solicitation for cryptoasset activities that are provided from overseas companies, ie, if a UK customer accessed a particular cryptoasset service entirely at their own initiative from an overseas firm and the firm does not solicit from the customer, then the firm will not be require FSMA-authorisation.

The Activities

The Consultation provides a helpful table summarising the activities covered, both existing and new, as well as providing further proposals in relation to some specific activities.

Operating a Cryptoasset Trading Venue

- Operating a cryptoasset trading venue will become a regulated activity under the RAO.
- The consultation proposes to establish a regulatory framework which is based on existing RAO activities of regulated trading venues – including the operation of an MTF.
- It is not clear if exchanges will have to be in the UK:
    - HM Treasury's view is that trading venues have a critical role in the cryptoasset value chain
    - there are, however, wider 'arranging' permissions, similar to those currently in existence for securities
    - it may be possible for offshore firms to obtain permissions may be available to obtain for offshore firms.

Cryptoasset Intermediation Activities

- The proposals that apply to analogous regulated activities – such as 'arranging deals in investments' and 'making arrangements with a view to transactions in investments' (set out in the RAO) will be adapted for cryptoasset market intermediation activities.

Cryptoasset Lending Platforms

- The proposals introduce a new activity of 'operating a cryptoasset lending platform':
    - this will include facilitating collateralised and uncollateralised borrowing of cryptoassets or borrowing of fiat currency with collateral provided in cryptoassets.

Cryptoasset Custodians

- HM Treasury is proposing to apply and adapt the CASS Rules for cryptoasset custody activities, making suitable modifications to accommodate unique cryptoasset features:
    - the consultation proposes that the activity in relation to cryptoassets would be broader than the current RAO, as it will capture firms that only safeguard (but do not administer) assets (eg, firms that solely safeguard cryptographic private keys which provide access to cryptoassets)
    - this broader definition is in line with the definition of cryptoasset custodians in the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLRs).
- The Consultation also notes that there is a Law Commission consultation currently exploring whether English and Welsh law needs to be adapted to accommodate digital assets – this looks specifically at custody arrangements:
    - HM Treasury confirmed that they will consider the findings of this consultation when drafting legislation specific to the custody of cryptoassets.
- HM Treasury is also considering what liability standards will need to be applied to custodians:
    - this leads to the suggestion that the government is looking to take a proportionate approach which may not impose full, uncapped liability on the custodian in the event of a malfunction or hack that was not within the custodian's control.

Cryptoasset Issuance and Disclosures

- The consultation proposes to establish an tailored issuance and disclosures regime for cryptoassets
- There will be two regulatory trigger points as to when a cryptoasset issuance has deemed to have occurred:
    - admitting (or seeking the admission of) a cryptoasset to a cryptoasset trading venue
    - making a public offer of cryptoassets (including ICOs).
- Where cryptoassets are admitted to a cryptoasset trading venue, the FCA would specify principles in their rule book for admission and disclosure requirements that cryptoasset trading venues would then be responsible for administering:
    - cryptoasset trading venues would be responsible for writing more detailed content requirements for admission and disclosure documents as well as performing due diligence on the entity admitting the cryptoasset
    - liability will be attached to the preparer of the documents (this could be the issuer or the trading venue)
    - where there is no issuer (eg, Bitcoin), the trading venue would be required to take on the responsibilities of the issuer if they wish to admit the asset to trading
    - trading venues would be required to reject the admission of cryptoassets where they consider that it may result in investor detriment.

Market Abuse

- The consultation proposes to introduce a cryptoassets market abuse regime based on elements of UK MAR:
    - this will include offences covering insider dealing, market manipulation and unlawful disclosure of inside information.

- HM Treasury intends that offences against market abuse would apply to all persons committing market abuse on a cryptoasset that is requested to be admitted to trading on a UK trading venue:
    - exchanges and venues will have to develop and out in place suitable systems and controls to monitor and report on trading activities in order to detect these abuses:
        - this would apply regardless of where the person is based or where the trading takes place
        - the consultation notes that there are significant challenges dealing with market abuse in the cryptoasset industry, due to its globalised, fragmented, and borderless nature of cryptoasset markets – HM Treasury notes that they do not expect to be able to achieve the same outcomes as UK MAR.

Source of information: HM Treasury

Call for Evidence

As well as consulting on the UK regulatory framework for cryptoassets, HM Treasury also sought feedback on:

- Decentralised Finance (DeFi)
- other cryptoasset activities not covered within the Consultation
- notably investment advice, clearing and settlement, mining, and staking
- sustainability considerations.

Source of information: HM Treasury

1.5.2 Digital Pound: A New Form of Money for Households and Businesses – HM Treasury & Bank of England Consultation

The Bank of England and HM Treasury noted that based on work undertaken to date, it is likely a digital pound will be needed in the future.

A UK central bank digital currency – a 'digital pound' – would be a new form of digital money for use by households and businesses for their everyday payments needs. As part of the wider landscape of money and payments it would sit alongside, not replace, cash – a digital counterpart to familiar, trusted banknotes and coins, subject to rigorous standards of privacy and data protection.

A digital pound would help to ensure that central bank money remains available and useful in an ever more digital economy, continuing to bolster UK monetary and financial stability while safeguarding the UK's monetary sovereignty in a changing global financial system. It could provide a platform for private sector innovation, promoting further choice, competition, efficiency and innovation in payments. It could also have further benefits for the resilience and functionality of payments in the UK.

Any future digital pound would be a major piece of national infrastructure which would likely take several years to complete. Its launch would require deep public trust in this new form of money – trust that their money would remain safe, accessible, and private.

A digital pound would be a retail central bank digital currency (CBDC) – digital money for use by households and businesses for their everyday payments, issued by the central bank, the Bank of England.

The consultation notes that it is too early to take the decision on whether to introduce the digital pound, rather that decision will be made in the coming years taking account of developments in money and payments and based the findings of this consultation as well as the investigation into the operational features and technology needed to deliver a digital pound.

However, for now, the Bank and HM Treasury's priority is to step up development work, build the necessary skills and put in place the technical capability to introduce the digital pound in a timely manner, should a decision be made in future to do so.

The Consultation Paper (CP) focused on a proposal for a retail CBDC, designed for everyday payments by households and businesses. By contrast, a 'wholesale CBDC' would be used to settle high-value payments between financial firms.

In 2024 the Bank of England and HM Treasury published an update on the feedback to their consultation paper. They advised that they received over 50,000 responses to the consultation, noting that many respondents raised concerns about the implications of such a digital pound for access to cash users' privacy, and control of their money.

Since the Consultation Paper was published, the Government has committed to introducing primary legislation before launching such a digital pound, ensuring Parliamentary input into any decision to proceed. Reflecting respondents' feedback to the Consultation Paper, this response makes clear that legislation introduced by the Government for a digital pound would need to provide protections to guarantee users' privacy and control of their money.

Respondents will have further opportunities to share their thoughts on a digital pound as there will be further public consultation prior to the introduction of primary legislation. Future work and decisions on a digital pound will continue to be informed by dialogue with the public, business, civil society, Parliamentarians, and experts, as the Bank and HM Treasury continue to develop its design.

The Consultation Paper

The Bank and HM Treasury have progressed to the design phase of work on a digital pound and expect to decide whether to proceed to the build phase around the middle of the decade. The priority of the design phase is to develop further, in both policy and technology terms, the in-depth design of such a digital pound. Work during the design phase will focus on developing in detail the digital pound proposition, with a particular focus on the operational, functional and technology model for a digital pound.

1.5.3 FCA Discussion Paper – 'Regulating Cryptoassets Phase 1: Stablecoins'

The FCA sought views on the design of a regulatory regime based on their statutory objectives, managing the risk of both fiat-backed stablecoins and those within fiat-backed stablecoins issuers.

The FCA noted that it recognises that many of the risks and issues involved are not new and apply to existing assets and markets (eg, the need to protect ownership rights).

It will adopt a outcomes-based approach, formed within a clear principles-based policy framework – but with sufficient detail and guidance for legal clarity (eg, as to what happens on insolvency), which will be technology-agnostic and it will not explicitly or otherwise endorse any particular technology.

It will look to achieve a balance between allowing innovation while protecting consumers and market integrity.

A stable coin issuer will need to be authorised by, and regulated by, the FCA in order to issue fiat-backed stablecoins in or from the UK - even if they are not marketed to UK consumers.

The Consumer Duty & Financial Promotion requirements will be the key focus of the FCA attention within firms.

Although the regime will be designed for the retail market, the FCA have asked whether there is appetite for institutional and wholesale use cases within the regime.

The Proposed 'Future Joint stablecoin Regulatory Regime' will come under the FCA's remit:

Payment Services Regulations – UK Payment chain & Payment arrangers.

Regulated Activities Order – issuing a UK based fiat-backed stablecoin, custody of regulated stablecoins, requirements in FCA Handbook.

The FCA noted that the 'fiat-backed' stablecoins will be the next phase of cryptoasset regulation. The Discussion Paper consultation period closed on 6 February 2024.

Source of information: FCA website (DP23/4)

1.5.4 HM Treasury – Smarter (Future) Financial Services Regulatory Regime for Cryptoassets (response to consultation and call for evidence) [including HM Treasury publication 'update on plans for the Regulation of Fiat-backed Stablecoins']

In October 2023 HM Treasury published a feedback response and a call for evidence, following its earlier consultation in February 2023 (noted in section 1.5.1).

HM Treasury noted that since its original proposals, there have been a number of policy developments in the cryptoassets space:

- The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (Financial Promotions SI) – which brings financial promotions relating to qualifying cryptoassets within the existing financial promotions regime - was made on 7 June 2023.
    - the FCA published its Policy Statement on financial promotion rules for cryptoassets and the Guidance Consultation on cryptoasset promotions in June 2023 – the regime came into force in October 2023.
- The Financial Services and Markets Act 2023 contains important powers confirming the government's ability to specify cryptoasset activities within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO)
    - and to designate activities as part of the Designated Activities Regime (DAR) as well as providing the regulatory powers necessary to deliver a regulatory regime for the use of 'digital settlement assets' (DSA) in payments.
- HM Treasury published (noted below) an update on plans for the regulation of fiat-backed stablecoins (Stablecoins Update) which provides further clarity on activities relating to fiat-backed stablecoins and the delineation of phase 1 and phase 2) legislation.

HM Treasury noted that they intend to proceed as proposed in the Consultation, expanding the list of 'specified investments' in Part III of the RAO and thereby require firms undertaking relevant activities involving cryptoassets by way of business to be authorised by the FCA under Part 4A of FSMA. FSMA is well-established and understood by firms. HM Treasury believes that developing a fully bespoke regime outside of the FSMA framework would risk creating an un-level playing field between cryptoasset firms and the traditional financial sector. The government's approach would also be in line with the approach taken by numerous other jurisdictions.

At the same time, HM Treasury confirmed that they will not expand the definition of 'financial instruments' in Part 1 of Schedule 2 of the RAO to include presently unregulated cryptoassets.

The original proposal to ban cryptoassets similarly fails to address other risks associated with the industry. There would be adverse consequences in terms of innovation, and there is no guarantee that banning cryptoassets would protect consumers, given high public demand and the availability of services in other jurisdictions. Therefore, HM Treasury noted that having robust and effective regulation will boost innovation, by giving people and businesses the confidence they need to use new technologies safely. By making the UK a safe place for the use and development of these technologies, HM Treasury's aim is to attract investment, generate new jobs, benefit from tax revenues, and promote innovation in new products and services.

Regarding the FSMA authorisation process, the new regime will be broader in scope than the current MLR registration regime and will include aspects of regulatory compliance that have not previously been assessed. Authorisation will therefore not be automatically granted to Money Laundering Regulations (MLR) registered firms.

Similar to the current MLR registration regime, the FCA will seek to provide feedback on good and poor- quality applications, engage with industry to ensure clarity of regulatory expectations and relevant provide data on the number of applications received and the outcomes of those applications.

The accompanying 'Stablecoins Update' outlines the government's intention to prioritise:

- the creation of FCA regulated activities under the RAO for the issuance and custody of fiat-backed stablecoins which are issued in the UK
- the regulation of payment services relating to certain fiat-backed stablecoins when used in a UK payment chain under the Payment Services Regulations 2017.

Source of information: HM Treasury

1.5.5 FCA Discussion Paper – 'Regulating Cryptoassets: Admissions, Disclosures and Market Abuse Regime'

In December 2024 the FCA published a discussion paper, to assist them in the development of rules for cryptoasset admissions and disclosures and cryptoasset market abuse.

The FCA proposals are aimed at reducing risks without stifling growth and innovation. They are looking to reduce consumer harm and promote confidence and trust in the UK cryptoasset market by:

- improving regulatory clarity to ensure there is clear and consistent 'rules of the game' for firms and consumers
- making sure consumers have the appropriate information they need before buying or selling cryptoassets, and
    - ensuring firms have controls and processes to bring about fair and orderly trading conditions
    - reduce risks of money laundering, and losses to fraud.

The discussion paper closed for comments on 14 March 2025.

The FCA also published a cryptoasset roadmap, where it shows all Policy Statements, with final rules, will be published no later than the beginning of 2026, as the regime will come into effect later in 2026 (although it did state that timelines are subject to change).

Source of information: FCA website

1.5.6 HM Treasury Policy Note – Future Financial Services Regulatory Regime for Cryptoassets (Regulated Activities)

In May 2025 HM Treasury published a policy note and a draft Statutory Instrument (SI), following on from their October 2023 consultation on proposals for the creation of a financial services regulatory regime for cryptoassets.

The policy note and draft SI provisions relate to 'new' regulated activities to be created under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO), and their associated consequential amendments to other instruments such as existing anti-money laundering and financial promotions requirements for cryptoasset firms. HM Treasury noted that market abuse and admissions and disclosures provisions will be published separately.

The Draft Order:

- includes certain cryptoassets (and stablecoins) in the list of "specified investments" in the UK
- designates certain activities in respect of such investments as "regulated activities" so that carrying them on in the UK by way of business triggers a licensing requirement
- makes consequential changes to legislation, bringing in a revised territorial scope, new exclusions to regulated activities and new exemptions to avoid other frameworks inadvertently overlapping.

The draft provisions amends the RAO to include 'cryptoasset activities, which are specified investments and specified activities as outlined below.

Specified Investments

- Qualifying cryptoassets
    - A subcategory of FSMA 'cryptoassets' which are fungible and transferable, and which includes 'qualifying stablecoin'; excluded from this definition are 'specified investment cryptoassets' and other instruments that could meet the definition of a 'cryptoasset' under FSMA, such as tokenised e-money or tokenised deposit.
- Qualifying stablecoin
    - An asset that references one or more fiat currencies, and seeks to hold those fiat currencies or fiat currencies and other assets as backing assets to maintain a stable value.

Specified Activities

- Stablecoin issuance
    - The issuance of 'qualifying' stablecoin in the UK – offering, redemption and maintaining the value of the qualifying stablecoin.
- Safeguarding.
- Operating a qualifying cryptoasset trading platform.
- Dealing in qualifying cryptoassets as principal.
- Dealing in qualifying cryptoassets as an agent.
- Arranging deals in qualifying cryptoassets.
- Qualifying cryptoasset staking.
- Decentralised Finance (DeFi).

The draft Statutory Instrument is noted by HM Treasury as 'near-final', with the finalised version expected to be published in Q3 2025.

1.5.7 FCA Discussion Paper – 'Regulating Cryptoasset Activities'

Following the publication by HM Treasury of its draft Statutory Instrument, and Policy Note, the FCA published a discussion paper.

The FCA note that the purpose of their discussion paper is to set out the outcomes they wish to achieve and the proposals they are looking to implement regarding the 'new' specified activities which will fall into the remit of the FCA.

The consultation closed for comments in June 2025, and the FCA will publish a consultation paper, and draft rules, on their proposals outlined in the discussion paper – however no date was noted as to when the consultation would be published by the FCA.

The FCA set out its desired outcomes, key policy proposals, risks and key harms associated with each of the 'new' specified activities in the Statutory Instrument.

1.5.8 UK Cryptoasset Regulation

On 15 December 2025, HM Treasury published the 'final draft' of the Financial Services and Markets Act 2000 (Cryptoassets) Regulations 2025 (the Cryptoasset Regulations), which will establish a comprehensive UK regulatory framework for cryptoassets under the UK's existing Financial Services and Markets Act 2000 (FSMA) framework. In addition, on 16 December 2025, the FCA published three consultation papers, summarised below, setting out their proposed rules and guidance on certain regulated cryptoasset activities; the admissions, disclosures, and market abuse regime, and the prudential framework, for authorised cryptoasset firms.

Qualifying Cryptoassets and Regulated Activities

Statutory Framework

- The Cryptoasset Regulations define which cryptoassets and activities fall within the UK regulatory perimeter by amending the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO), which specifies which activities require FCA authorisation.

Which Cryptoassets and Activities are Caught?

- **qualifying cryptoassets** – the core category brought into regulation
- **qualifying stablecoins** – a subset of qualifying cryptoassets, and
- **specified investment cryptoassets** – cryptoassets that also meet the definition of traditional financial instruments under the RAO.

The Cryptoasset Regulations also designate a range of cryptoasset-related activities as regulated activities, meaning that any person carrying on those activities by way of business, in the UK, must be authorised by the FCA unless an exclusion

applies. As with other regulated activities regulated by the RAO (eg, dealing in securities), the carrying on of in-scope cryptoasset-related activities will constitute a criminal offence under FSMA.

The regulated activities include: issuing qualifying stablecoins:

- safeguarding and administering qualifying cryptoassets
- operating a qualifying cryptoasset trading platform
- dealing in or arranging transactions in qualifying cryptoassets, and
- carrying on qualifying cryptoasset staking.

The Cryptoasset Regulations include a range of exclusions, some aligned with existing securities and derivatives exclusions (eg, the 'absence of holding out' exclusion for dealing as principal), and others specific to cryptoasset markets, such as where the distribution of a qualifying cryptoasset occurred because it was automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions.

Territorial Scope

- In terms of territorial scope, the Cryptoasset Regulations are designed to capture material UK-facing activity even where a firm is based outside the UK.
    - this means that non-UK firms that provide the new types of regulated cryptoasset activities to UK persons can be caught by the new regime.
    - however, there will be exclusions, notably when overseas cryptoasset firms serve only UK institutional clients (assuming those institutional clients are not acting as an intermediary to a UK consumer).

Timing of New Regime

- The Cryptoasset Regulations specify that the new regime will come into force on 25 October 2027, giving the FCA time to complete the consultation process described below.

FCA Consultation Paper 25/25 – Application of FCA Handbook for Regulated Cryptoassets Activities

Published in September 2025, this sets out how the FCA's rules will apply to firms undertaking regulated Cryptoassets activities.

The standards that the FCA consulted on are similar to the standards that apply to all regulated firms. The FCA has made changes to these to reflect the unique nature of cryptoassets, and the specific risks that they pose.

The FCA noted that if the standards are adopted, it would help to reduce some of the risks prevalent in the business practices in this sector. However, they do not address the underlying and inherent risks posed by cryptoassets.

The below was the proposed scope and application of the FCA Handbook for firms undertaking Regulated Cryptoassets Activity:

FCA Handbook 'Block'	Sourcebook
High Level Standards	• PRIN – Principles for Businesses (excluding the Duty)
	• SYSC – Senior Management Arrangements, Systems and Controls
	• COCON – Code of Conduct
	• COND – Threshold Conditions
	• FIT – Fit and Proper test for Employees and Senior Personnel

	• GEN – General Provisions
Business Standards	• ESG – Environmental, Social and Governance sourcebook
Regulatory Processes	• SUP – Supervision • DEPP – Decision Procedure and Penalties Manual
Regulatory/Registry Guides	• FCG – Financial Crime Guide: A firm's guide to countering financial crime risks (FCG) • FCTR – Financial Crime Thematic Reviews
Glossary	• Relevant Glossary Terms

The FCA noted that the objectives and outcomes that it was seeking based on the proposed application of the FCA Handbook:

Objectives

- By applying appropriate provisions of the Handbook to cryptoasset firms, it wants to ensure they will:
    - operate with integrity and transparency, helping build trust in the financial system while protecting consumers
    - treat consumers fairly, be transparent about their products and services and effectively manage any potential conflicts of interest
    - have operational resilience, with robust arrangements, controls and policies to prevent, respond to, and recover from operational and technical disruptions such as cyber-attacks or third-party failures
    - identify, assess, monitor and manage risks of money laundering, terrorist and proliferation financing and other criminal activities, reducing illicit financial activities in this sector
    - have clear accountability, promoting personal responsibility, and improving conduct in firms, by applying the Senior Managers and Certification Regime (SM&CR) regime to firms' systems and controls.

Outcomes

Create a market that works well for consumers, encourages effective competition and enhances market integrity, including:

- Effective competition that delivers high-quality offerings and drives innovation in the UK cryptoasset sector.
- Appropriate consumer protection for users of cryptoasset services.
- Consumers are appropriately informed of risks before investing in cryptoassets and using services.
- Cryptoassets used within the FCA's regime are not attractive for fraud, money laundering, terrorist and proliferation financing or any other criminal activities.
- The international competitiveness of the economy of the UK is supported, as well as its growth in the medium to long term, and firms are encouraged to set up in the UK to offer cryptoasset products and services.
- Well-run firms with appropriate standards and sufficient resources, subject to clear and proportionate standards which we can supervise effectively.

Consumer Protection

The FCA noted that it expect to see consumers of cryptoasset firms get an appropriate level of protection. While cryptoassets are generally high-risk and highly volatile, customers should still be protected from poor business practices.

Therefore, the FCA proposals will apply similar requirements and guidance from their Handbook to cryptoasset firms as to traditional financial firms where appropriate. This includes rules on conduct (such as product design and disclosures), governance (including SM&CR), financial crime, and operational resilience. These measures are designed to reduce risks of harm from poor conduct, weak governance, financial crime and inadequate systems and controls.

Principles for Businesses

The FCA proposed to disapply certain Principes for cryptoassets firms.
For instance, the FCA proposed to disapply the following Principles to transactions entered into on a CATP by its members:

- Principle 1 (Integrity)
- Principle 2 (Skill, care and diligence)
- Principle 6 (Customers Interests)
- Principle 9 (Customers: relationship of trust).

In addition, the FCSA proposed to disapply the following Principles to firms which provide the service of operating a CATP for professional clients:

- Principle 6 (Customers Interests)
- Principle 9 (Customers: relationship of trust).

SM&CR

The FCA proposed applying the existing requirements to cryptoasset firms, to remain consistent with their current approach to SM&CR. The FCA noted that it is important that cryptoasset firms implement robust personal accountability frameworks for senior personnel, just as other FSMA-authorised firms are required to. This will help reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold people to account for their conduct and competence when things go wrong.

The FCA noted that they expect most, if not all, of cryptoasset firms be classified as 'Core' FCA solo-regulated firms for the purposes of the SM&CR application.

FCA Consultation CP25/40 – Cryptoasset Activities

Published in December 2025, this sets out the FCA's proposed rules and guidance for firms carrying on some of these newly regulated cryptoasset activities.

- For cryptoasset trading platforms (CATPs), the FCA proposes a comprehensive framework covering authorisation, governance, market operation, and client protection. CATPs would be required to maintain robust systems and controls, manage conflicts of interest arising from multiple roles, support fair and orderly trading, and comply with proportionate transparency, record-keeping, and reporting obligations.
    - further rules will be developed by the FCA relating to settlement requirements.
- For cryptoasset intermediaries, the proposed requirements broadly align with those applicable to traditional investment intermediaries, adapted for crypto-specific risks.
    - these include rules on governance, conflicts, best execution, order handling, and client reporting
    - for retail clients, intermediary activity is closely linked to the admissions and disclosures regime, with trading expected to generally be limited to cryptoassets admitted to trading and supported by compliant disclosure documentation.
- Cryptoasset lending, borrowing, and staking will be regulated activities requiring specific FCA permissions.
    - retail participation is permitted but subject to enhanced safeguards, including clear risk disclosures and express client consent.

FCA Consultation Paper CP25/41 – Regulating Cryptoassets: Admission & Disclosures and Market Abuse Regime

Published in December 2025, this sets out central parts of the UK's broader future financial services regulatory regime for cryptoassets. Together, the Admissions & Disclosures and Market Abuse Regime are designed to:

- Strengthen safeguards and protection by improving the quality and reliability of information available at the point of admission to trading.
- Enhance market integrity by tackling fraud, scams and abusive practices such as insider dealing and market manipulation.

- Raise standards across cryptoasset markets, supporting fair competition and clean, well-functioning cryptoasset markets.

The Cryptoasset Regulations establish a designated activities regime governing public offers of qualifying cryptoassets in the UK and the admission of qualifying cryptoassets to trading on CATPs.

- Public offers are generally prohibited unless a statutory exemption applies.
    - the Cryptoasset Regulations provide the basis for FCA rules on disclosure content, responsibility, and liability, including civil liability for misleading statements or omissions, subject to exemptions and a forward-looking statements safe harbour.
- Under the regime, CATPs would be required to apply objective, risk-based admission criteria, conduct due diligence on cryptoassets seeking admission, and ensure that a Qualifying Cryptoasset Disclosure Document (QCDD) is prepared and published before trading begins.
    - the FCA is proposing detailed content and responsibility requirements for QCDDs, mechanisms for updating disclosures where material changes arise, and a centralised filing and publication process via CATP websites and an FCA-operated repository. Tailored disclosure requirements would apply to UK-issued qualifying stablecoins.

The Cryptoasset Regulations market abuse regime applies to applying to relevant qualifying cryptoassets admitted, or seeking admission, to trading on a qualifying cryptoasset trading platform.

- The regime adopts concepts aligned with the existing UK Market Abuse Regulation, including insider dealing, unlawful disclosure of inside information and market manipulation, supported by FCA rulemaking on systems, controls and enforcement.
- Under the new Market Abuse Regime for Cryptoassets the FCA is proposing the prohibition on insider dealing, unlawful disclosure, and market manipulation, supported by guidance on how these concepts apply in a cryptoasset context.
    - issuers, offerors, and CATPs would be responsible for disclosing inside information that directly concerns them, with requirements on timing, delay, and dissemination
    - cryptoasset firms would be required to maintain proportionate market abuse systems and controls, with enhanced obligations for larger CATPs, including on-chain monitoring and cross-platform information sharing
    - the FCA also proposes to recognise certain legitimate cryptoasset market practices, such as coin burning and crypto-stabilisation.

FCA Consultation Paper 25/41 – Prudential Regime for Cryptoasset Firms

Published in December 2025, the FCA is consulting on a comprehensive prudential regime for authorised cryptoasset firms, extending earlier proposals for stablecoin issuance and custody to all newly regulated cryptoasset activities. The proposed framework mirrors the prudential structure for UK investment firms but is tailored to cryptoasset-specific risks.

Firms would be required to meet minimum capital requirements based on the highest of a fixed permanent minimum, a proportion of fixed overheads, or activity-based risk metrics (K-factors) calibrated to cryptoasset exposures. The FCA also proposes ongoing internal risk assessments akin to the internal capital and risk assessment exercise for Investment Firms Prudential Regime investment firms, covering business model sustainability, capital and liquidity planning, stress testing, recovery actions, and wind-down planning, alongside minimum liquid asset requirements. Tailored public disclosure obligations would apply in relation to firms' risk management, capital, and group arrangements.

The FCA is due to publish further consultation Papers in early 2026 on 'trading platforms, intermediation, lending and staking' and 'the remaining material for the prudential sourcebook'.

Due to the Cryptoassets regime coming into effect in October 2027, the FCA will publish their Policy Statements, with final rules, before October 2026 to allow firms a 12-month implementation period.

FCA Consultation Paper (CP26/4) – Application of FCA Handbook for Regulated Cryptoasset Activities (Part 2)

The consultation published in December 2025 focused on the following proposals:

- **Application of the Consumer Duty to cryptoasset firms, supplemented by further non-handbook guidance**
    - the FCA is proposing to apply the Consumer Duty to cryptoasset firms in the same way that it applies to all FSMA authorised firms
    - the FCA stated that it will not apply the PROD sourcebook to these firms
    - the Guidance is not designed to be comprehensive and should be read in conjunction with FG22/5 (Finalised Guidance – Non-Handbook Guidance for firms on the Consumer Duty.
- **Approach to Redress and Dispute Resolution (DISP)**
    - the FCA proposed applying the DISP sourcebook to cryptoasset firms, in a similar manner that is applies to other authorised firms
    - the FCA is proposing to allow access to the FOS for consumers of regulated cryptoasset firms
    - But, the FCA is not intending to expand FSCS protections FSCS to cover regulated cryptoasset activities.
- **Application of various parts of the Conduct of Business Standards Sourcebook (COBS)**
    - as the FCA proposes to extend its Handbook glossary definition of 'designated investment business' (DIB) to include the future cryptoasset regulated activities under the new regime; this means that the COBS requirements which apply to firms conducting DIB will apply to these firms
    - firms should ensure that compliance with COBS obligations is considered alongside the specific requirements set out in the CRYPTO sourcebooks
    - the FCA is proposing that the following COBS provisions will apply to these firms:
        - COBS 1 – Application
        - COBS 2 – Conduct of Business obligations
            - 2.1 – acting honestly, fairly and professionally
            - 2.2 – information disclosure before providing services
            - 2.3 – inducements
            - 2.4 – agent as client and reliance on others
            - 2.5 – optional additional products
        - COBS 3 – Client Categorisation
        - COBS 4 – Communicating with clients, including financial promotions
        - COBS 6 – Information about the firm, its services and remuneration
            - 6.1 – information about the firm and compensation information
            - 6.4 – disclosure of charges, remuneration and commission
        - COBS 8 – Client agreements (non-MiFID provisions)
        - COBS 10 – Appropriateness
        - COBS 16 – Reporting information to clients
            - 16.1 – application
            - 16.2 – occasional reporting
            - 16.3 – periodic reporting
            - 16.4 – statements of client designated investment or client money.
- **The Use of Credit to Purchase Cryptoassets**
    - The FCS noted that it recognise the risks of buying cryptoassets with lines of credit for consumers, and considers that borrowing to purchase cryptoassets is unlikely to align with the risk profiles of most retail clients.
    - However, the FCA stated that they are not proposing to restrict firms from accepting credit card payments or lines of credit from EMI (electronic money institution).

- **SM&CR 'Tiering'**
  - FCA proposed to categorise cryptoasset firms as either 'core' or 'Enhanced' firms under the SM&CR
    - the largest cryptoasset firms whose size, complexity and potential impact on consumers or markets warrant more attention will be correctly categorised under SM&CR.
    - enhanced cryptoasset firms under the SM&CR will be the following:
      - **Stablecoin issuers** – total value of backing asset pool is greater than £65 billion
      - **Cryptoasset custodians** – holding in safe custody/client assets in excess of £100 billion
      - **Stablecoin issuance firms** – where asset under management exceed £50 billion
      - **Cryptoasset custodian firms** – safe custody assets in excess of £100 billion (same approach as for CASS large firms).
- **Approach to Training and Competence**
  - The FCA proposes that firms conducting certain new cryptoasset activities for retail clients that have a comparable TC traditional financial activity will need to follow TC requirements.
    - dealing in qualifying cryptoassets as principal or agent (including cryptoasset lending and borrowing)
    - safeguarding a qualifying cryptoasset or a relevant specified investment cryptoasset (including arranging for a person to carry on that activity) where those cryptoassets are held on trust
    - arranging qualifying cryptoasset staking.
  - The FCA proposes these types of cryptoasset firms should comply with corresponding requirements on:
    - training (TC 1)
    - competence (TC 2 and appended TC 4, 5, 6, 7)
    - record-keeping on training (TC 3).
  - The new activities will be subject to the territorial scope of the TC requirements.
  - In addition, the FCA noted that the TC requirements would not apply in the following circumstances:
    - firms carrying out wholesale activities
    - employees who work exclusively with professional or eligible counterparty clients, and
    - employees of relevant cryptoasset firms not directly involved in advising retail clients.
- **Approach to Regulatory Reporting (SUP 16)**
  - The FCA are proposing that the existing returns in SUP 16, as noted below, will apply to all qualifying cryptoasset firms that have Part 4A permission.
    - They will apply from Day 1 of the regime
    - SUP 16.1 – application
    - SUP 16.2 – purpose
    - SUP 16.3 – general provisions on reporting
    - SUP 16.4 – annual controllers report
    - SUP 16.5 – annual close links report
    - SUP 16.7A – annual reports and accounts
    - SUP 16.10 – verification of firm details
    - SUP 16.23 – annual financial crime report
    - SUP 16.30 – baseline financial resilience report
    - SUP 16.33 – operational incident and third party reporting

The consultation closed for comments on 12 March 2026. The FCA noted that consideration of responses to all consultations as part of the 'cryptoasset roadmap', as well as guidance will help to the FCA to deliver their policy statements, with final

rules and guidance.

1.5.9 FCA Guidance Consultation – 'Application of the Consumer Duty to Cryptoasset Firms'

Also in January 2026 the FCA published draft guidance on the application of the Consumer Duty to cryptoasset firms.

The FCA's Consumer Duty Guidance Consultation clarifies how cryptoasset firms should interpret and embed the Consumer Duty across their business models. The guidance is intended to support consistent implementation of the Consumer Duty, raise standards of consumer protection, and ensure firms deliver good outcomes throughout the customer lifecycle.

The FCA are exploring two options:
- applying the Customer Duty to cryptoasset firms, supplemented by sector-specific guidance
- not applying the Consumer Duty but introducing new rules that would achieve an appropriate standard of consumer protection.

Option 1 – 'Applying the Consumer Duty'

The FCA's preference is that in general the Consumer Duty should apply to all regulated cryptoasset activities with additional guidance. However, it is proposing bespoke rules in respect of trading between participants in UK authorised cryptoassets trading platforms.

Requiring cryptoasset firms to apply the Consumer Duty to their dealings with retail customers will be a significant change from the current circumstances. It would introduce a number of specific requirements, including requirements to avoid foreseeable harm, enable informed decisions and provide fair value.

Option 2 – 'Not applying the Consumer Duty'

Applying the Consumer Duty to cryptoasset firms may also pose difficulties in a number of areas, which might suggest that specific rules should be introduced.

These 'specific rules' could make the make standards of firms and consumers' understanding of firms' obligations transparent and clear.

An example of the issue are the following examples:

Certain requirements may not fit well with the cryptoasset sector, as set out below.

- Availability of manufacturer information
    - Many cryptoassets are created and distributed by decentralised networks or unknown (anonymous) issuers that do not involve a UK authorised firm and sometimes do not involve any known manufacturer at all.
- Target market
    - If there is no identifiable manufacturer of a product, there will not be an identified target market or a developed distribution strategy. In such circumstances, compliance with the requirements for distributors may be extremely challenging.
- Price and value
    - The nature of cryptoassets and cryptoasset markets make it difficult to assess price and fair value, cryptoasset markets are highly volatile and the decentralised price formation process used for many cryptoassets are not transparent or comparable to traditional financial products.

1.5.10 FCA Guidance Consultation – 'Cryptoasset Perimeter Guidance'

In April 2026 the FCA published a consultation on new guidance to be added to the Perimeter Guidance, with a purpose of promoting the understanding of the scope of the new regulated activities and when permissions will be required.
The consultation closed for comments on 3 June and the FCA noted that they will publish the revised guidance in September 2026.

The FCA noted that they want to develop a competitive and sustainable cryptoasset sector where UK consumers are served by authorised cryptoasset firms and can make informed decisions. The new perimeter gives them the tools to strengthen protections for consumers and support fair, transparent and orderly markets as the sector matures.
The proposed guidance is prepared in a Q&A format in a new chapter in PERG (PERG 19), designed so that further legislative changes can be made where appropriate.
The FCA aims that they want to achieve are:

- a clearer view for market participants: they should clearly understand when authorisation will be required, which permissions apply to their activities, and whether any exclusions are relevant, so reducing uncertainty and the risk of inadvertent perimeter breaches
- effective competition: by helping firms correctly identify the permissions relevant to their business models, better ensuring the consistent regulatory treatment of firms
- appropriate consumer protection: by supporting timely and accurate applications for authorisation, UK clients conducting regulated cryptoasset activities and accessing cryptoasset services engage with firms which are appropriately authorised
- fair, transparent, orderly and resilient markets: by improving firms' understanding of their regulatory obligations and supporting consistent application of the regime across market participants.

The main focus of the FCA's proposal to introduce a new PERG chapter (PERG 19) - with guidance dedicated to cryptoasset activities, is intended to:

- aid understanding of the scope of the new regulated cryptoasset activities - particular focus is given on the activities of safeguarding cryptoassets (where helpful guidance around the scope of 'control' and ownership of cryptoassets is provided) and issuing stablecoins (where guidance confirms that the activity of 'issuing' includes more than just 'minting' tokens)
- explain when activities are regarded as being carried on 'by way of business' and 'in the UK', and
- clarify the authorisations/permissions required for each regulated cryptoasset activity.

This approach mirrors the FCA's existing use of PERG to support perimeter assessments in new, complex or evolving areas of financial services regulation.

Changes to Existing PERG Chapters
In addition to the proposed new chapter (PERG 19) the FCA is targeting amendments to PERG 1 (Introduction to PERG), 2 (Authorisation and regulated activities) and 8 (Financial promotion and related activities). The proposed updates are designed to ensure consistency across the FCA Handbook by reflecting:

- the introduction of cryptoasset specific regulated activities
- the interaction between cryptoassets and broader concepts such as specified investments, and
- the shift from the current MLRs based framework to regulation under the FSMA framework.

The FCA noted that firms accustomed to using PERG in other contexts should expect cryptoassets to be more fully integrated into the overall perimeter architecture, rather than treated as a standalone add on.

1.6 Financial Crime

A number of developments and changes occurred during 2025 and 2026. The below is summary of the key topics and issues.

1.6.1 FCA Finalised Guidance on the Treatment of Politically Exposed Persons (PEPs) for AML Purposes

The FCA updated its guidance to reflect changes to the legislative framework.

In the updated guidance, the FCA:

- Clarified that firms should not treat non-executive Board members of civil service departments in the UK as PEPs.
- Reflected changes to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Money Laundering Regulations 2017).
- Updated sign off for PEP business relationships.

The FCA Finalised Guidance was updated following their multi firm review of the treatment of PEPs, which was published in 2024.
The following are the findings from their multi-firm review:

- Some firms included definitions for PEPs and RCAs (relatives and close associates) that are not in line with the regulations and guidance.
- Some firms did not have effective arrangements in place to review PEPs and RCAs to ensure the PEP classification remained appropriate after the PEP had left public office.
- A small number of firms did not effectively consider the customer's actual risk in their assessment and rating.
- Despite the need to improve the firms' policies and procedures, the FCA noted that firms did not regularly applying excessive enhanced due diligence measures (EDD) for customers.
- All of the firms reviewed were clear that they would not decline products or services to UK PEPs or their RCAs simply because of PEP status.
- Firms need to improve the clarity and detail of communications with PEP and RCA customers.

1.6.2 JMLSG Proposed Amendments

The Joint Money Laundering Steering Group (JMLSG) published a consultation paper in 2025 containing proposed changes to chapter 3 (Nominated Officer/MLRO) and chapter 6 (suspicious activities, reporting and data protection) of Part I of the JMLSG Guidance

In Chapter 3, the JMLSG is proposing to add additional text to the section on standing of the MLRO:

- clarification regarding overall responsibility for AML/CTF operations
    - although overall responsibility, or responsibility for certain AML/CTF operations, may be appointed to another director or senior manager, the MLRO is responsible for the oversight of all aspects of firms AML/CTF operations
- clarification on when a firms AML/CTF oversight is delegated, that the MLRO is expected to continue to have ultimate managerial responsibility for those activities
- clarification on the application and scope of controls undertaken across group entities for UK AML/CTF specific activities.

The proposed changes are seeking to narrow the scope for weak for weak interpretations and box ticking approaches to AML governance. On a positive note, MLRO's should see this as a reinforcement of the need for credible authority, support sand backing.

The proposed changes reinforce that AML governance is not just documentation, rather MLROs must have structure, influence on a firms senior management to support their legal and regulatory obligations.

In Chapter 6 of the JMLSG, it is proposing changes to the requirements relating to 'subject access requests', these changes arise from the Data (Use and Access) Act 2025, which makes changes to UK GDPR.

1.6.3 FCA Fines for AML Failings

2025 saw a number of high-profile enforcement actions, implementation of the failure to prevent fraud corporate offence, continued sanctions focus and consultation on the Money Laundering Regulations.

One theme that stands out is how often risk decisions were allowed to remain in place even as the underlying risk changed.

This was clearly demonstrated in the Barclays Bank fine. Specific corporate customer began behaving very differently from what had been initially expected. Transaction volumes increased significantly, large payments became routine, and the firm

received law-enforcement intelligence pointing to potential money laundering concerns.

Despite all these warning signs, the customer remained classified as low risk. This wasn't due to a lack of information, different teams could see different red flags, but they were working in silos. The information was visible, but it was never brought together to form a refreshed, consolidated view of customer risk. Therefore, there was a heightened money laundering risk going unaddressed because the Bank never paused to reassess the customer as a whole.

Another theme from 2025 was that firms were growing faster than their control frameworks could keep pace. This was evident in the Monzo case. They introduced a streamlined onboarding model that worked well for speed and customer experience. As the business scaled, however, that model meant key information wasn't always collected, such as the purpose of the account, expected activity levels and, in some cases, full ownership or controller details. Therefore, transaction monitoring teams were left without a clear benchmark for what 'normal' behaviour looked like and, by extension, what should raise suspicion. This was compounded by a misalignment with Monzo's own stated risk appetite. This meant that they were unable to confirm that it was operating within its own risk appetite or that its controls remained aligned to it.

The largest AML fine levied in 2025 by the FCA was to Nationwide, who knowingly allowed prolonged business use of personal current accounts. The firm was aware that the product did not match the customer activity and that its controls were designed for personal banking rather than business use. Despite this, the position was allowed to continue.

The consequence was that large volumes of business activity, including Covid-related government support payments, flowed through accounts subject to controls that were not designed for that level or type of risk. This created clear opportunities for fraud and money laundering and ultimately resulted in the most significant penalty across all the cases.

Taken together, these cases reinforce a clear supervisory expectation, risk assessments and control frameworks must be actively revisited, and where necessary revised, rather than maintained.

This aligns closely with the FCA's November 2025 publication, Risk assessment processes and controls in corporate firms, which emphasised good practice in identifying and understanding risk, applying proportionate mitigation, and maintaining effective risk management as business models evolve.

A clear message from the FCA enforcement actions is that for firms, when the business changes, risk decisions must change with it.

Source of information: FCA website

1.7 Financial Benchmarks

The Benchmarks Regulation was designed to address risks and misconduct in widely used benchmarks, while the regulation has helped to maintain market integrity, the financial landscape has evolved significantly, as part of the reset of UK financial regulations, the government recognises the need for a more agile, proportionate framework tailored to the UK.

The Specified Authorised Benchmarks Regime (SABR) will replace the Benchmarks Regulation, under SABR, benchmarks or benchmark administrators posing systemic risk to UK financial markets would be regulated.

HM Treasury will designate those benchmarks or administrators that meet the criteria, based on advice from the FCA. The criteria for designation would be set in legislation, to allow HM Treasury to designate an individual benchmark. Under these principles, benchmarks which are widely used within a specific market may be captured, even if their overall usage across UK markets is relatively small.

HM Treasury noted in the consultation that the majority of benchmarks are expected to fall out of regulation – therefore, it will no longer be necessary to require authorised firms to only use regulated benchmarks

Under SABR, commodity benchmarks would only be regulated if they are of systemic importance and are designated as such – in the consultation HM Treasury noted that most commodity benchmarks would fall out of scope of the 'new' regime.

The consultation closed for comments on 11 March 2026.

Source of information: HM Treasury website

1.8 FCA Consultation Paper on 'Modernising the 'Redress' System'

In March 2026 the FCA and the FOS published a joint consultation paper aimed at modernising the redress system.

The FCA stated aims and objective from the consultation are:

- Improved operational efficiency for the FOS and the FSCS leading to improved outcomes for consumers and levy payers.
    - ie remove the FOS's role as a 'quasi regulator'
- Firms better understand how to identify issues that cause foreseeable harm to retail consumers at an early stage and resolve complaints more effectively and proactively.
- Potentially significant or emerging redress events are identified earlier and notified to the FCA promptly, so problems can be resolved swiftly and efficiently.

The FOS stated that the outcomes they are seeking are to resolve complaints more quickly and informally, leading to faster and more consistent resolutions, reduced delays and improved outcomes for all parties.

FCA and FOS Joint Proposals

FCA and FOS Cooperation and Referrals

- Enhanced cooperation via an updated Memorandum of Understanding.
- Development of a future statutory referral mechanism, allowing FOS to seek FCA input on regulatory interpretation
    - removing the concept of the FOS as a 'quasi regulator'.

Transparency of Ombudsman Decision-Making

- Government commitment to require thematic reporting by FOS on how certain complaint types are assessed.
- Reduce reliance on individual decisions as de facto precedent.
- Supports firms' ability to anticipate complaint outcomes.

Read Across Rules

- FCA acknowledges concerns that DISP guidance can be perceived as creating new standards.

Revised Definition of Mass Redress Events (MREs)

FCA Proposals

Non Handbook Guidance on Proactive Redress

- FCA to provide finalised guidance on good and poor practice in identifying and rectifying harm

Reporting of Emerging Redress Issues

- FCA finalises enhanced guidance clarifying when firms must notify serious redress risks.

Improve FOS and FSCS Operational Efficiency – 'DISP Changes'

- Finalised changes include guidance clarifying firms' duty to cooperate fully with FOS and the requirement for firms to include Final Response Letter deadlines in complaint acknowledgements.

FOS Proposals

Introduction of a Registration Stage

- Pre-registration stage: early assessment, information gathering, jurisdiction checks, and triage.
- Registration stage: complaints that are 'ready to investigate' move to full casework.

Case Readiness Framework

- embedding a 'readiness to investigate' test in DISP 3 – meaning having enough information to understand the complaint; identify material facts and decide whether dismissal grounds apply.

Amending the Grounds for Dismissing a Complaint

- Proposing a significantly updated set of dismissal grounds, enabled by removal from the ADR Regulations framework.
- The intent is to increase finality; reduce repeated or speculative complaints and improve operational efficiency without removing legal rights.

Amendments to the Fair and Reasonable Test

- Remove reference to the FOS considering good industry practice and to make clear that only the standards applicable at the time of the act or omission complained about will apply.

The consultation closed for comments on 11 May 2026, the FCA and the FOS noted that they are aiming to publish a Policy Statement, along with final rules, in later 2026 – but they did not make any reference to when the proposed changes would come into effect.

1.9 FCA Consultation on 'Simplifying the Pensions & Investment Advice Rules'

In March 2026 the FCA published a consultation paper on 'Simplifying the Pensions & Investment Advice Rules'; it closed for comments on 22 May 2026.

The FCA noted that it will publish its Policy Statement, with final rules, in Q4 2026.

This consultation delivers on two separate public commitments made by the FCA:

- **consolidate, simplify and reframe the advice rules** – modernise and clarify its requirements and reduce the actual and perceived regulatory burden to better help firms to navigate the flexibility afforded by those rules
- **review existing rules relating to financial advisers' ongoing services** – following the commitment when setting out findings from its multi-firm work to ensure its ongoing advice rules remain fit for purpose.

FCA Proposals

Simplifying the Advice Rules

- Consolidate the rules in Conduct of Business Sourcebook (COBS) 9 and COBS 9A into a single, common framework, removing distinctions between advice on products in scope of the Markets in Financial Instruments Directive (MiFID), insurance-based investment products and other life policies and pensions.
- Delete certain COBS rules where Consumer Duty rules provide an appropriate degree of protection for retail customers.
- Reframe Handbook rules and guidance so that suitability assessments must be based on sufficient information to reasonably demonstrate the suitability of a recommendation. Firms' approaches should be proportionate to the nature and scope of the service and the complexity of any recommendation.
- Retire FG17/8 guidance and, in due course, publish updated case studies that help firms understand what it means to consider 'sufficient' information.
- Update Handbook rules and guidance so that firms are not required to assess a customer's knowledge and experience where this would deliver no discernible benefit.
- As part of assessing the suitability of a recommendation, simplify the language about considering the risk that a customer is willing to take, and being clear this is separate to the need to assess the client's ability to bear loss.
- Consolidate the different timing and content requirements for suitability reports to align with expectations under the Consumer Duty. Require that suitability reports only include useful, relevant information for clients, allow for layering

of disclosure requirements and risk warnings.

Ongoing Advice Service Proposals

- Frequency of suitability reviews – replace the annual suitability requirement with periodic suitability reviews.
- Clarify rules to make clear that firms may charge for ongoing related services linked to an earlier personal recommendation.
- Set out expectations as to how firms should fulfil their existing Consumer Duty obligations when dealing with disengaged clients.

Review the Rules on Commission Payments

- Trail commission payable to advisers – examining the impact on consumers & firms that pay or receive trail commission.
- Commission for non-advised distribution.

Professional Client and Suitability Standards

- The FCA seeks views on the suitability requirements it should apply to advice provided to professional clients.

The FCA noted that it will be retaining the charging and qualification requirements for advice, which were introduced as part of the 'Adviser Charging rules', following the RDR.



2. International Relevant Regulatory Developments

These are regulatory developments that could have an impact in the UK, to UK consumers and/or to UK based/domiciled financial services entities.

2.1 Central Securities Depositories Regulation (CSDR)

The CSDR is a regulation aiming to improve the securities settlement process in Europe and introduces a common authorisation, supervision and regulatory framework for central securities depositories (CSDs). Although aimed at EU central securities depositories (CSD) and central clearing counterparties (CCPs), it impacts market participants and firms globally in relation to the settlement of trades conducted in securities which are electronically transferable (settled) via EU CSDs.

From a UK perspective, the CSDR applies to UK regulated entities when they undertake transactions in transferable securities on EU trading venues and which are settled at a EU CSD (such as Euroclear, Clearstream), or where they settle a financial instrument at an EU CCP that was not executed on an EU trading venues (ie, OTC/bilaterial of a third country trading venue).

The main aim of the CSDR is to increase the safety and efficiency of securities settlement and settlement infrastructure (ie, CSDs) in the EU, providing shorter settlement cycles and settlement discipline measures including penalties and mandatory buy-ins for settlement fails.

The CSDR applies to all financial instruments that settle at an EU CSD and which are defined as MiFID financial instruments (as per Annex I, Section C of MiFID).

Under the Central Securities Depositories Regulation (CSDR), the following applies:

- Any participant in a securities settlement shall settle such transactions on the intended settlement date.
- Trading venues shall establish procedures to enable the confirmation of relevant details of transactions on the date when the transaction was executed.
- A CSD will provide regular reports to the relevant competent authority (ie, the FCA) of failed trades.
- A CSD will establish procedures in respect of penalties for failed settlement.
- A mandatory 'buy-in' process that takes effect from a specific number of days following the intended settlement date, based on whether the financial instrument is deemed to be 'liquid' or 'illiquid. Daily cash penalties will apply until the transaction settles and additional costs and charges resulting from the 'buy-in' process are to be settled by the failing counterparty.
- CSDs, CCPs and trading venues shall establish procedures that enable them to suspend (in consultation with the firms' respective competent authorities) any participant or firm that fails consistently and systematically to settle trades on the intended settlement date. The details will be made public.

One of the most contentious pieces of the legislation, the 'settlement discipline regime' (cash penalties and the mandatory buy-in process) was published in the EU Official Journal in September 2018. However, its implementation has been the subject of much debate and the 'mandatory buy-in' requirements – which were initially delayed until November 2025, but

are now delayed further until the framework is developed and put in pace that would support the implementation by the European Commission of the buy-in provisions for a specific asset class.

Cash penalties came into effect in February 2022 and are seen by the industry as the main tool to change market participants behaviour in relation to increasing settlement efficiency and reducing settlement fails.

The UK decided against applying the 'Settlement Discipline' requirements, meaning that the requirements do not apply to securities settled at the UK CSD (Euroclear UK & International).

In March 2022 the European Commission published formal proposals for changes to the CSDR Level 1 legislation – which include changes to the buy-in provisions.

The proposals are referred to as 'CSDR Refit'. In December 2023, the CSDR Refit legislation was published in the EU Official Journal, coming into effect 20 days later.

The following changes were made to CSDR by 'CSDR Refit':

Cash Penalties

ESMA, in close cooperation with the members of the ESCB, have been tasked with developing draft regulatory technical standards to specify the measures to prevent settlement fails in order to increase settlement efficiency and in particular:

- the measures to be taken by investment firms
- the details of the procedures that facilitate settlement – which could include the shaping of transaction sizes, partial settlement of failing trades and the use of auto-lend/borrow programmes provided
- the details of the measures to encourage and incentivise the timely settlement of transactions

The European Commission must develop a Delegated Act to supplement the CSDR Refit by specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties, based on all of the following:

- asset type
- liquidity of the financial instrument
- type of transaction
- duration of the settlement fail.

Mandatory Buy-ins (MBI)

A new Article was developed and adopted under the CSDR Refit, specifically to cover the buy-in process (Article 7a – 'Mandatory Buy-in process').

Mandatory Buy-ins will only apply to transactions executed between counterparties that relate to equities (and equity like financial instruments) and bonds.

MBI's will only apply as a last resort, where both the following conditions are met:

- the application of the penalty mechanism has not resulted in a long-term sustainable reduction of settlement fails in the EU, or in maintaining a reduced level of settlement fails in the EU, even after a review and change to the structure and level of cash penalties, and
- the level of settlement fails in the EU has or is likely to have a negative effect on the financial stability of the Union.

The European Commission must consider the following when making its decision on whether MBI's should apply:

- the potential impact of the mandatory buy-in process on financial markets in the EU
- the number, volume and duration of settlement fails, including the number and volume of settlement fails outstanding at the end of the extension period, and
- whether a particular financial instrument or category of transactions in that financial instrument is already subject to appropriate contractual provisions that provide a right for receiving participants to trigger a buy-in.

Where the Commission decides that MBI's should apply to an asset class, and/or a specific sub-set of financial instruments, the application date of the MBI's must not be earlier than one year from the publication of the Delegated Act.

Mandatory buy-ins do not apply to:

- settlement fails the underlying cause of which is not attributable to the participants in the transaction
- operations that are not considered as trading
    - ie, 'margin transfers' under SFTR and EMIR
    - transactions where the failing participant is a CCP, except for transactions entered into by a CCP where it does not interpose itself between the counterparties
    - transactions where insolvency proceedings are opened against the failing participant
    - securities financing transactions (ie, repos and securities lending)
        – other types of transactions that render the buy-in process unnecessary (ie, 'margin transfers' under SFTR and EMIR)
    - transactions that fall within the scope of Article 15 of Regulation (EU) No 236/2012
        – 'buy-in' procedure under the Short Selling Regulation (covering EU shares, EU Government Bonds and CDS).

Settlement Chains and Pass-on Mechanism

Where there is a settlement fail in a chain of transactions resulting in settlement fails of subsequent transactions in the chain, each participant shall have the right to pass on their obligation to initiate the mandatory buy-in to the next participant in the chain.

Power to Suspend MBIs

Where the buy-in process has been instigated, ESMA can recommend that the Commission suspend the buy-in mechanism for specific categories of financial instruments where necessary, and proportionate to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the EU.

Buy-in Agent

The requirement to appoint a 'buy-in' agent to complete the mandatory buy-in has been removed.

The trading counterparties to the transaction are responsible for the buy-in process, specifically the party awaiting delivery will have the responsibility for undertaking and executing (or appointing a counterparty to undertake the buy-in on their behalf) the buy-in.

Symmetry of Payments (Buy-in Notice Issued)

Where the price of the financial instruments agreed at the time of the trade is different from the price paid for the execution of the 'buy-in', the difference shall be paid by the participant benefitting from the price difference to the other participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

ESMA must, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to further specify:

- details of the operation of the appropriate buy-in process
    - including appropriate timeframes
    - taking into account the asset type and liquidity of the financial instruments, for the delivery of the financial instrument following the buy-in process
- circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments
    - ie, taking into account the liquidity status of the underlying financial instrument
- details of the pass-on mechanism
- other types of transactions that render the buy-in process unnecessary
    - ie, financial collateral arrangements (margin transfers)
    - transactions that include close-out netting provisions (subject to a Master agreement, such as an ISDA CSA)
- methodology for the calculation of the cash compensation

- details of how the participants of the CSDs, the CCPs and the trading venue members are to take into account the specificities of retail investors when executing mandatory buy-ins.

In October 2025, ESMA published a final report on amendments to the regulatory technical standards on CSDR Settlement Discipline.

The final report, and proposed changes to the Settlement Discipline Regime, are explained by ESMA as being necessary to address practical challenges identified by stakeholders since the initial implementation of the RTS on settlement discipline, particularly in relation to the allocation and confirmation processes, standardisation and timeliness of settlement instructions, and the monitoring and reporting of settlement fails.

ESMA proposed that the requirements shall apply as of 7 December 2026, its rationale for this timeframe was that the provisions introducing shorter timeframes for pre-settlement processes that support the transition to a T+1 settlement cycle should enter into application at an earlier stage, in order for market participants to have sufficient time for testing, well in advance of the move to T+1 settlement from 11 October 2027.
Other amendments, such as those related to the reporting and disclosure of settlement fails data by CSDs should enter into force a few months ahead of the move to T+1. Therefore, ESMA proposes that these requirements shall apply as of 1 July 2027.

At the time of the workbook being updated the European Commission had not endorsed the ESMA draft Regulatory Technical Standards.

Below is a summary of the revisions to the Settlement Discipline Regime requirements:

Timing of Allocations and Confirmations

- Professional clients must submit their written allocations and confirmation to investment firms by close of business on trade date.
- ESMA considers that a regulatory requirement should be introduced mandating the submission of allocations and conformations as early as possible on trade date.
- ESMA does not suggest on a fixed time by when 'allocations' must be provided.

Means for Sending Allocations and Confirmations

- ESMA considered the requirement to make clearer that both allocations and confirmations should be made in an electronic, machine-readable format.
- ESMA considers that a regulatory requirement should be introduced mandating the submission of allocations and confirmation as early as possible on trade date
- ESMA does not suggest a fixed time by when 'allocations' must be provided by professional clients to investment firms.

Use of International Open Communication Procedures and Standards for Messaging and Reference Data to Exchange Allocations and Confirmations

- ESMA proposed mandating the use of international open communication procedures and standards – referred to in Article 35 of CSDR – for the electronic exchange of written allocation and confirmation messages.
- ESMA remains of the view that regulatory action is necessary in this area. The widespread adoption of international open communication procedures and standards can be promoted by introducing a requirement for professional clients to comply with them.
- ESMA is proposing to mandate professional clients to provide written allocation and confirmations using the format and method described in CSDR Settlement Discipline Requirements Article 2(1)(34).

Provision of Professional Clients Reference Data for Allocations and Confirmations and Format

- ESMA proposed to introduce an obligation for investment firms to collect the data necessary to settle a trade from professional clients during their onboarding and to keep it updated at all times.
- ESMA considers that regulatory action could effectively contribute to settlement efficiency and, indirectly, facilitate settlement in T+1.
- ESMA is not proposing to be prescriptive about the time in which the collection of the SSI data should take place and addresses the key concerns raised during the consultation.

- rather it states that the responsibility lies with professional clients to provide updated SSI data to investment firms whenever changes occur – and, in any case, sufficiently in advance of any transaction requiring settlement:
    - investment firms should receive SSI data when it is actually needed, rather than at a fixed point in time
    - it also allows best practices and commercial solutions to evolve organically. In particular, the development and use of centralized SSI databases should be left to the industry. Mandating such solutions could impose disproportionate costs on smaller market participants.

Allocations: Alignment with Settlement Instructions Matching Fields

- ESMA is proposing that allocation requirements should be aligned with CSD level matching requirements.
- Aligning the fields required in written allocations (Article 2(1)) with the settlement instruction matching fields specified in Article 5(3). This extends the allocation fields to:
    - the total amount of cash delivered or received, with enhancements referencing the tolerance levels set out in Article 6;
    - the identifier of the entity where the securities are held; and
    - the identifier of the entity where the cash is held.

Allocations: Place of Settlement (PSET) as Mandatory Field

- ESMA proposed to include a new regulatory requirement on settlement discipline according to which information on PSET shall be included in the allocation.

Settlement Instructions: Timing for Sending Settlement Instructions to a Securities Settlement System

- ESMA noted that introducing a deadline for the submission of SIs may be unnecessary in a T+1 environment where market practices should necessarily streamline the different steps of the process.
- ESMA acknowledged that a deadline for submission of SIs may be introduced once industry discussions on T+1 have taken place, but deemed that amending the RTS on settlement discipline was not necessary at this stage.
- However, given the move to T+1 in October 2027, ESMA concluded that industry recommendation to submit SIs as soon as possible and no later than by '23:59' on the date of the transaction should be strengthened through a regulatory requirement.

Monitoring and Reporting Settlement Fails based on the Place of Trading

- This topic was not included in the CP, however due to the amendments to CSDR Level 1 text to enable the move to a T+1 settlement, ESMA considered that amendments are required to the RTS on settlement discipline
    - so that they can receive the necessary data from CSDs in line with the respective Level 1 requirements.
- Therefore, ESMA proposed that market participants provide (populate) their settlement instructions with the place of trading populates by the MIC code of the trading venue.

Allocations and Settlement Instructions: Transaction Type

- ESMA proposed to add the following to the list of 'types of transactions' in Article 2(1) of the RTS on settlement discipline
    - 'buy-sell back' or 'sell-buy back' transactions.

Hold & Release

- Given that most CSDs already offer the hold and release functionality, as well as given the usefulness of this tool to reduce settlement fails, ESMA proposed to require the hold and release functionality to be offered by all CSDs.

Auto-Partial Settlement

- SMA proposed to mandate that all CSDs enable auto-partial settlement
    - ESMA noted that it agreed with the EU Industry Task Force on the importance of partial settlement and proposed to delete Article 12 of RTS on settlement discipline to require all CSDs to offer by default the partial settlement functionality.

Auto-collateralisation

- ESMA proposed to amend Article 12 of RTS on settlement discipline, along with the creation of a new recital to state that CSDs shall facilitate access by their participants to intra-day cash credit secured with collateral via an automated collateralisation functionality.

Real Time Gross Settlement and/or Settlement Batches

- ESMA noted that CSDs should maintain the capacity to offer both RTGS and/or batch settlement during a business day, in accordance with market needs.

Reporting Top Failing Participants

- ESMA proposed to review the approach for reporting top failing participants under Article 14(1) of RTS on settlement discipline to take into account the share of a participant's settlement fails in the total volume and value of settlement instructions processed by the CSD.
- ESMA proposed to adopt this methodology in addition to the current approach for reporting top failing participants in absolute terms.
- While ESMA acknowledged that participants of CSDs may not be directly responsible for settlement fails caused by intermediaries/counterparties in a settlement chain, the proposed amendments will provide an additional level of clarity to the information on settlement fails to be reported by CSDs.

Reporting the Reasons for Settlement Fails

- ESMA proposed to amend Article 13(1)(a) of RTS on settlement discipline to specify that the reason for settlement fails at participants' level should be provided by the participants where this information is not available to the CSD.
- ESMA believes it is important for CSD participants (especially those with highest rates of settlement fails) to investigate the root causes of settlement fails. This can be a targeted analysis, focusing on a sample of relevant cases.
- in addition, ESMA noted that CSDs should require their top ten failing participants to report to them, on a monthly basis, the main reasons for settlement fails and the measures to address them.

CSDs Public Disclosure on Settlement Fails

- ESMA proposed to amend Annex III of the RTS on settlement discipline to include information on the breakdown of the settlement fails per asset class that the CSDs would be required to report.

The frequency, annually, cannot be amended by ESMA, as it is included in the Level 1 test and would need to be approved by the European Parliament and Council.

2.2 European Commission Simplification Agenda

In February 2025, the European Commission announced its simplification agenda for financial services aims to boost EU competitiveness by cutting red tape, reducing administrative burdens (targeting 25% for businesses, 35% for SMEs), streamlining reporting, and removing inconsistencies in rules, as seen in their recent Omnibus packages and ongoing work with the Council of the EU and the ECB.

This involves legislative changes, better coordination, and using tech, while preserving financial stability, consumer protection, and core regulatory standards.

Key Pillars of the Agenda

- **Reducing burdens** – targeting significant cost savings by eliminating duplicate rules, harmonizing definitions (e.g., CSRD, CSDDD) and streamlining reporting.
- **Improving coherence** – enhancing consistency across different financial regulations (prudential, supervisory, reporting) and fostering financial integration within the EU.
- **Streamlining processes** – making it easier for companies, especially SMEs, to access capital and comply, including simplifying internal model approvals for banks.
- **Enhancing competitiveness** – the overall goal is to restore the EU's financial sector efficiency and global standing, making it more attractive for investment.

Key Initiatives & Actions

- **Omnibus packages** – legislative proposals that bundle multiple, smaller changes for broad simplification across various directives and regulations.
- **'One in, One Out' approach** – a mechanism to offset costs of new rules with savings from repealed or simplified ones.

Key Focus Areas

- **Banking supervision** – simplifying capital requirements and accelerating approval processes for internal models.
- **SME access to markets** – facilitating access to SME growth markets by adjusting listing requirements.
- **Integrated markets** – proposals for a comprehensive package to fully integrate EU financial markets (part of the Savings & Investments Union strategy).

In essence, the agenda seeks smart simplification (making rules workable) rather than deregulation (weakening goals), ensuring the EU remains competitive while maintaining strong financial standards.

The European Commission published its final list of measures in financial services that it plans to deprioritise. The publication is part of broader simplification efforts and comes off the back of discussions with the EU member states on the list of level 2 measures, as well as on the overall approach to simplification in the financial services space.

The list contains 115 level 2 measures across banking, asset management, markets, insurance, sustainable finance, digital and anti-money laundering.

The list identified by the European Commission are considered as non-essential for the effective functioning of the Level 1 legislation and for the achievement of EU Policy objectives.

The European Commission has stated in an accompanying letter to the ESAs its two-step approach to the delays:

- The European Commission will not adopt acts in the attached list before 1 October 2027
- Where level 2 empowerments carry legal deadlines, the European Commission will propose amendments or repeals to those mandates during upcoming legislative revisions to ensure legal consistency
- The European Commission states that this exercise reflects a pragmatic simplification strategy, stating that a high volume of level 2 measures adds not only compliance costs but also places a burden on co-legislators tasked with scrutiny.

(It noted that there was 430 level 2 Acts adopted by them between 2019 to 2024).

What the delays mean is that the existing legislative measures (level 1 and level 2 legislative text and Level 3 Guidelines) will still apply until 2027.

The below are some of the delayed level 2 measures:

MiFID 3/MiFIR 2 Reforms

- MiFIR RTS on transaction reporting (RTS 22) has been deprioritised.
- Delegated Act on order execution policies, part of the MIFIR/MiFID 3 measures
    - ESMA Final Report is pending adoption by the European Commission

- Delegated Act on OTC derivatives identifying data for the purposes of transaction reporting.
- Delegated Act amending the scope of OTC derivatives subject to transparency requirements.

CSDR (Settlement Discipline Regime – Mandatory Buy-in & Framework)

- RTS to specify the buy-in settlement fails (mandatory buy-in for securities – shares and bonds).
- Implementing Act on the review of the implementing act on mandatory buy-in.
- Implementing Act on the suspension of the buy-in mechanism.

AML Package

- Delegated Act on categories of corporate entities associated with higher risks and associated lower Beneficial Ownership thresholds.

Benchmark Regulation (BMR)

- Delegated Act on the calculation method thresholds critical benchmarks.
- Delegated Act on the calculation method significant benchmarks.

2.2.1 Corporate Sustainability Reporting Directive (CSRD)

The Directive was published in the EU Official Journal in December 2022, it came into effect in January 2023.

The CSRD was developed to provide high quality data across a wider range of EU companies, requiring detailed disclosures on sustainability matters.

Companies are required to report through the lens of materiality, disclosing information about the sustainability risks and opportunities that they face – as well the impacts they have on society and the environment.

It also has an element of extraterritoriality, requiring in some circumstances reporting at full group level where Third Country entities have EU subsidiaries.

Undertakings Captured by the CSRD

The CSRD will apply to:

- **Large undertakings** (including EU subsidiaries of non-EU parent companies)
    - Exceed at least two of the following three thresholds:
        - 250 employees on average during the financial year
        - net turnover of €50 million, and
        - balance sheet of €25 million.
- **Listed undertakings**
    - Undertakings with securities listed on an EU regulated market (including where they are incorporated outside the EU):
        - will include small and medium-sized entities (SMEs)
        - but not micro-undertakings which do not exceed two of the following three thresholds:
            - ◊ 10 employees on average during the financial year
            - ◊ net turnover of €900,000, and
            - ◊ balance sheet of €450,000.
- **Non-EU undertakings with substantial activity in the EU**
    - Where net turnover generated within the EU exceeded €150 million (in each of the last two consecutive years), provided the non-EU undertaking has:
        - an EU subsidiary that is listed or a large undertaking (ie, within CSRD's scope as per the above two bullets), or
        - an EU branch that generated net turnover of at least €40 million, the EU subsidiary or branch must report at the non-EU parent's group level.
- **Parent undertakings of large groups**
    - Groups that satisfy, on a consolidated basis, the criteria set out in the first bullet.

With regards to the exterritoriality issue, where an in-scope EU company (or branch) has an ultimate parent incorporated outside the EU, then the parent will be captured. The EU subsidiary must report at a consolidated level for the entire group. However, this this group-level reporting will be slightly less burdensome.

Reporting for non-EU undertakings will not be required until 2029, subject to the entity meeting the threshold conditions.

Disclosure Requirements

- **Business model and strategy** – comprising their resilience to risks from sustainability matters and opportunities arising from sustainability matters, how their strategy accounts for the interests and impact upon other stakeholders.

- **Transition plans** – are they compatible with limiting global warming to 1.5°C and achieve net zero by 2050.
- **Targets** – where appropriate (and where set by the undertaking), absolute greenhouse gas emission reduction targets for 2030 and 2050, and a description of the progress made in achieving the targets.
- **Governance** – description of the role, skills and expertise of the administrative, management and supervisory bodies, as well as any incentive schemes linked to sustainability matters.
- **Policies** – regarding sustainability matters.
- **Due diligence process** – with respect to sustainability matters.
- **Principal adverse impacts** – actual and potential, connected to the entities own operations as well as its value chain, and any actions taken to prevent, mitigate, remediate or end such impacts.

Specific details on the reporting standards are provided through Delegated Acts.

- Reporting in 2025 on the financial year 2024 for entities with more than 500 employees already subject to the Non-Financial Reporting Directive (NFRD).
- Reporting in 2026 on the financial year 2025 for large entities and parents of large groups that are not currently subject to the NFRD.
- Reporting in 2027 on the financial year 2026 for listed SMEs (except micro undertakings):
    - prior to financial years starting in 2028, SMEs can opt out and choose not to publish a sustainability report.
- Reporting in 2029 on the financial year 2028 for group-level reporting of non-EU entities with in-scope EU subsidiaries (or branches).

2.2.2 Corporate Sustainability and Due Diligence Directive (CSDDD)

Under the Corporate Sustainability Due Diligence, EU entities would:

- undertake due diligence across their value chains to identify the adverse impacts on their business
- implement processes to mitigate those impacts, and
- integrate sustainability and human rights considerations into their corporate governance and management systems.

Although the legislation is aimed at EU entities, it is extraterritorial as Non-EU entities who generate a net turnover in the EU of more than €450 million will be in scope.

The CSDDD was published in the EU Official Journal in July 2024, EU members states must transpose it into national law by 26 July 2026. As part of a compromise from the original European Commission consultation, in the published Directive, financial services were temporarily excluded from the CSDDD.

In February 2025, the European Commission published proposals that are being called the 'Omnibus Directive' which are aimed at removing regulatory burdens for EU and Non-EU firms that would be subject to the CSRD and the CSDDD.

At the same time, the European Commission published a 'stop the clock' application of the CSRD and the CSDDD.

The European Council and the Parliament have reached swift agreement on the 'stop the clock' proposals – therefore, EU Member States have until December 2025 to change national laws to give this effect.

What has been agreed?
The entry into application of the CSRD for large companies will be delayed by two years:

- The obligation on large EU companies to prepare reports on financial years starting in 2025 will be delayed by two years, with the first reports required for financial years starting in 2027.
- There will be no immediate delay to reporting obligations on Public Interest Entities (PIEs) for financial year 2024 reporting.
- The STC does not impact the current application thresholds (changes to those are being sought in the separate substantive proposal).

The transposition deadline and the application of the CSDDD to the largest companies will be delayed by one year:

- Member States are no longer required to transpose CSDDD by July 2026, rather by July 2027.
- The obligations on the largest companies (ie, EU-headed groups with over 5,000 employees and €1.5 billion net turnover worldwide, or non-EU-headed groups with over €1.5 billion turnover in the EU) are delayed for one year:
    - this means that substantive obligations will apply from July 2028 instead of July 2027 and that the reporting obligation will apply for financial year 2029 instead of financial year 2028.
- The entry into application of obligations for large companies, ie, EU groups with over 3,000 employees and €900 million net turnover worldwide, or non-EU-headed groups with over €900 million turnover in the EU, remains unaltered: substantive obligations will start to apply in July 2028 and reporting obligations will start to apply for financial year 2029.
- The entry into application of substantive obligations for EU companies with over 1,000 employees and €450 million net turnover worldwide, or non-EU-headed groups with over €450 million turnover in the EU also remains unaltered:
    - obligations will start in July 2029.
    - reporting obligations for these companies, however, are delayed by one year, starting financial year 2030 instead of financial year 2029.

The trialogue negotiations between the European Commission, European Parliament and the European Council have concluded. The agreed text was published in the Official Journal in February 2026.

Under the published amending text:

CSRD

- Only businesses with on average over 1,000 employees and a net annual turnover of over EUR 450 million would have to carry out social and environmental reporting under the CSRD and be required to provide sustainability reporting under Taxonomy rules.
- Reporting standards would be further simplified and reduced, requiring fewer qualitative details, and sector-specific reporting would become voluntary.

CSDDD

- Due diligence requirements would only apply to large corporations with more than 5,000 employees and a net annual turnover of over €1.5 billion.
- In-scope businesses would be expected to adopt a risk-based approach to due diligence.
- Companies would no longer need to prepare a transition plan to make their business model compatible with the Paris Agreement.
- Finally, the provisional agreement postpones the CSDDD transposition deadline by another year, to 26 July 2028 – companies will have to comply with the new measures by July 2029.

2.2.3 ESMA Call for Evidence on a Comprehensive Approach for the Simplification of Financial Transaction Reporting

As part of its Data Strategy and its contribution to simplification and burden reduction, in June 2025 ESMA launched today a call for evidence to gather feedback on opportunities to simplify, better integrate and streamline supervisory reporting.

The call for evidence highlights some of the issues previously raised by market participants in their responses to consultations and interactions with regulators. These issues include the overlapping obligations across different reporting regimes (MiFIR, EMIR, SFTR and REMIT), the duplicative reporting channels, and the burdens created by frequent and unsynchronised regulatory changes.

While the consultation and the analysis of the feedback received is conducted, ESMA will not propose changes to the existing reporting frameworks on transaction reports (RTS 22), order data (RTS 24) and reference data (RTS 23) under the

ongoing MiFIR Review. ESMA is instead publishing final reports summarising the feedback received from market participants to the consultations on the review of MIFIR transaction, order book and reference data reporting.

Based on the feedback received, ESMA will publish a final report by the beginning of 2026, which will include the identification of key cost drivers of supervisory reporting and outline the proposed way forward.

It goes without saying that any of the two options (and sub-options) put forward by ESMA will impose costs on firms to ensure compliance with their reporting obligations under MiFIR, SFTR & EMIR.

This review of transaction reporting is not going to be a quick solution given that the recent MiFID/MiFIR review gave ESMA a mandate to review transaction reporting with a timeframe of 2028. All of the proposed options put forward by ESMA will require the European Commission to draft level 1 legislative changes which will be subject to review, scrutiny and challenge by the EU co-legislators (Parliament and Council) – this is not a quick process and could take a number of years before any formal changes are published in the EU Official Journal and come into effect.

Background

ESMA identified what it sees as the main challenges associated with overlapping or inconsistent requirements across major transaction reporting, as highlighted by industry (stakeholders):

- Frequent regulatory changes and lack of flexibility to enable a phased implementation, synchronisation and coordination of the changes in the different reporting regimes.
    - frequent regulatory changes and lack of synchronisation and coordination in the changes to reporting requirements
    - constantly adapting to new regulations demands significant time and resources.
- Duplicative reporting of the same derivative instruments under MiFIR, EMIR, and REMIT
    - transactions in Exchange Traded Derivatives (ETD) and in a significant part of OTC derivatives are now reported under both EMIR and MiFIR regimes.
- Different terminology and definitions within different reporting regimes
    - different regimes often use different names for substantively the same concepts, creating difficulties for the implementation, interpretation and reconciliation. The absence of a centralised and standardised data dictionary prevents the resolution of such inconsistencies.
- Requirements to report both transaction-level and position-level data under EMIR, SFTR, and MiFIR commodities position reporting.
- Dual-sided reporting obligation under EMIR and SFTR
    - resource-intensive and can lead to additional burden due to the need to implement reconciliation mechanisms.
- Intragroup derivative reporting.
- Reference data reporting duplications.
- Different reporting channels across MiFIR, EMIR, SFTR, and REMIT.
    - under MiFIR, reporting is made to national competent authorities (NCAs) – which are then forwarded to ESMA. Under EMIR and SFTR transactions are reported to Trade Repositories, which with allows broad access rights to the data for a wide range of stakeholders.

ESMA Proposal for Change

ESMA identified several options for the simplification of regulatory reporting, which are based on the following principles:

- preserve information scope
- decrease overlaps to reduce reporting burden.
- ensure global alignment
- balance cost and benefit.

ESMA acknowledged that all of the options it has put forward is a change from the current obligations and by default will impose costs on firms.

ESMA put forward two options for simplification, with two sub-options – as noted below.

ESMA notes that this approach will allow the identification of additional relevant elements and feedback to be captured under each alternative.

Option 1 – Removal of Duplications in Current Frameworks

Elimination of duplications in the scope of the reporting requirements without directly changing the legal set up for the current reporting channels and the relevant infrastructures to collect the data. It effectively removes some of the most notable overlaps within the scope of EMIR and MiFIR (with possibilities to expand to REMIT and MiFID).

- **Delineation by instrument (option 1a)**
    - Splitting reporting between ETD and OTC (impact to derivatives reporting only).
- **Delineation by events (option 1b)**
    - Separating 'post-trade' reporting and 'transaction' reporting for MiFIR, EMIR & SFTR.

Both options would also review 'dual-sided' reporting that exists in EMIR & SFTR.

Option 2 – *'Report Once'* Principle

This involves creating a unified template for reporting information that was previously distributed across various regimes.

- **Report once principle (option 2a)**
    - applied in full to both MiFIR, EMIR and SFTR.
- **Report once principle 'expanded (option 2b)**
    - all instruments currently in scope of EMIR, SFTR and MiFIR are integrated under a single template to be used for such reporting, and the related level 1 legal texts would be harmonised/merged accordingly.

ESMA is due to publish initial feedback in H1 2026 with a final report due to be published in H2 2026, which will identify the next steps and the legislative actions that need to be taken – ie, where amendments will be required to be proposed by the European Commission to MiFIR 2 level 1 text, and the subsequent mandate for ESMA to develop level 2 measures.

2.2.4 European Commission Digital Simplification Package

The Digital Omnibus package is a pivotal step in the EU's push towards harmonising and streamlining its digital regulatory framework, including for AI, data access, privacy, and cybersecurity. This forms part of the EU's new 'digital package', which also includes a new Data Union Strategy and a proposal for a European Business Wallet.

On 19 November 2025, the European Commission published the much-anticipated EU Digital Simplification Package. Also referred to as the 'Digital Omnibus', the package is made up of two proposed omnibus laws:

- a Regulation on the simplification of the implementation of harmonised rules on artificial intelligence (the 'Digital Omnibus on AI'), and
- a Regulation simplifying and consolidating parts of the EU's digital acquis, making targeted amendments to data, privacy and cyber laws ('Digital Legislation Omnibus').

More broadly, the Digital Omnibus sits within a wider EU focus on enhancing competitiveness and is intended to align with the European Data Protection Board (EDPB)'s view that for practical simplification of the GDPR, clearer and more usable guidance and deeper cross-regulatory cooperation to ensure greater consistency across the EU's evolving digital regulatory landscape.

It is likely to be hard fought through the course of 2026 in the trialogue negotiations between the European Parliament, European Council and the European Commission.

Taken together the proposals represent significant changes to the areas they cover and are likely to evolve as the proposals move through the legislative process.

Some of the key proposals of the Digital Omnibus relate to:

- facilitating use of personal data in AI training, development and operation
- postponed entry into application for high-risk AI provisions, transitional periods for entry of certain transparency requirements for generative AI and targeted amendments to other EU AI Act provisions on oversight, AI literacy, documentation and registration
- consent fatigue and cookie rules
- codifying a subjective, entity-driven approach to the definition of personal data in GDPR
- minimising the burden on controllers for certain data subject rights under the GDPR
- creating a single point for incident reporting under a number of EU laws, and increasing reporting thresholds and timeframes under the GDPR
- amending and consolidating key EU laws on data access and re-use
- repealing the Platform-to-Business Regulation.

2.2.5 European Commission's Proposals to Facilitate Greater Integration of EU Financial Markets – 'Markets Integration Package'

On 4 December 2025, the European Commission published a set of legislative proposals which have collectively been labelled the 'Market Integration Package' (MIP).

The MIP legislation has the overall objective of further integrating EU financial markets by breaking down barriers to cross-border business and encouraging greater capital flows. This forms part of the EU's broader Savings and Investments Union initiative, which resulted from the September 2024 report by Mario Draghi on the Future of European Competitiveness.

The MIP proposals consist of three separate texts which contain a raft of amendments to existing EU financial services directives and regulations, as follows:

- **'Master Regulation'**
    - Proposal amending a wide range of EU regulations, including (among others) the Cross Border Distribution of Funds Regulation (CBDFR), EMIR, SFTRE, MiFIR, MiCAR and the CRA.
- **'Master Directive'**
    - proposal amending AIFMD, UCITS and MiFID.
- **Settlement Finality Regulation**
    - Proposal to introduce a new regulation governing the EU settlement finality framework, while also repealing the existing Settlement Finality Directive and making targeted amendments to the Financial Collateral Directive.

As part of the proposed 'Master Regulation', ESMA would receive a new enhance role, which would include:

- Direct supervision over significant entities
    - transforming ESMA from a mainly coordinating and peer-convergence body into a direct pan-European supervisor for certain significant market infrastructures and generally all crypto service providers (CASPs)
    - this expanded role comes with increased responsibilities and enforcement powers.
- Responsible for determining the significance of trading venues, CCPs and CSDs.
- Centralisation of supervisory procedures, tools and enforcement.

The European Commission's proposal are now being reviewed by the European Parliament and European Council, who will come confirm and agree their positions – which will then be subject to negotiated in the trialogue process with the

European Commission.

The entire legislative procedure lasts on average 18 months although there is no fixed timeline to finalise the process. In this case, it might take longer. In particular, it is expected that the negotiations on the proposal to strengthen EU supervision will be controversial and difficult.

The expected application date of the MIP legislation is currently unclear and varies between the different texts. Broadly, the Master Regulation and Master Directive changes will take effect between 12 and 24 months after those pieces of legislation enter into force. The Settlement Finality Regulation would repeal the existing Settlement Finality Directive as soon as it enters into force, but will have certain transitional provisions that would apply for the first five years.

In the respective legislative statements, the Commission provides the following expected implementation timelines:

However, these timings would are subject to the speed with which the proposals pass through the EU legislative process, as well as the possibility of the EU legislators amending the relevant application dates.

2.3 Anti-Money Laundering

The EU AML Package is a major legislative overhaul to harmonise and strengthen Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) rules across the EU, establishing a single rulebook and a new central authority, the Anti-Money Laundering Authority (AMLA), to create a more unified and effective system against financial crime, bringing in stricter obligations for obliged entities and new powers for the central body.

Its purpose is to strengthen EU-wide AML/CFT rules and harmonise requirements across member states, closing existing legal gaps

Key Objectives & Changes

- **Harmonisation** – creates one set of rules (the AMLR) for obliged entities to reduce loopholes.
- **Centralisation** – AMLA will directly supervise some high-risk entities and coordinate national supervisors.
- **Broader scope** – extends AML/CFT obligations to new sectors (eg, real estate, football clubs) and crypto-assets.
- **Enhanced supervision** – aims for stricter, more consistent enforcement across member states.

The legislation forming the EU Commission's July 2021 anti-money laundering and counter terrorist financing (AML/CTF) package was published in the Official Journal in June 2024.

The 'AML' package includes two Regulations and two Directives:

Regulation (EU) 2024/1624, the EU 'Single Rulebook' Regulation or Anti-Money Laundering Regulation (AMLR1)

- a directly applicable single rulebook to harmonise AML/CTF rules across the EU
    - AMLR1 will apply from 10 July 2027
    - The AMLA will develop level 2 and level 3 (Guidelines) measures, to be published during 2025-26.

Directive (EU) 2024/1640, the sixth Anti-Money Laundering Directive (AMLD6)

- expand the scope of the rules to address new technologies, such as cryptoassets
- AMLD6 came into force on 9 July 2024 – EU member states will have two years (10 July 2026) to transpose some parts of the AMLD6 and three years for others (10 July 2027).

Regulation (EU) 2024/1620 establishing the European Anti-Money Laundering Authority (AMLA)

- centralised authority (AMLA) with supervisory and investigative powers to ensure compliance with the rules

Directive (EU) 2024/1654 as regards access to centralised bank account registries.

2.3.1 Anti-Money Laundering Authority (AMLA)

The AMLA is a new central European Union agency designed to revolutionise the fight against financial crime by directly supervising high-risk entities and coordinating national authorities. Legally established in 2024, it began operations in July 2025 and will be fully operational with direct supervision capabilities by 2028.

For the first time, supervisors across the EU will use a common methodology to assess money laundering and terrorist financing risks.

The aim of the EU Authority is to transform the anti-money laundering and countering the financing of terrorism (AML/CFT) supervision in the EU and enhance cooperation among financial intelligence units (FIUs).

As part of its preparation for direct supervision, AMLA launched a public consultation on draft implementing technical standards that set out how AMLA and national financial supervisors will cooperate during the selection process and when transferring supervisory powers for institutions or groups that will be directly supervised by AMLA.

From 2028, AMLA will directly supervise 40 high-risk financial institutions in the EU. The instruments announced today set out how AMLA and national supervisors will assess risks and how AMLA will select the entities it will directly supervise.

The AMLA will publish level 2 and level 3 measures on the following:

By 10 July 2026

- Scope of internal policies, procedures and controls (level 3 measures – 'Guidelines')
- Business wide risk assessment (level 3 measures – 'Guidelines')
- Application of customer due diligence measures (level 2 measure – 'regulatory technical standards')
- Customer due diligence measures (level 3 measures – 'Guidelines')
- Ongoing monitoring of the business relationship and monitoring of transactions performed by customers (level 3 measures – 'Guidelines')
- Regulatory technical standards on the information necessary for the performance of customer due diligence (level 2 measures – 'regulatory technical standards')
- Penalties (level 2 measures – 'Delegated Act' from the European Commission)
- Reporting of suspicions (level 2 measures – 'regulatory technical standards')

By 10 July 2027

- Inability to comply with the requirement to apply customer due diligence measures (level 3 measures – 'Guidelines')
- Guidelines on money laundering and terrorist financing risks, trends and methods (level 3 measures – 'Guidelines')
- Scope of application of enhanced due diligence measures (level 3 measures – 'Guidelines')
- Specific provisions regarding politically exposed persons (level 3 measures – 'Guidelines')
- Guidelines on reliance on other obliged entities (level 3 measures – 'Guidelines')

Implementation Timeline

- **2024** – legislation adopted and published in the Official Journal.
- **2025** – AMLA becomes legally established and begins setup.
- **2027** – AML Regulation (AMLR) comes into force, with the first selection of high-risk entities by AMLA.
- **2028** – direct supervision by AMLA of selected entities begins.

2.4 T+1 Settlement (UK, EU and Switzerland)

Primary legislation has been published by the UK (HM Treasury) and the EU (European Commission) regarding the move to a T+1 settlement cycle, for in scope securities traded on UK, EU and Swiss trading venues this will come into effect from 11 October 2027.

This will mean that the UK, the EU, Switzerland will be aligned with the same settlement timeframe for transactions executed on trading venues as the US and Canada.

Background

UK

The UK Accelerated Settlement Taskforce (AST) was set up, by HM Treasury in December 2022, to examine the case for securities trades to be settled more quickly in the UK, such as moving to a 'T+1' standard settlement period. Their report was published on 28 March 2024, recommending that the UK should move to T+1 by the end of 2027.

HM Treasury accepted all the recommendations made to it, including to legislate for T+1 to be mandatory from 11 October 2027, and agreed that the Taskforce should continue until the transition to T+1 in the UK has been successfully implemented.

EU

In the EU a similar approach was undertaken, the European Commission mandated ESMA to look at the potential to move to a T+1 settlement cycle. In its report published in November 2024, to the European Commission, titled '*Assessment of the Shortening of the Settlement Cycle in the European Union*', ESMA recommended the migration to a T+1 settlement cycle on 11 October 2027.

The UK and EU authorities aligned the move to a T+1 settlement cycle due to the strong links between UK and EU markets and market participants.

Scope

Impacted financial instruments includes shares, bonds and cash settled derivatives.

Not in scope of the move to a T+1 settlement cycle are certain non-cash/non-physical settled derivatives (ie, interest rate swaps).

There is an exemption for securities financing transactions (SFTs), such as repo, reverse-repo and securities lending.

- In the UK, it will apply to all SFTs executed on UK trading venues.
- Whereas in the EU, it will apply to SFTs when executed on EU trading venues and the transaction is documented as single transaction composed of two linked operations.

However, not in scope of the move to T+1 are financial instruments that are executed on a bilateral/OTC basis. Market participants will be able to continue to agree on a bilateral basis the terms of the settlement cycle – however industry consensus is that these transactions will by default also move to a T+1 settlement cycle to enable appropriate inventory management by firms.

Current UK & EU Settlement Framework

UK

- UK Gilts settle T+1.
- UK Corporate Bonds & Equities settle T+2.
- Supranational bonds settle T+1 (US dollar based).

EU

- EU Government bonds and Equities settle T+2.

The primary driver for the move to T+1 settlement is global competitiveness. But this move is not without its challenges.

T+1 Main Challenges

Automation	significant investment is required to automate processes across the custody chain, from tra execution to settlement
Market fragmentation	fragmented settlement landscape across the EU and the need for coordination with the UK a Switzerland
Settlement fails	shorter settlement cycle may increase settlement fails

Securities financing transactions industry	potential material shift of repo & securities lending flows to T+0 (same date settlement flow

2.4.1 UK Specific Issues

When the UK Accelerated Settlement Taskforce Technical Group (AST) published its final report and set of recommendations for transitioning to T+1 in the UK in 2025, it included a Code of Conduct (UK-TCC) that contains the scope of instruments that will be subject to T+1 settlement, a timetable of recommended actions starting from June 2025, and a series of expected behaviours by market participants.

The UK-TCC sets out 12 critical actions that must be implemented by all market participants, as well as 26 highly recommended actions.

The critical actions are:

1. HMT amendment of UK CSDR, by October 2027.
2. Trading venues to amend their rulebooks, by October 2027.
3. Market participants to comply with T+1 with respect to in-scope instruments and transactions, by October 2027.
4. Allocation and confirmation processes to be completed by end of T0 at the latest, via automated processes, whether on an electronic trade matching platform or otherwise, by end 2026. The AST also notes that market participants should consider moving processes to real-time, optimising the timeliness of data exchanges between parties and increasing the frequency or elimination of batch processing.
5. Settlement instructions to be sent to CSDs by 06.00 on T+1, by October 2027.
6. Market participants to put in place policies and procedures to ensure compliance with T+1, by end 2026.
7. Financial market infrastructures (FMIs) to review existing procedures and operating systems to remove any potential barriers to T+1, by end 2025.
8. FMIs to communicate any proposed updates to members, by end 2026.
9. Euroclear International to publish its CREST modernisation programme schedule, avoiding any major platform changes immediately before or after the T+1 transition date, by June 2025. CREST opening hours will be extended to 9pm allowing for instructions to be submitted on T0 up until that time.
10. Market participants to implement the Core Principles and templates contained in the Financial Markets Standard Board's (FMSB) Standard for Sharing of Standard Settlement Instructions (SSIs), by end 2026.
11. Market participants to automate lending recall processes, according to industry best practice, by end 2026.
12. Market participants adhere to industry best practices regarding recall cut off times and return deadlines, by October 2027.

The UK-Code of Conduct (UK-TCC) establishes five expected behaviours needed to achieve a smooth and efficient transition to T+1.

These are commitments to:

- compliance
- Automation
- 'action this day'
- settlement discipline
- readiness for testing.

The AST notes that responsibility for implementing these behaviours lies with senior management, who should set the correct '*tone from the top*'.



Chapter Six
Risk in Financial Services

Section 1 Compliance

Section 2 Ethics and Integrity



1. Compliance

Compliance starts at the top. It is most effective in a corporate culture that emphasises standards of honesty and integrity and in which the board of directors and senior management lead by example. It concerns everyone within a firm and should be viewed as an integral part of the business activities. A firm should hold itself to high standards when carrying on business, and at all times strive to observe both the spirit as well as the letter of the law. Failure to consider the impact of its actions on its shareholders, customers, employees and the markets may result in significant adverse publicity and reputational damage, even if no law has been broken.

The expression 'compliance risk' is the risk of legal or regulatory sanctions, material financial loss, or loss to reputation as a result of a firm's failure to comply with laws, regulations, rules and codes of conduct applicable to its activities (together, compliance laws, rules and standards).

Compliance laws, rules and standards generally cover matters such as observing proper standards of market conduct, managing conflicts of interest, treating customers fairly, acting in the clients' best interest and ensuring the suitability of customer advice. They typically include specific areas such as the prevention of money laundering (ML) and terrorist financing, and may extend to tax laws that are relevant to the structuring of products or customer advice. A firm that

knowingly participates in transactions intended to be used by customers to avoid regulatory or financial reporting requirements, evade tax liabilities or facilitate illegal conduct will be exposing itself to significant compliance risk.

Compliance laws, rules and standards have various sources, including primary legislation, rules and standards issued by regulators or supervisors, market conventions, codes of practice promoted by industry associations and internal codes of conduct applicable to all staff of a regulated firm.

Compliance should be part of the culture of the organisation. It is not just the responsibility of the compliance staff in a firm.

There are significant differences between firms regarding the organisation of the compliance function. In larger firms, and/or more complex firms, compliance staff may be located within operating business lines, and internationally active firms may also have group and local compliance officers. Whereas in smaller firms, compliance function staff may be located in one unit. Separate units may be established in some firms for specialist areas, such as data protection and the prevention of ML and terrorist financing.

A firm should organise its compliance function and set priorities for the management of its compliance risk in a way that is consistent with its own risk management strategy and structures. Most firms will have separate compliance and risk functions, requiring close cooperation and the establishment of operational mechanisms between them.

Regardless of how the compliance function is organised within a firm, it should be independent and sufficiently resourced, its responsibilities should be clearly specified, and its activities should be subject to periodic and independent review by the internal audit function (where applicable).

The Bank for International Standards (BIS) issued a set of ten principles for banks and supporting guidance setting out sound practices related to the principles. The principles should be applicable to all firms (not just banks), although it is for individual firms to determine how best they should be implemented on a proportionate basis.

The way in which the principles are implemented will depend on factors such as the firm's size, nature, complexity and geographical extent of its business, and the legal and regulatory framework within which it operates.

In smaller firms, for example, it may not be practicable to implement in full some of the specific measures recommended, yet they may be able to take other measures that achieve the same result.

1.1 Responsibilities of the Board of Directors for Compliance

The following has been published by the Bank of International Settlements (BIS), and is available on its website (www.bis.org).

Principle 1

The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should approve the bank's compliance policy, including a formal document establishing a permanent and effective compliance function. At least once a year, the board or a committee of the board should assess the extent to which the bank is managing its compliance risk effectively.

A firm's board is responsible for ensuring that an appropriate policy is in place to manage the firm's compliance risk. The board should oversee the implementation of the policy, including ensuring that compliance issues are resolved effectively and expeditiously by senior management with the assistance of the compliance function. The board may delegate these tasks to an appropriate board level committee (eg, its audit committee).

1.2 Responsibilities of Senior Management for Compliance

Principle 2

The bank's senior management is responsible for the effective management of the bank's compliance risk.

Principle 3

The bank's senior management is responsible for establishing and communicating a compliance policy, for ensuring that it is observed, and for reporting to the board of directors on the management of the bank's compliance risk.

The firm's senior management is responsible for establishing a written compliance policy that contains the basic principles to be followed by management and staff, explaining the main processes by which compliance risks are to be identified and managed through all levels of the organisation.

Senior management should, with the assistance of the compliance function:

- at least once a year, identify and assess the main compliance risk issues facing the bank and the plans to manage them. Such plans should address any shortfalls (policy, procedures, implementation or execution) related to how effectively existing compliance risks have been managed, as well as the need for any additional policies or procedures to deal with new compliance risks identified as a result of the annual compliance risk assessment, and
- at least once a year, report to the board of directors or a committee of the board on the bank's management of its compliance risk, in such a manner as to assist board members to make an informed judgement on whether the bank is managing its compliance risk effectively, and
- report promptly to the board of directors or a committee of the board on any material compliance failures (eg, failures that may attract a significant risk of legal or regulatory sanctions, material financial loss, or loss to reputation).

Principle 4

The bank's senior management is responsible for establishing a permanent and effective compliance function within the bank as part of the bank's compliance policy.

1.3 Compliance Function Principles

Principle 5: Independence

The bank's compliance function should be independent.

The concept of independence involves four related elements. Firstly, the compliance function should have a formal status within the bank. Secondly, there should be a group compliance officer or head of compliance with overall responsibility for coordinating the management of the bank's compliance risk.

Thirdly, compliance staff and, in particular, the head of compliance, should not be placed in a position where there is a possible conflict of interest between their compliance responsibilities and any other responsibilities they may have. And lastly, they should have access to the information and personnel necessary to carry out their responsibilities.

The concept of independence does not mean that the compliance function cannot work closely with management and staff in the various business units. Indeed, a cooperative working relationship between the compliance function and business units should help to identify and manage compliance risks at an early stage.

The compliance function should have a formal status within the organisation to give it the appropriate standing, authority and independence.

The following issues with respect to the compliance function should be addressed in the document:

- its role and responsibilities
- measures to ensure its independence
- its relationship with other risk management functions within the bank and with the internal audit function;
- in cases where compliance responsibilities are carried out by staff in different departments, how these responsibilities are to be allocated among the departments
- its right to obtain access to information necessary to carry out its responsibilities, and the corresponding duty of staff to cooperate in supplying this information
- its right to conduct investigations of possible breaches of the compliance policy and to appoint outside experts to perform this task if appropriate

- its right to be able to express and disclose its findings freely to senior management, and if necessary, the board of directors or a committee of the board
- its formal reporting obligations to senior management, and
- its right of direct access to the board of directors or a committee of the board.

Chief Compliance Officer/Head of Compliance

Each firm should have an executive or senior staff member with overall responsibility for coordinating the identification and management of the firm's compliance risk and for supervising the activities of other compliance function staff.

The head of compliance may or may not be a member of senior management. If the head of compliance is a member of senior management, they should not have direct business line responsibilities. If the head of compliance is not a member of senior management, then they should have a direct reporting line to a member of senior management who does not have direct business line responsibilities.

Conflicts of Interest

The independence of the head of compliance and any other staff having compliance responsibilities may be undermined if they are placed in a position where there is a real or potential conflict between their compliance responsibilities and their other responsibilities. It is preferable that compliance function staff perform only compliance responsibilities. Although, this may not be practicable in smaller firms. In these cases, therefore, compliance staff may perform non-compliance tasks, providing that potential conflicts of interest are avoided.

The independence of compliance staff may also be undermined if their remuneration is related to the financial performance of the business line for which they exercise compliance responsibilities.

Access to Information and Personnel

The compliance function should have the right on its own initiative to communicate with any staff member and obtain access to any records or files

necessary to enable it to carry out its responsibilities.

They should be able to carry out its responsibilities on its own initiative in all departments in which compliance risk exists. It must have the right to conduct investigations of possible breaches of the compliance policy and to request assistance from specialists (eg, legal or internal audit) or engage outside specialists to perform this task if appropriate.

Principle 6: Resources

The bank's compliance function should have the resources to carry out its responsibilities effectively.

The resources to be provided for the compliance function should be both sufficient and appropriate to ensure that compliance risk within the firm is managed effectively. In particular, compliance staff should have the necessary qualifications, experience and professional and personal qualities to enable them to carry out their specific duties. Compliance staff should have a sound understanding of compliance laws, rules and standards and their practical impact on the bank's operations. The professional skills of compliance staff, especially with respect to keeping up to date with regulatory developments, should be maintained through regular and systematic education/studying and training and engaging with industry associations and bodies.

Principle 7: Compliance Function Responsibilities

The responsibilities of the bank's compliance function should be to assist senior management in managing effectively the compliance risks faced by the bank. Its specific responsibilities are set out below. If some of these responsibilities are carried out by staff in different departments, the allocation of responsibilities to each department should be clear.

Not all compliance responsibilities are necessarily carried out by a compliance department or compliance unit. Compliance responsibilities may be exercised by staff in different departments. For example, legal and compliance may be separate departments, the legal department may be responsible for advising management on the compliance laws, rules and standards and for preparing guidance to staff, while the compliance department may be responsible for monitoring compliance with the policies and procedures, and reporting to management.

However, in other firms parts of the compliance function may be located within the operational risk or within a more general risk management group. If there is a division of responsibilities between departments, the allocation of responsibilities to each department should be clear. There should also be appropriate mechanisms for cooperation among each department and with the head of compliance (eg, with respect to the provision and exchange of relevant advice and information). These mechanisms should be sufficient to ensure that the head of compliance can perform his or her responsibilities effectively.

Advice

The compliance function should advise senior management on compliance laws, rules and standards, including keeping them informed of developments.

Guidance and Education

The compliance function should assist senior management in:

- educating staff on compliance issues, and acting as a contact point within the bank for compliance queries from staff members, and
- compliance laws, rules and standards through policies and procedures and other documents such as compliance manuals, internal codes of conduct and practice guidelines.

Identification, Measurement and Assessment of Compliance Risk

The compliance function should, on a proactive basis, identify, document and assess the compliance risks associated with the firm's business activities, including the development of new products and business practices, the proposed establishment of new types of business or customer relationships, or material changes in the nature of such relationships. If the bank has a new products committee, compliance function staff should be represented on the committee.

The compliance function should assess the appropriateness of the bank's compliance procedures and guidelines, promptly follow up any identified deficiencies, and, where necessary, formulate proposals for amendments.

Monitoring, Testing and Reporting

The compliance function should monitor and test compliance by performing sufficient and representative compliance testing.

The head of compliance should report on a regular basis to senior management on compliance matters. The reports should refer to the compliance risk assessment that has taken place during the reporting period, including any changes in the compliance risk profile based on relevant measurements, such as performance indicators, summarise any identified breaches, and/or deficiencies and the corrective measures recommended to address them, and report on corrective measures already taken.

Statutory Responsibilities and Liaison

The compliance function may have specific statutory responsibilities (eg, fulfilling the role of the money laundering officer). It may also liaise with relevant external bodies, including regulators, standard setters and external experts.

Compliance Programme

The responsibilities of the compliance function should be carried out under a compliance programme that sets out its planned activities, such as the implementation and review of specific policies and procedures, compliance risk assessment, compliance testing, and educating staff on compliance matters. The compliance programme should be risk-based and subject to oversight by the head of compliance to ensure appropriate coverage across businesses, and coordination among risk management functions.

Principle 8: Relationship with Internal Audit

The scope and breadth of the activities of the compliance function should be subject to periodic review by the internal audit function.

Compliance risk should be included in the risk assessment methodology of the internal audit function, and an audit programme that covers the adequacy and effectiveness of the compliance function should be established, including testing of controls commensurate with the perceived level of risk.

1.4 Other Matters

Principle 9: Cross-Border Issues

Banks should comply with applicable laws and regulations in all jurisdictions in which they conduct business, and the organisation and structure of the

compliance function, and its responsibilities should be consistent with local legal and regulatory requirements.

Firms may conduct business internationally through local subsidiaries or branches, or in other jurisdictions where they do not have a physical presence. Legal or regulatory requirements may differ from jurisdiction to jurisdiction; they may also differ depending on the type of business conducted by the bank or the form of its presence in the jurisdiction.

Firms choosing to conduct business in a particular jurisdiction must comply with local laws and regulations. For example, operating as a subsidiary means satisfying all the legal and regulatory requirements of the host jurisdiction. It is for local businesses to ensure that compliance responsibilities specific to each jurisdiction are carried out by individuals with the appropriate local knowledge and expertise, with oversight from the head of compliance, in cooperation with other risk management functions.

Procedures should be in place to identify and assess the possible increased reputational risk if it offers products or carries out activities in certain jurisdictions that would not be permitted in its home jurisdiction.

Principle 10: Outsourcing

Compliance should be regarded as a core risk management activity within the bank. Specific tasks of the compliance function may be outsourced, but they must remain subject to appropriate oversight by the head of compliance.

Firms should ensure that any outsourcing arrangements do not impede effective supervision by their local regulators. Regardless of the extent to which specific tasks of the compliance function are outsourced, the board of directors and senior management remain responsible for compliance with all applicable laws, rules and standards.

Source: Bank for International Standards (BIS)

1.5 MiFID Compliance Function Requirements

ESMA produced guidelines on certain aspects of the MiFID II Compliance function requirements for firms. Following Brexit, the FCA confirmed that the guidelines would continue to apply to UK firms, and that firms are expected firms to comply with all Level 3 measures (ie, Guidelines, Q&A and opinions) adopted by ESMA when the UK was part of the EU – until the FCA advises otherwise. Subsequent changes and amendments made by ESMA will therefore not apply, such as the changes made by ESMA following its review of the guidelines and publication of revised guidelines in 2021.

The below requirements, from the ESMA Guidelines, apply to all types of firms that are subject to UK MiFID.

Senior management with firms must ensure that the compliance function fulfils the requirements as defined below.

Guideline 1 – The Compliance Risk Assessment

Investment firms should make sure that they manage risks efficiently, with risks comprehensively monitored in order to allocate resources to the firm's functions efficiently. The compliance function shall establish a risk-based compliance monitoring programme on the basis of an assessment to determine its priorities and the focus of its monitoring, advisory and assistance activities.

Supporting Guidelines

It is not practical or feasible for the compliance function to review all items and activities that the firms undertake – to do so would mean that firms would need an army of compliance staff. Rather, a risk-based approach should be adopted to test and see if underlying risks have been controlled. This monitoring programme should be updated to reflect changes to the firm's risk profile.

Firms must establish, implement and maintain adequate policies and procedures designed to detect any risk of failure to comply with its obligations under UK MiFID.

The compliance risk assessment should take into account the applicable obligations under UK MiFID, policies, procedures, systems and controls implemented within the firm in the area of investment services and activities. The assessment should also take into account the results of any monitoring activities and of any relevant internal or external audit findings.

The compliance function's objectives and work programme should be developed and set up on the basis of this compliance risk assessment.

Guideline 2 – Monitoring Obligations of the Compliance Function

The aim of the risk-based monitoring programme is to evaluate whether the firm's business is conducted in accordance with its obligations under UK MiFID, taking into consideration all areas of the investment firm's investment services and activities, including any relevant ancillary services. The monitoring programme should establish priorities determined by the compliance risk assessment, ensuring that compliance risk is comprehensively monitored.

Supporting Guidelines

The aim of a monitoring programme should be to evaluate whether the firm's business is conducted in compliance with its obligations under UK MiFID, and whether its internal guidelines, organisation and control measures are (and remain) effective and appropriate.

If a firm is part of a group, responsibility for the compliance function rests with 'each regulated entity' in that group. A firm should therefore ensure that its compliance function remains responsible for monitoring its own compliance risk. This includes when a firm outsources compliance tasks to another firm within the group. The compliance function within each firm should, however, take into account the group of which it is a part – for example, by working closely with audit, legal, regulatory and compliance staff in other parts of the group.

Suitable tools and methodologies for monitoring activities that could be used by the compliance function include (but are not limited to):

a. the use of aggregated risk measurements (for example, risk indicators)
b. the use of reports warranting management attention, documenting material deviations between actual occurrences and expectations (an exceptions report) or situations requiring resolution (an issues log)
c. targeted trade surveillance, observation of procedures, desk reviews and/or interviewing relevant staff.

The monitoring programme should reflect changes to the investment firm's risk profile, which may arise, for example, from significant events such as corporate acquisitions, IT system changes, reorganisation or regulatory changes. It should

also extend to the implementation and effectiveness of any remedial measures taken by the firm in response to non-compliance, and breaches of UK MiFID.

Monitoring activities performed by the compliance function should also take into account:

a. the business area's obligation to comply with regulatory requirements
b. the first-level controls in the firm's business areas (ie, controls operated by the business unit, as opposed to second-level controls performed by compliance), and
c. reviews by the risk management, internal control function, internal audit function or other control functions in the area of investment services and activities.

Reviews by other control functions should be coordinated with the monitoring activities performed by the compliance function, while respecting the different functions' independence and mandate. The compliance function should have a role in overseeing the operation of the complaints process and it should consider complaints as a source of relevant information in the context of its general monitoring responsibilities. This does not require compliance functions to have a role in determining the outcome of complaints. In this regard, firms should grant the compliance function access to all customer complaints received by the firm.

Guideline 3 – Reporting Obligations of the Compliance Function

Regular written compliance reports should be provided to senior management. The reports should contain a description of the implementation and effectiveness of the overall control environment for investment services and activities, and a summary of the risks that have been identified, as well as remedies undertaken or to be undertaken. Reports must be prepared at appropriate intervals and at least annually.

The mandatory compliance reports should cover all business units involved in the provision of investment services, activities and ancillary services provided by a firm (ie, UK MiFID activities). The reports should contain information on the following matters, where relevant:

General information:

- information on the adequacy and effectiveness of the firm's policies and procedures designed to ensure that the firm and its staff comply with its obligations under UK MiFID
- relevant changes and developments in the applicable requirements over the period covered by the report
- summary of the compliance function's structure, including the overall personnel employed, their qualifications and reporting lines, and in following reports, any change.

Manner of monitoring and reviewing:

- how the compliance function monitors the development and review of obligations under UK MiFID and how possible risks of failure by the firm or its staff to comply with these obligations are identified at an early stage
- a summary of 'inspection' or 'desk-based' reviews performed
- a summary of the planned monitoring activities for the subsequent review.

Findings:

- a summary of major findings of the review of the policies and procedures, including risks identified in the scope of the compliance function's monitoring activities
- breaches and deficiencies in the firm's organisation and compliance process
- the number of complaints received in the period under review if not already reported through other sources. Where, as a result of the review of clients' complaints, specific compliance or risk issues are identified in relation to the policies or procedures adopted by the firm for the provision of investment services and activities, these aspects should be specifically reported.

Actions taken:

- a summary of any action taken to address any significant risk of failure by the firm or its staff to comply with the obligations under UK MiFID
- measures taken, and to be taken, to ensure compliance with changes to the rules and requirements

- reaction to complaints received and any pay-out performed based on the complaint, if not already reported through other sources. Actions regarding specific compliance or risk issues identified in relation to the policies or procedures adopted by the firm for the provision of investment services and activities as a result of the review of clients' complaints.

Others:

- other significant compliance issues that have occurred since the last report
- overview of material correspondence with competent authorities
- information as regards any deviation by senior management from important recommendations or assessments issued by the compliance function
- information in relation to any deviation from the principle that the other business units must not issue instructions or otherwise influence compliance staff and their activities
- where a firm makes use of the exemption to avoid appointing a dedicated compliance officer whose sole responsibility within the firm is the compliance function, an assessment of the continuing appropriateness of the arrangements to minimise conflicts of interest.

Supporting Guidelines

The compliance report to senior management should cover all business units involved in the provision of UK MiFID investment services. If the report does not cover all of these activities of the investment firm, it should clearly state the reasons.
The following matters should, where appropriate, be addressed in these written compliance reports, where relevant:

a. a description of the implementation and effectiveness of the overall control environment for investment services and activities
b. a summary of major findings of the review of the policies and procedures
c. a summary of 'on-site' inspections or 'desk-based' reviews performed by the compliance function, including breaches and deficiencies in the firm's organisation and compliance processes that have been discovered, and appropriate measures taken as a result

d. risks identified in the scope of the compliance function's monitoring activities

e. relevant changes and developments in regulatory requirements over the period covered by the report, and the measures taken, and/or to be taken to ensure compliance with the required changes (when senior management has not previously been made aware of these through other channels)

f. other significant compliance issues that have occurred since the last report, and

g. material correspondence with competent authorities (when senior management have not previously been made aware of these through other channels).

These practices provide competent authorities with first-hand insight into a firm's compliance activities, as well as any breaches of regulatory provisions.

Guideline 4 – Advisory and Assistance Obligations of the Compliance Function

Firms should ensure that the compliance function fulfils its advisory responsibilities including: providing support for staff training; day-to-day assistance for staff and participating in the establishment of new policies and procedures.

They should promote and enhance a compliance culture throughout the firm. The purpose of the compliance culture is not only to establish the overall environment in which compliance matters are treated, but also to engage staff with the principle of improving investor protection. The compliance function should support the business units in the area of investment services and activities (ie, all staff involved directly or indirectly in the provision of UK MiFID investment services and activities) in performing any training. Training and other support should focus particularly, but not exclusively, on:

a. the internal policies and procedures of the investment firm and its organisational structure in the area of investment services and activities, and

b. in relation to UK MiFID, rules and requirements set out by HM Treasury, the PRA and the FCA.

Training should be developed on an ongoing basis so that it takes into account all relevant changes (for example, new legislation, standards or guidance issued

by HM Treasury, the PRA and/or the FCA, and due to changes in the investment firm's business model).

The compliance function should periodically assess whether staff in the area of investment services and activities hold the necessary level of awareness and correctly apply the investment firm's policies and procedures. Compliance staff should also provide assistance to staff from the operative units in their day-to-day business and be available to answer questions arising out of daily business activity.
Firms should ensure that the compliance function is involved in the development of the relevant policies and procedures within the firm in the area of UK MiFID investment services, activities and ancillary services.

Firms should ensure that the compliance function is involved in discussions regarding significant modifications in relation to the organisation of the investment firm in the area of investment services, activities and ancillary services.

Guideline 5 – The Effectiveness of the Compliance Function

When ensuring that appropriate resources are allocated to the compliance function, firms should take into account the scale and types of investment services, activities and ancillary services undertaken by the investment firm. They should also provide compliance staff with the authority necessary to exercise their duties effectively, as well as access to all relevant information concerning the services and activities, as well as other ancillary services undertaken.

The designated compliance officer should have sufficiently broad knowledge and experience and have a sufficiently high level of expertise, so as to be able to assume responsibility for the compliance function as a whole and ensure that it is effective. The number of staff required for the tasks of the compliance function depends to a large extent on the nature of the investment services, activities and ancillary services, including any other services provided by the investment firm. When a firm's business unit activities see levels of significant growth, then the resources for the compliance function should be similarly be increased as necessary in view of changes to the firm's compliance risk. Senior management should monitor regularly whether the number of compliance staff is adequate for the fulfilment of the duties of the compliance function.

The compliance officer should have in-depth knowledge of the firm's organisation, corporate culture and decision-making processes in order to be able to identify which meetings are important to attend.

All compliance staff should have at least knowledge of MiFID and of the respective national laws and all applicable standards and guidance issued by either the FCA and/or the PRA, as far as these are relevant for the performance of their tasks. Compliance staff should be regularly trained in order to maintain their knowledge. A higher level of expertise is necessary for the designated compliance officer.

The compliance function should take a proactive approach to its dual responsibilities of monitoring the business and providing advice to senior management and the business.

The aim of an effective compliance function would be to add value to the business and keep the business on a compliance path. It should be seen by the firm's business areas as a 'business enabler' rather than a 'business prevention' unit.

The compliance function should ensure that there is effective communication between itself and the other control functions such as internal audit and risk management, as well as external audit.

Guideline 6 – The Skills, Knowledge, Expertise and Authority of the Compliance Function

A firm's compliance staff must have the necessary skills, knowledge and expertise to discharge their obligations, along with the necessary authority to carry out their role.

In order to ensure that the compliance function has the authority required for its duties, the senior management of the firm should support it in the exercise of their duties.

The compliance officer should have sufficiently broad knowledge and experience and a sufficiently high level of expertise to assume responsibility for the compliance function and ensure that it is effective.

Compliance staff should be regularly trained in order to maintain their knowledge. In addition, the compliance officer should possess a higher level of

skills, knowledge and expertise.

Guideline 7 – Permanence of the Compliance Function

UK MiFID requires firms to ensure that the compliance function performs its tasks and responsibilities on a permanent basis. Firms should therefore establish adequate arrangements for ensuring the responsibilities of the compliance officer are fulfilled when the compliance officer is absent, and adequate arrangements to ensure that the responsibilities of the compliance function are performed on an ongoing basis. These arrangements should be in writing.

The responsibilities and competences, as well as the authority of the compliance staff, should be set out in a compliance policy, other general policies or internal rules that take into account the scope and nature of the firm's investment services and activities. This should include information on the monitoring programme and the reporting duties of the compliance function, as well as information on the compliance function's risk-based approach to monitoring activities. Relevant amendments to regulatory provisions should be reflected promptly by adapting these policies and/or rules.

The monitoring activities should regularly cover all key areas of UK MiFID investment services and activities, taking into account the compliance risk associated with the business areas.

Guideline 8 – Independence of the Compliance Function

The compliance function should hold a position in the organisational structure that ensures that the compliance officer and other compliance staff act independently when performing their tasks. The compliance officer should be appointed and replaced by senior management or by the supervisory function.

Guideline 9 – Proportionality with Regard to the Effectiveness of the Compliance Function

When a firm considers that it may not be proportionate for it to comply with the requirements, it should assess whether the effectiveness of the compliance function is compromised by the proposed arrangements. This assessment should be reviewed regularly.

Firm's should decide which measures, including organisational measures and the level of resources, are best suited to ensuring the effectiveness of the compliance

function in the firm's particular circumstances. In deciding this, investment firms should take the following criteria (inter alia) into account:

a. the types of investment services, activities and ancillary services, including the other business activities provided (including those not related to investment services, activities and ancillary services)
b. the interaction between the investment services and activities and ancillary services and other business activities carried out by the firm
c. the scope and volume of the investment services, activities and ancillary services carried out (absolute and relative to other business activities), balance sheet total and income of the investment firm from commissions, fees and other income in the context of the provision of investment services, activities and ancillary services
d. the types of financial instruments offered to clients
e. the types of clients targeted by the firm (professional, retail, eligible counterparties)
f. staff headcount
g. services provided through a commercial network, such as tied agents or distribution arrangements, and
h. organisation and sophistication of the IT systems.

Guideline 10 – Combining the Compliance Function with Other Internal Control Functions

Investment firms should generally not combine the compliance function with the internal audit function. The combination of the compliance function with other control functions may be acceptable if this does not compromise the effectiveness and independence of the compliance function. Any such combination should be documented, including the reasons for the combination, so that competent authorities are able to assess whether the combination of functions is appropriate in the circumstances.

Compliance staff should generally not be involved in the activities they monitor. However, a combination of the compliance function with other control units at the same level (such as money laundering prevention) may be acceptable if this does not generate conflicts of interests or compromise the effectiveness of the compliance function.

For practical reasons (for example, decision-making), and in certain circumstances (for example, in firms of only two persons), it may be more appropriate to have one person responsible for both functions. In this regard, firms should consider discussing the combination with their regulator.

In addition, where this combination occurs, the firm must, of course, ensure that the responsibilities of each function are discharged properly (ie, soundly, honestly and professionally).

Guideline 11 – Outsourcing of the Compliance Function

Firms should ensure that all applicable compliance function requirements are fulfilled when all or part of the compliance function is outsourced.

The UK MiFID outsourcing requirements for critical or important functions apply in full to the outsourcing of the compliance function.

The firm should perform a due diligence assessment before choosing a service provider, ensuring that the service provider has the necessary authority, resources, expertise and access to all relevant information in order to perform the outsourced compliance function tasks effectively. The extent of the due diligence assessment is dependent on the nature, scale, complexity and risk of the tasks and processes that are outsourced.

Firms should also ensure that when outsourced, partially or fully, the compliance function remains permanent in nature, ie, the service provider should be able to perform the function on an ongoing basis and not only in specific circumstances. They should monitor whether the service provider performs its duties adequately, which includes monitoring the quality and the quantity of the services provided. Senior management are responsible for supervising and monitoring the outsourced function on an ongoing basis and should have the necessary resources and expertise to be able to fulfil this responsibility. Senior management may appoint a specific person to supervise and monitor the outsourced function on their behalf.

Outsourcing of the compliance function within a group does not lead to a lower level of responsibility for the senior management of firms within the group. However, a centralised group compliance function may, in some cases, provide

the compliance officer with better access to information, and lead to greater efficiency of the function, especially if the entities share the same premises.

If a firm, due to the nature, size and scope of its business activities, is unable to employ compliance staff who are independent of the performance of services they monitor, then outsourcing of the compliance function could be an appropriate approach to take.

Guideline 12 – Competent Authority Review of the Compliance Function

The FCA will in the case of certain firms, where they are subject to direct supervision, review firms plan to meet, implement and maintain the UK MiFID compliance function requirements. This will apply in the context of the authorisation process, as well as, following a risk-based approach, in the course of ongoing supervision.

The FCA will assess whether a firm's compliance function is adequately resourced and organised, and whether adequate reporting lines have been established. They should require that any necessary amendments are made to the compliance function as a condition for authorisation.

1.6 FCA Report Titled 'The Compliance Function in Wholesale Banks'

Prior to the implementation of MiFID II, now referred to as UK MiFID, the FCA published its findings of a review it had conducted on 22 wholesale banks, covering large global banks operating across several business lines, medium-sized firms, as well as firms with less significant UK presence.

Key themes from the review:

- Compliance functions need to evolve in response to a changing environment, including the advancement of technology-driven businesses and operations and the expanded range of first line of defence controls.
- More strategic thinking is needed.
- Compliance functions are still considering how to best define their responsibilities as a second line of defence function.

- There is now more 'checking the checker' activity, whereby teams within compliance examine the effectiveness of the compliance function.



2. Ethics and Integrity

A former group chairman of a UK bank said:

> *'Part of the responsibility of top management is to ensure that the culture of the organisation reinforces the ethical behaviour that is a prerequisite of our industry. The example set by the people at the top will always have a huge influence on how the rest of the organisation behaves.'*

What we are considering here is the role of the ethical culture, how it is disseminated, and the impact of it on those involved. This leads to the fundamental question of: 'What is meant by an ethical culture?'

2.1 Ethical Culture

Culture can be described but not easily defined. Nor can it be imposed in an organisation by just putting in a policy or set of values to be adhered to. It must be recognised by those who are employed, or who come into contact with the business. At its most basic, corporate culture expresses itself in behaviour and the way a business is run, and staff are sensitive to management style. For example, if the prevailing culture is one characterised by greed or arrogance, it is soon reflected in the way staff behave. On the other hand, if it is one of trust,

integrity and openness, staff generally will feel comfortable at work and be proud of the organisation. This is likely to be reflected in dealings with others, whether it be fellow members of staff, other businesses or, most importantly, customers or clients.

Culture is also expressed in attitudes. When faced with a business problem, a manager has to balance legitimate requirements of attaining business objectives with the ethical requirements and expectations in the way this is achieved. The culture of an organisation will be affected internally and externally by the way the issues are handled, decisions are made and how subsequent policy is implemented.

For an ethical culture to be successful, it must have regard to all of those people and organisations who are affected by it, and it also must consider the impact it has upon the motivations and behaviours of those same individuals and groups.

Self-interest is an obvious motivation in any action and, taken to extremes, leads to a situation where one of the parties in any engagement will take advantage of another, to the detriment of that second party.

An example of when the party affected is less obvious is common in the world of the jobbing builder and related activities.

Example

A builder (supplier) offers a customer an apparent incentive: the frequently seen discount for cash payment. But what is his primary motivation? While it may be to give the customer a good deal and so to win the business for himself, this is being achieved through the likely under-reporting of his income and thus under-collection of legitimate taxes (both income and VAT) by the government.

So what would you do? Would you insist that you would make payment only against a proper invoice knowing that you will also have to pay VAT? Or would you be willing to compromise your ethical standards, using the argument that what you are doing goes on all the time?

Would you do that on a business contract at work? Does your company policy allow it? Almost certainly not. And in the business context there are numerous other interests to be taken into account when considering who will be affected and in what way.

This starts with the smallest participant, you as an individual, and can be followed through to affect all of the stakeholders in the business.

Your actions will affect your team, which may be defined as any colleagues with whom you work, up to the whole business itself.

The business will have shareholders and, as a result of your actions improving the profitability of the business, a dividend may be paid that otherwise would not have been paid. So, your action will have impacted them, apparently positively.

Had you asked them whether they supported your activities, however, knowing what was involved (the firm being a party to under-reporting and/or collection of taxes), is it likely that they would have agreed?

And what about the impact upon your external stakeholders, your other suppliers and customers who become aware of the standards your firm has adopted? Are they likely to be reassured? Are they likely to continue undertaking business with your firm? Will they also ask for a discount to avoid paying taxes?

Another question to ask is, where does it stop?

So what may have started out as a well-intentioned but inadequately thought-out action, may have consequences which extend far beyond your immediate area, similar in nature to tugging a loose thread on a sweater and discovering the garment unravelling!

2.2 Codes of Ethics and Conduct

For any industry in which trust is a central feature, the need to have demonstrable standards of practice and the means to enforce them is a key requirement. Hence, the proliferation of professional bodies in the fields of health and wealth, areas in which consumers are more sensitive to performance and have higher expectations than in many other fields.

The terms 'code of ethics' and 'code of conduct' are often used synonymously. However, there are subtle differences between the two. Using the term 'ethics' in a document which is designed to establish standards of behaviour implies that it involves commitment to and conformity with standards of personal morality, rather than simply complying with rules and guidance relating to professional dealings. A code of ethics will also generally be aspirational, encouraging adherence to values which are above and beyond normal standards.

A code of conduct will usually set out rules and guidance for individuals to adhere to. Alternatively, if it is considered that more specific guidance of standards of professional practice are beneficial, such standards might be set out in an appropriately entitled document, or in regulatory standards.

Within financial services, there is a structure where detailed and prescriptive regulation (with rules and guidance) is imposed by the PRA and the FCA.

Nevertheless, professional bodies operating in the field of financial services develop codes of conduct for their members. Professional bodies have reinforced the importance of ethical behaviour, especially integrity, for their members and provide guidance and training based around ethics and values. For example, the Chartered Institute for Securities & Investment (CISI) requires all members to complete, and pass, an ethics test called 'IntegrityMatters'. A practitioner working in the industry will therefore be exposed to both the rules issued by the regulator and ethical standards expected of them by a professional body.

This represents a major challenge and one in which you have chosen to become involved. So, we should be considering how our ethical behaviour can be used to enhance the rather rigid structures of the regulatory framework to produce enhanced outcomes for all stakeholders. At this point it is worth considering the principal features of what we can describe as the ethics versus compliance approach.

Ethics	Compliance
Prevention	Detection
Principles-based	Law/rules-based

Values-driven	Fear-driven
Implicit	Explicit
Spirit of the law	Letter of the law
Discretionary	Mandatory

Once again it is back to the choice of doing things because you ought to, because it is the right thing to do (ethics), rather than because you have to (rules).

Example

A fairly basic example occurs when driving. As a driver approaches a pedestrian crossing with pedestrians waiting to cross, the driver ought to stop to allow the pedestrians to cross, but the driver does have a choice and may choose not to stop. In other words, you ought to, but do not have to. Your action is governed by the choice that you make. However, once the pedestrian is on the crossing, the dynamic changes and you no longer have a choice. The Highway Code requires that you have to stop, as the pedestrian now has priority. Your action is governed by the rules.

At a considerably higher level, when the US Securities and Exchange Commission (SEC) announced its intention to prosecute a major US investment bank for a number of its actions in relation to the sale of securities supported by sub-prime mortgages, initial comment in the financial media suggested that it was not at all clear that the actions taken by the bank in what were highly complex transactions were actually illegal.

Nevertheless, whether the activities were legal or not, tremendous damage was done, not only to the bank in question, but to the whole industry in terms of significantly reduced share price, professional reputation and public perception of banks and the financial services sector as a whole – this mistrust of financial services firms (mainly banks and fund managers) still exists today.

Although the legal situation in the UK is not quite the same as the US, the reputation of the financial services industry is equally poor in the eyes of the general public, the fundamental reason for which may be described as an absence of integrity. This may be illustrated at grass roots level by misselling scandals (eg, PPI), and the bank bail-outs from the financial crisis of 2007–08, FX manipulation (FCA fines issued in 2014), 'LIBOR' manipulation (FCA fines in 2012 and 2015) and the recent Motor finance scandal (which is ongoing).

2.3 Applying the Code to a Professional Practice

From the outset of its role as the sole regulator for the UK financial services sector in 2001, the then regulator (the FSA) operated without a formal code of ethics, since the original view was that establishing ethical standards and the policing of ethical behaviour was not an appropriate responsibility for a regulator. This approach has been taken forward by the PRA and the FCA on its inception in 2013.

However, there were principles established both for regulated business itself and also for approved persons, and both sets of principles were capable of being invoked when considering the behaviour of industry participants that, while not breaches of actual regulation, were considered to be inappropriate or damaging to the industry.

2.4 The CISI Code of Conduct

2.4.1 Principles

In some cases, professional codes of conduct are values based, in that each principle within the code reflects a particular value which members are expected to uphold (eg, confidentiality or objectivity). However, because professionals within the securities and investment industry owe important duties to a range of stakeholders, including clients, the market, the industry and society at large, the CISI code is stakeholder based. This means that each of the eight Principles

specifies the duties owed by members to one or more stakeholders who may be impacted by their actions.

There may be situations where professionals are faced with making a decision where the correct course of action is not immediately obvious. In addition to referring to the Code, consideration of the following could help to decide the right course of action.

Clear & Honest	Have I told no lies or 'half-truths' to any party involved in my reaching my decision?
Impartial & Open	Is everyone affected by my action or decision aware of the consequences?
Straightforward & Transparent	Have I made sure that my action or decision will not result in any party being unknowingly disadvantaged or unduly advantaged?
Informed & Fair	Have I considered the interests of my potential stakeholders and not been misleading when making my decision?

The Principles, and corresponding stakeholders, are outlined below.

	The Principles	Stakeholder
1.	**Personal Accountability** – to strive to uphold the highest levels of personal and professional standards at all times, acting with integrity, honesty, due skill, care and diligence to avoid any acts, either in person, in a remote working environment or digitally which may damage the reputation of your organisation, your professional body or the financial services profession.	Self, Clients, Regulators, Colleagues, Market Participants, Firm, Profession, Society

2.	**Client Focus** – to put the interests of clients and customers first by treating them fairly, being a good steward of their interests, never seeking personal advantage from confidential information received and utilising client data only for a defined purpose.	Clients
3.	**Conflict of Interest** – being alert to and actively managing fairly and effectively any personal or other conflicts of interest, obeying legislation and complying with regulations to the best of your ability, ensuring you are open and cooperative with all your regulators, challenging and reporting unlawful or unethical behaviour.	Clients, Market Participants, Regulators
4.	**Respect for Market Participants** – to treat all counterparties and business partners with respect, to observe proper standards of market integrity, good practice, conduct and confidentiality required to maintain the highest level of mutual trust.	Clients, Market Participants
5.	**Professional Development** – to strive continually for professional excellence, committing to Continuous Professional Development (CPD) and promoting and supporting the development of others.	Profession, Clients, Colleagues
6.	**Aware of Capabilities** – to decline to act on any matter about which you are not competent or qualified unless you have access to such advice or assistance to carry out the work in a professional manner, taking into account the nature of the individual mandates given by your customers and counterparties.	Clients, Profession, Market Participants

7.	**Respect Others and the Environment** – to treat everyone fairly and with respect, supporting opportunity for all, embracing diversity and inclusion and ensuring that the environmental impact of your work is considered.	Society, Colleagues, Clients, Regulators, Market Participants, Profession, Professional Body
8.	**Speak Up & Listen Up** – to be active in speaking up and encouraging others to do so by listening up, promoting a safe environment for all and recognising the responsibilities you have to the communities in which you operate.	Society, Colleagues

2.5 Key Principles of Integrity

Let us consider the principles of integrity through the following example of a real-life scenario.

Example

You are the managing director of a major company. It is six weeks before the year end. Two days ago, one of your sales teams made it onto the shortlist for an important and profitable tender from a major existing client. Success will mean that you will meet key annual targets.

Your team has been asked to make a presentation, along with a number of other short-listed competitors, and while sitting in the waiting area they discover, by accident, a presentation pack left behind, they believe, by their key competitor. As they are reading it, the boardroom door opens and they are ushered in to make their presentation. They keep the pack and take it back to their office.

Later that day they are told they have made it to the final two and are asked to return in three days with their final offer. They review the competitor's document regularly in finalising their tender.

At the start of the third day, by chance, you find out what has happened.

What are you going to do?
Option 1 Congratulate the team for being so observant in this competitive environment.
Option 2 Pretend that you didn't hear what you had been told.
Option 3 Inform the client that you have in error obtained a competitor's presentation and revert to your original offer.
Option 4 Apologise to the client and your competitor, withdraw from the bid, and take disciplinary action against your team members.

Before making your decision, consider what has happened and then, using the key measures of openness, honesty, transparency and fairness, decide what you should/would do. There is a widely held view that in business all is fair in winning an important contract, providing that what you do is not obviously illegal.

In this case, your competitor has left behind, by mistake, some important confidential information. A member of your team finds it. It is only human nature to take a look and we would almost certainly skim through it, in the manner that we read a magazine in a doctor's waiting room. You are then called into your meeting. What do you do at this point?

- Do you hand the pack to the client, saying that another team appears to have forgotten it?
- Do you leave it where you found it?
- Do you put it in your briefcase?

Essentially, you have a choice between taking it or leaving it.

Which action would meet all of the open, honest, transparent and fair tests?

Clearly you should leave the presentation where you found it.

But say that in your haste, as an automatic reaction, you have put it in your bag. You get back to the office and you still have it in your bag. What will you do?

- **Option 1** – Shred it without looking at it any further.
- **Option 2** – Shred it without looking at it any further and tell the owners what you have done.
- **Option 3** – Think that, having got the presentation, you might as well read it.
- **Option 4** – Tell your boss and give it to him without reading it.
- **Option 5** – Share the information with your team, so that you can construct a winning bid.

Which action(s) meet(s) all of the open, honest, transparent and fair tests?

The choices at this stage are whether or not you make use of the information, or how best you resolve the problem that you are now in possession of something that does not belong to you.

Do you believe that it would be right to make use of the information, because this is a competitive business and if you win the bid you will meet your sales target? If so, before taking any action, consider the following:

- How do you think that your competitor would react if they were in your position?
- How do you think that the client would react if they knew how you had constructed a winning bid?
- How would you react if you knew that a competitor was using your own confidential information against you?

At a personal level, is this any different from leaving your briefcase containing personal information in an office when you go for a job interview and one of the other applicants then using information that they had gleaned about you, to enhance their own CV? Would you be happy with that? How might the prospective employer react? Are they likely to congratulate the other candidate on being observant, or might they question their standards of honesty?

The fact is that this scenario should not present those involved with an insurmountable dilemma.

- In the first place they should not have removed the presentation.

- Having done so, they should not then have read it.
- Having read it, they should not have taken advantage of the knowledge gained.
- They should not have concealed the fact that they had made use of the information gained.

Overall, therefore, the team's behaviour was not open, honest, transparent, or fair.

So, in the terms of your original choices what might be an appropriate response?

- **Option 1** – Congratulate the team for being so observant in this competitive environment. *Clearly this is a bad response*.
- **Option 2** – Pretend that you did not hear what you had been told. You cannot pretend that you are unaware, and from a broader perspective this is almost worse than simply doing the wrong thing, because you know that it is wrong but are not prepared to do anything about it.
- **Option 3** – Inform the client that you have in error obtained a competitor's presentation and revert to your original offer. You have taken positive action in so far as you have told the client what has happened and have not taken action to improve your position. So, this is quite a good answer but does not resolve all of the issues.
- **Option 4** – Apologise to the client and your competitor, withdraw from the bid, and take disciplinary action against your team members. This is the most appropriate response in the circumstances as not only have you taken decisive action, but you have also taken steps to remind your own staff, as well as those with whom your firm comes into contact, what the standards are to which you operate and what you are prepared to do to ensure that they are maintained.

Option 4 is the most appropriate response, but is also the most difficult course to take and may well be a step beyond what your peers or competitors would do. But it does represent a public declaration of your firm's standards and your intention to maintain them.

2.6 Behaviour that Reflects Professional Integrity

We shall continue to use the example of confidential information when considering these elements, but with additional details.

Example

You have recently moved to Greenbank as a manager in the corporate finance department, a prestigious position which impresses all your friends.

On joining the firm, you are sent on an induction course to learn about the structure of the firm and its values, including the seriousness with which it takes adherence to its ethical standards. Your first assignment is hectic and you are engaged with two other colleagues, one senior and one junior to you, in making a pitch for a valuable piece of business with an established client.

While you are sitting in the client's reception area before giving your presentation, you discover on the floor, half under the chair in which you are sitting, the presentation pack left behind by accident, you assume, by your key competitor, Bluebank.

You mention it to your boss, who tells you to give it to him, and he starts to leaf through it. Suddenly the door to the boardroom opens and you are invited in to give your presentation. Your boss chucks the Bluebank presentation on to the table and you go into the meeting. The meeting seems to go well and later that day you hear that you have been invited back in two days' time to make your best and final offer.

The next morning the team gathers to prepare for the final bid, you are surprised to see on your boss's desk the Bluebank presentation – which you had seen him leave on the table.

He grins and says, 'It's a good thing that Mark (your junior) was alert, otherwise we might have left this behind.'

You express concern at the ethical implications of using proprietary information belonging to a competitor, particularly since this was a topic

specifically covered in your induction, which stressed the importance of acting with integrity in all situations

Your boss brushes aside your concerns, saying that what you were told on the induction programme is just PR and the reality is that it's a dog-eat-dog world. If you want to meet the almost impossible targets that you have been set, you must take advantage of every opportunity that you are given. And this presentation is manna from heaven.

This presents you with an enormous dilemma.

Your induction stressed the importance of the firm's ethical values. You are now faced with an obvious breach of these values, which supports your own personal beliefs that you should conduct yourself in business as you would in your private dealings.

But you are new to the bank and the department (and still on probation). Your boss tells you that no one takes much more than superficial notice of the firm's ethical standards, at least not when money is at stake. It would be career suicide to go against your boss.

Nevertheless, you pluck up courage to argue with the boss, saying that you believe in the importance of all staff adhering to the firm's code, not just because the firm has recently been fined by the regulator, but also because you know from your previous job that the market perception of Greenbank is that they are only too happy to bend rules.

Your boss, looking angry, is just about to respond, when the office door opens and the managing director (MD) enters. He says that he has just received a phone call from his opposite number at Bluebank, where there is great concern that they have lost a numbered copy of their presentation. They believe that it was left in the client's reception area, but they have been told by the client that it is no longer there. They know that Greenbank followed them and have asked whether we have the presentation.

Your boss replies that you did find it on the floor and he did look at it for about ten seconds and left it on the table when he went into the boardroom. But he will check with the rest of the team to see that it wasn't scooped up in their

papers and will come back to him immediately. The managing director thanks him and leaves the office.

Your boss looks at you challengingly and says, 'As you were saying?'

What are you going to do now, and what might be your reasons? Doing the right thing should be obvious and has just been made a bit easier. But we might usefully examine the position of each of the three team members.

- **Your boss** appears to be happy to use the proprietary information, as he argued against you and he endorsed Mark's action in bringing the competitor's presentation back to your office. Up to that point, he has shown complete disregard for the firm's ethical stance. However, he now has the opportunity to put that right and advise the MD that the presentation has been found among Greenbank's papers and return it to Bluebank.
- **You** have acted properly throughout and sought to protect your personal and professional standards and those of the firm.
- M**ark, the trainee**, has so far not acted with integrity because he took a deliberate action in picking up Bluebank's presentation and bringing it back to your office. His future ethical development may be affected by what happens next, but he seems already to have been tainted by the attitude displayed by your boss.

However, there are two possible further strands for consideration. Suppose that your boss tells the MD that your team does not have the presentation.

- **Are you prepared to go to the MD and report the true situation?** If so, what might be the cost to you and your career? What is likely to be the impact on your boss and on Mark, the junior team member?
- O**r are you going to keep quiet?**

The right answer must be that, regardless of the personal consequences, you cannot keep quiet if you know that the presentation has been retained by the team, but the MD has been told that you do not have it. Any other course of

action represents a complete denial of your own personal standards and those of the firm.

An additional consideration in this scenario is how the MD reacts when told that Greenbank does, in fact, have the Bluebank presentation.

He has a number of options, which are similar to those discussed in the earlier example.

1. The worst option would be for him to tell Bluebank that you do not have the presentation because, like your boss, he sees a competitive advantage for Greenbank.
2. Or, the MD may choose simply to say to Bluebank that yes, you have found the presentation, which had been scooped up with Greenbank's papers. Greenbank will shred it or immediately send it back, as Bluebank wishes. This is a straightforward response, but may leave the lingering suspicion in Bluebank's mind that Greenbank will have read the presentation and used it to their advantage. So, is it enough? That depends on how seriously Greenbank considers the need to appear above suspicion and to act with the highest standards of integrity.
3. The third option is that the MD decides that he wishes Greenbank to be entirely above suspicion and so not only does he return the presentation, but he withdraws Greenbank from the tender, advising both the client and Bluebank of his reasons for so doing. This is the most appropriate course of action in the circumstances, if Greenbank is serious about preserving or enhancing its reputation for integrity, whatever the actual circumstances of the Bluebank presentation's having ended up at Greenbank.

As before, the third course of action provides a tangible example of Greenbank's commitment to the highest standards of professional integrity.
A firm's corporate culture and attitude to ethics is set by the behaviour of the board and the executive.

The more senior the member of management who is seen to bend the rules, the more likely it is that staff beneath them will follow the example set.

2.7 Professional Integrity and Ethics within Financial Services

> *'Professionals within the securities and investment industry owe important duties to their clients, the market, the industry and society at large. Where these duties are set out in law, or in regulation, the professional must always comply with the requirements in an open and transparent manner.'*

> *'Membership of the Chartered Institute for Securities & Investment requires members to meet the standards set out within the Institute's Principles. These Principles impose an obligation on members to act at all times in a way beyond mere compliance.'*

These words are from the introduction to the CISI Code of Conduct, and the Principles themselves, which incorporate the Code of Conduct for financial advisers, and set out clearly the expectations upon members of the industry 'to act at all times in a way beyond mere compliance'. In other words, we must understand the obligation upon us to act with integrity in all aspects of our work and our professional relationships.

Perhaps the most obvious avowal of the application of ethical standards at both an individual and corporate level was the Latin motto of the old London Stock Exchange (LSE), dictum meum pactum (my word is my bond), which in its English form is now the motto of the CISI and its members.

What these short words are intended to say is: you can trust me or us. There is no qualification, there is no small print, and there is no attempt to provide wriggle room. Because the Exchange consisted of individuals who were a mixture of employees and partners in their firms, this motto became, by extension, the motto of the stockbroking profession and was regarded as synonymous with the City.

As noted previously, each of the eight CISI Principles specifies the duties owed by members to one or more stakeholders who may be impacted by their actions. However, there may be circumstances in which it is impossible to please all stakeholders at the same time. In situations like this, one may wonder to whom

do we most owe a duty of care, or in which order should we address the needs of conflicting stakeholders?

An easy solution to this problem was expressed by a former senior industry practitioner, who noted the order of priorities of the firm at which he started and of which he became a partner.

- Client first
- Firm second
- Self third

The purpose of these short words, and the much more encompassing words of the codes of conduct, are intended to provide direction to members of the professional bodies and, via the FCA and PRA, to other members of the financial services sector, as to what their behavioural requirements are in dealing in all areas, and with all stakeholders involved in the activity of financial services.

At the corporate and institutional level, this means operating in accordance with the rules of market conduct, dealing fairly (honestly) with other market participants and not seeking to take unfair advantage of either. That does not mean that you cannot be competitive, but rules and standards of behaviour are required to enable markets to function smoothly, on top of the actual regulations which provide direction for the technical elements of market operation. This is specifically referred to in Principle 4 of the CISI Code of Conduct, together with support from Principles 2 and 8.

At the individual client relationship level, Principles 1, 5, 6 and 7 remind us of the ethical responsibilities firms have towards clients, over and above complying with the regulatory framework and our legal responsibilities. But, as we have been discussing throughout this chapter, if you are guided by ethical principles, compliance with regulation is much easier.

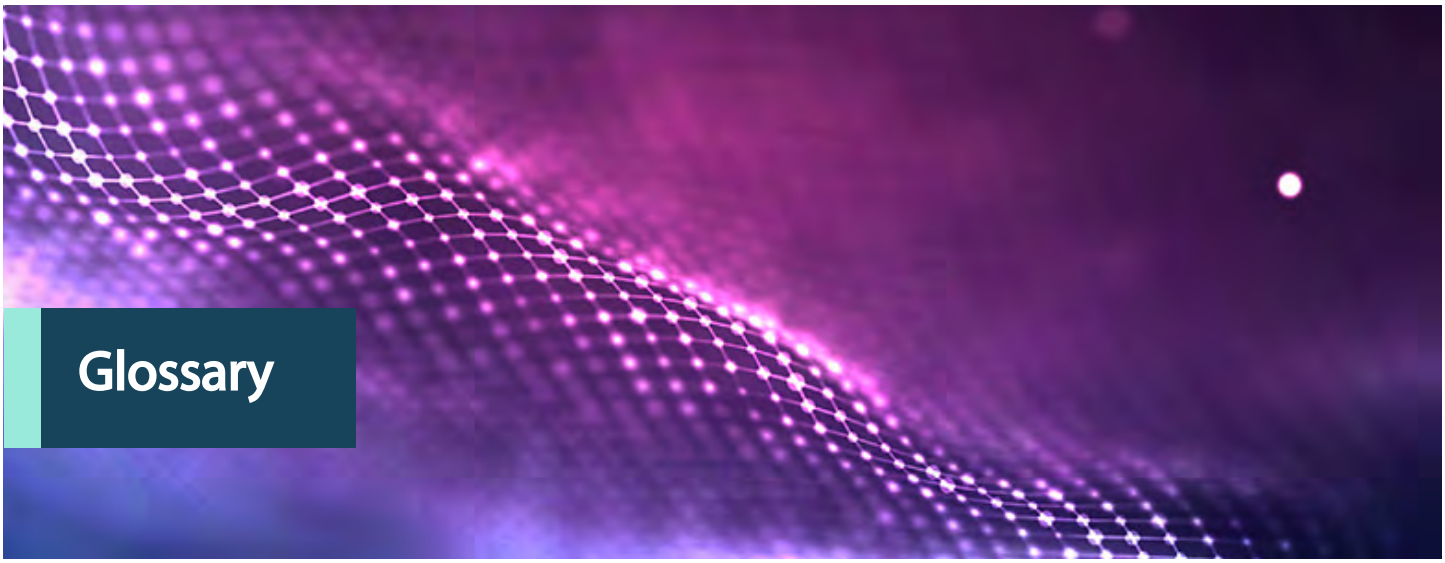
At the conclusion of this section, let us consider the words of an investment director and head of corporate governance at UK life firm, when speaking at a CISI annual ethics debate.

> *'It's personal; we as individuals are the City. We must take our responsibility for restoring trust and there can be no abdication of*

> *responsibility to third parties; we must conduct our affairs as good stewards; we must sort out right from wrong and behave accordingly. Members must live out being good stewards in the interests of their clients'.*

Find out more about Integrity and Ethics in Financial Services...





Glossary

Aggregation (Aggregate)
Multiple client orders are bulked together and processed as a single order. Customers must be notified of this procedure and any potential advantages and disadvantages.

Allocation
The division of a single aggregated order between two or more investors' accounts.

Anti-Money Laundering (AML)
See Money Laundering.

Appointed Representative
An appointed representative can be any type of person (ie, an individual or a company). They must be a party to a contract with an authorised person that allows them to carry on certain regulated activities, and the authorised person must have accepted responsibility for the conduct of these regulated activities in writing.

Approved Persons (APER)
Individuals who are approved by the FCA to undertake controlled functions. These individuals are required to comply with the FCA's Statements of Principle for Approved Persons and Code of Practice for Approved Persons. Following the extension of the SM&CR, APER now only applies to a limited number of individuals, such as appointed representatives.

Authorisation
The Financial Services and Markets Act (FSMA 2000) requires firms to obtain

authorisation prior to conducting investment business. Authorisation is gained by receiving one or more Part 4A Permissions from the FCA and/or the PRA.

Bank of England (BoE)

The UK's central bank, which acts as the government's banker and determines interest rates via its Monetary Policy Committee (MPC).

Best Execution

Firms take into account not only price factors, but also such issues as costs, speed, likelihood of execution and settlement, and all these in the light of the size and nature of the deal, in determining the means of obtaining the best outcome for a client when executing their deal. This applies when firms owe contractual obligations to its clients.

Capital Requirements Directive (CRD) & Capital Requirements Regulation (CRR)

This sets out the financial rules for financial firms that apply to banks, building societies and some investment firms. The aim of the CRD is to ensure that firms hold adequate financial resources and have adequate systems and controls to prudently manage the business and the associated risks.

Certification Regime

This is part of the Senior Managers & Certification Regime (SM&CR). Individuals will not be approved by the regulators, rather they will be assessed by their firm to confirm they are 'fit and proper' to perform their role. The PRA and FCA have different criteria as to who is subject to the regime.

Churning

Excessive trading by an investment firm in order to generate commission, regardless of the interests of the customer.

Client

Individuals or firms that conduct business through an authorised person. Every client is either a customer (retail or professional) or an eligible counterparty.

Client Assets/Client Money

Securities or other assets (including cash) held by a firm on behalf of its clients. The assets have to be kept separate (segregated) from the firm's own assets.

Collective Investment Scheme (CIS)
Open-ended funds such as unit trusts and open- ended investment companies (OEICs), also known as investment companies with variable capital (ICVCs).

Common Platform Firm
Firms subject to either the UK Capital Requirements Directive (UK CRD) or the UK Markets in Financial Instruments Directive regime (UK MiFID).

Compulsory Jurisdiction
The range of activities for which complaints fall compulsorily within the jurisdiction of the Financial Ombudsman Service (FOS).

Conduct of Business Sourcebook (COBS) Rules
Rules made by the FCA under the Financial Services and Markets Act (FSMA 2000) dealing mainly with the relationship between an authorised firm and its clients.

Conduct Rules
This is part of the Senior Managers & Certification Regime (SM&CR). The PRA and FCA approach means that all UK-based employees of relevant firms will be subject to high level individual conduct rules. There are additional conduct rules for individuals subject to the Senior Managers Regime.

Consumer Duty
An FCA initiative that introduced a Principle, cross-cutting rules and outcomes for the 'fair' treatment of consumers and the delivery of 'good outcomes' when purchasing financial products and services.

Contract for Differences (CFDs)
An investment instrument consisting of a contract under which the parties hope to make a profit (or avoid a loss) by reference to movements in the price of an underlying asset. The underlying asset does not change hands.

Contracts of Insurance
Financial products specified by Part III of the Regulated Activities Order 2001, with two subdivisions: general and long-term insurance contracts.

CREST
A recognised clearing house, CREST was the organisation in the UK that facilitated the clearing and settlement of trades in UK and Irish company shares, particularly in

dematerialised form. CREST changed its operating and legal name to Euroclear UK & Ireland in 2007. The term CREST is still used for the clearing and settlement system itself.

Criminal Justice Act (CJA) 1993

A key Act which includes provisions relating to insider dealing, including a definition.

Data Protection Act (DPA) 2018

Legislation governing how personal data should be held and processed and the rights of access to it.

Designated Investment Exchange (DIE)

An overseas exchange designated by the FCA as meeting certain standards of investor protection in terms of such criteria as market efficiency, transparency and liquidity.

Designated Professional Body (DPB)

Professional bodies whose members are able to carry on limited financial services business without the need for authorisation from the
FCA, providing that the limited financial services offered to clients are incidental to their main business. These are the professional bodies for lawyers, accountants, chartered surveyors, licensed conveyancers and actuaries.

Directives

Legislation issued by the European Union (EU) to its member states requiring them to enact and implement local legislation (transpose into national law).

Disclosure and Transparency Rules (DTR)

An FCA Sourcebook; the rules apply to issuers of securities on certain markets. The aim of the Disclosure Rules is to make provisions to ensure that information relating to publicly listed securities is properly handled and disseminated. The aim of the Transparency Rules, in part, is to implement the requirements of the Transparency Directive and to ensure there is adequate transparency of and access to information in the UK financial markets.

Durable Medium

Paper or any instrument which enables the recipient to store information addressed

personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information.

Eligible Counterparty (ECP)

A client that under UK MiFID client categorisations is either a per se eligible counterparty or an elective eligible counterparty. A number of MiFID provisions do not apply to activities undertaken by ECPs. This classification relates to limited activities.

Exempt Persons

Firms exempt from the need to be authorised to carry on regulated activities. The term includes bodies such as recognised investment exchanges (RIEs) and recognised clearing houses (RCHs).

Financial Conduct Authority (FCA)

The Financial Conduct Authority (FCA) is responsible for regulating conduct in retail and wholesale markets, supervising the trading infrastructure that supports those markets and for the prudential regulation of firms not prudentially regulated by the Prudential Regulation Authority (PRA).

Financial Conduct Authority (FCA) Handbook

The document containing the FCA rules and guidance, with which authorised firms must comply. It is divided into a number of separate Sourcebooks covering different subjects.

Financial Ombudsman Service (FOS)

The body established to investigate and determine the outcome of complaints made by eligible complainants against regulated firms. The FOS can make awards, when appropriate, up to a maximum threshold limit plus costs.

Financial Policy Committee (FPC)

Responsible for monitoring and taking action to remove or reduce systems risk with a view to protecting and enhancing resilience of the UK financial system.

Financial Services Act 2012

The Financial Services Act 2012 is the primary legislation through which the government- enacted reforms to the UK financial services regulatory structure. Its main role was to amend the Financial Services and Markets Act 2000 (FSMA) to

establish the now current regulators (PRA, FCA and the FPC) and to set out their additional powers.

Financial Services Act 2016

The Bank of England (BoE) and Financial Services Act 2016 included the strengthening of the governance and accountability of the Bank, by ending the subsidiary status of the PRA and allowing the National Audit Office to undertake value for money reviews of the Bank for the first time; taking further steps to protect tax payers from firm failure, by updating resolution planning and crisis management arrangements between the Bank and Treasury and ensuring that senior managers across the financial services industry can be held to account for failings that occur on their watch, through the extension of the senior managers and certification regime to all authorised persons.

Financial Services Act 2021

This Act is seen as the first step by the UK government in taking back control of the regulatory framework post-Brexit. It included the UK implementation of the Investment Firms Prudential Regime, amendments to the PRIIPs Regime and the UK Market Abuse Regime.

Financial Services and Markets Act (FSMA) 2000

The legislation that established the financial regulator (the FSA) and empowered it to regulate the financial services sector. The FSA was split in April 2013 – refer to the FCA and the PRA.

Financial Services and Markets Act 2023 (FSMA 2023)

FSMA 2023 allows the UK regulatory authorities (HM Treasury, FCA and the PRA) to make extensive reforms to the regulation of financial services in the UK by granting powers to HM Treasury and the regulators – to allow the integration of all onshored EU legislation into the PRA Rulebook and/or the FCA Handbook. It will implement the outcomes of the Government's 'Future Regulatory Framework' (FRF) Review – which is now called the 'Smarter Regulatory Framework' (SRF).

Financial Services (Banking Reform) Act 2013

The Banking Reform Act 2013 implemented the recommendations of the Independent Commission on Banking and the Parliamentary Commission on Banking Standards (PCBS), to put in place strict new rules on bank ring-fencing,

implement bail-in, and make sweeping changes to enhance individual accountability and raise standards in banking (the SMCR).

Financial Services Authority (FSA)

The agency created by the Financial Services and Markets Act (FSMA 2000) to be the single financial regulator in the UK. In April 2013 it was split into two – the FCA looking after conduct issues and the PRA looking after prudential issues.

Financial Services Compensation Scheme (FSCS)

Created to provide a safety net for customers in the case of firms that have ceased trading, and cannot meet their obligations to them.

Fit and Proper

Under the Financial Services and Markets Act (FSMA 2000), every firm conducting investment business must be fit and proper. The FCA has the autonomy to define the term in the UK.

Future/Futures

A futures contract is a legally binding arrangement by which parties commit to buy/sell a standard quantity and (if applicable) quality of an asset from /to another party on a specified date in the future, but at a price agreed today. Because the price is agreed at the outset, the seller is protected from a fall in the price of the underlying asset in the intervening time period (and vice versa).

His Majesty's Treasury (HM Treasury)

The government department that is responsible for formulating and implementing the government's financial and economic policies. Among other things this means that it is responsible for setting the primary legislation for financial services regulation in the UK.

Home State

The term used for the European Union (EU) country when a financial services firm conducts cross-border business, within the EU, is based.

Host State

The term used for a European Union (EU) country in which a financial services firm is doing business from another EU member state.

Information Barriers
Organisational barriers to the flow of information set up in large firms, to prevent the movement of confidential sensitive information between departments and to manage any potential conflicts of interest.

Information Commissioner's Office (ICO)
The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Inside Information
Information relating to a specific security, or an issuer, which is not publicly known and which would affect the price of the security if it was made public.

Insider Dealing
One of several offences created under the Criminal Justice Act (CJA)1993 which may be committed by an insider in possession of unpublished price-sensitive information if they attempt to deal in affected securities, encourages others to deal, or pass the information on.

Integration
The third stage of money laundering; integration is the stage at which the laundered funds appear to be of legitimate provenance.

Joint Money Laundering Steering Group (JMLSG)
A group whose membership is made up of 14 trade bodies in the financial services sector. The JMLSG publishes guidance notes which set out how firms should interpret and implement the UK's Money Laundering Regulations. This guidance is not binding but, where there is a breach, compliance with the guidance is relevant to an enforcement court.

Layering
The second stage of money laundering, in which money or assets are typically passed through a series of transactions to obscure their true origin.

LCH Limited
An independent clearing house which acts as central counterparty for trades executed on Euronext Liffe, the London Metal Exchange (LME) and Intercontinental

Exchange (ICE) Futures, and for certain trades executed on the London Stock Exchange (LSE). It is a recognised clearing house (RCH).

London Stock Exchange (LSE)

The dominant UK market for trading in securities, especially shares and bonds. The LSE is a recognised investment exchange (RIE).

Market Makers

Firms which quote bid and offer prices for a named list of financial instruments. They would normally have an obligation to make a price in any financial instrument for which it is market maker at all times.

Markets in Financial Instruments Directive (MiFID)

A European Union (EU) directive which allows firms authorised in one member state to provide/ offer financial services to customers in another member state, subject to some restrictions. It was enhanced/updated in 2018 by 'MiFID II'. The workbook refers MiFID II and MiFIR collectively as 'MiFID' – since the end of the Brexit transition period this referred as UK MiFID.

Markets in Financial Instruments Regulation (MiFIR)

A Regulation which came into effect alongside MiFID II in 2018, following a review of MiFID and as a response to the financial crisis of 2007–08. A Regulation does not require member states to 'transpose' it into local law. Market infrastructure requirements (Pre-Trade and Post-Trade Transparency and the Systematic Internaliser Regime) are contained in the Regulation to ensure that there is a uniform and consistent application across EU member states.

Misleading Statement

The term used for false information given about an investment, in order to (or with the effect of) affecting its value – a criminal act under Section 89–92 of the Financial Services Act 2012 and a potential form of market abuse.

Money Laundering (ML)

The process whereby criminals attempt to conceal the true origins of the proceeds of their criminal activities, and to give them the appearance of legitimacy by introducing them into the mainstream financial system.

Money Laundering Reporting Officer (MLRO)

A senior employee who is responsible for assessing internal suspicion reports, and, if these appear justified, reporting those suspicions to
the National Crime Agency (NCA).

Multilateral Trading Facility (MTF)

An MTF is defined as a multilateral system, operated by an investment firm or a market operator, and which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract. Operating an MTF is an investment service to which MiFID applies.

National Crime Agency (NCA)

The law enforcement agency to which suspicions of money laundering must be reported by a firm's money laundering reporting officer (MLRO).

Nominated Officer (NO)

A term for the officer who is required to receive a firm's internal suspicion reports under Proceeds of Crime Act 2002 (POCA), the Terrorism Act and the Money Laundering Regulations; in practice, usually the same individual as the money laundering reporting officer (MLRO).

Open-Ended Investment Company (OEIC)

A collective investment scheme (CIS) constituted as an open-ended company. This means that its share capital (the size of the fund) can expand or contract to meet investor supply and demand. It is also referred to as an investment company with variable capital (ICVC).

Option/Options

An option gives the holder the right (but not the obligation) to buy or sell a fixed quantity of an underlying asset on, or before, a specified date in the future. There are two basic types of option – puts and calls. The holder of a call option has the right to buy the underlying asset at a given price. The holder of a put option has the right to sell the underlying asset at a given price.

Organised Trading Facility (OTF)

It is a multilateral system which is not a Regulated Market (such as the LSE) or an MTF and in which multiple third-party buying and selling interests in bonds, structured

finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract. Unlike RMs and MTFs, operators of OTFs will have discretion as to how to execute orders, subject to pre-transparency and best execution obligations. Operating an OTF is an investment service to which MiFID applies.

Part 4A Permission

The specific activity which an authorised firm is permitted to carry on. It is so called because Part 4A permissions are granted by the FCA and/or the PRA under Part IV of the Financial Services and Markets Act (FSMA 2000).

Passporting

The method by which firms authorised in one European Union (EU) member state are, under MiFID, permitted to carry on regulated financial services activities in another state without the need to become fully authorised in that specific state. Following Brexit, this ceased to apply to UK firms looking to do business in the EU, and to EU firms looking to do business in the UK.

Placement

The first stage of money laundering, in which money is introduced into the financial system.

Principles for Businesses

12 key principles established by the FCA which must be observed by authorised firms. These principles are detailed in the FCA's Handbook.

Proceeds of Crime Act 2002 (POCA)

Legislation which contains, among other things, anti-money laundering provisions.

Product Intervention and Product Governance (PROD)

This contains the requirements for firms in respect of product oversight and governance processes (the systems and controls firms have in place to design, approve, market and manage products throughout the products' life cycle to ensure that they meet legal and regulatory requirements) and the FCA's use of the temporary product intervention rules.

Prohibition Order

An order which may be exercised by the FCA under powers given to it under Section

56 of the Financial Services and Markets Act (FSMA 2000). Such an order prohibits the individual in connection with whom it is granted from carrying out particular controlled functions on the grounds that they are not fit and proper.

Prudential Regulation Authority (PRA)

The PRA is responsible for the prudential regulation of financial firms, including banks, investment banks, building societies and insurance companies.

Public Interest Disclosure Act (PIDA) 1998

An act which, among other things, provides protection for employees who, in good faith, disclose suspicions of wrongdoing within an organisation. See also Whistleblowing.

Recognised Clearing House (RCH)

A term used to denote those clearing houses recognised by the FCA as providing appropriate standards of protection in the provision of clearing and settlement facilities to certain markets. LCH.Clearnet and Euroclear UK & Ireland are two examples of the five organisations granted this status.

Recognised Investment Exchange (RIE)

A term used to denote those UK exchanges which operate markets in investments, meeting certain standards set by the FCA.

Recognised Overseas Investment Exchange (ROIE)

An overseas exchange offering membership or providing facilities within the UK, and having been recognised by the FCA as meeting appropriate standards of investor protection.

Regulated Activities

Activities for which authorisation from the FCA (or exemption from the need for that authorisation) is required. Regulated activities are defined in relation both to the activities themselves, and to the investments to which they relate.

Regulated Activities Order 2001

The statutory instrument which defines the range of regulated activities.

Regulatory Decisions Committee (RDC)

A committee of the FCA which is responsible for disciplinary decisions.

Senior Managers & Certification Regime (SM&CR)

The regime introduced by the PRA and the FCA to bring individual accountability to staff working in the banking industry. It has three parts to its regime Senior Managers Regime, Certificate Regime and Conduct Rules. The regime initially applied to relevant firms (UK-incorporated banks, building societies, credit unions and UK-incorporated investment firms which are regulated by the PRA and which have permission to deal as principal) and insurance companies. Implementation was phased in for insurers subject to the Solvency II requirements, claims management companies and investment firms who are regulated by the FCA (Solo regulated firms).

Senior Managers Regime

This is part of the SM&CR. Individuals will be in a position where they direct/control and manage the firm's business (on a day-to-day basis) and are responsible for the discharge of the firm's regulatory obligations. Individuals will be approved by the regulator and held accountable in the event of issues arising.

Stabilisation

The activity of supporting the price of a new issue of securities or bonds in order to minimise the volatility that can sometimes arise with new issues.

Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal)

The Upper Tribunal took over the role of the Financial Services and Markets Tribunal (FSMT) in 2010. It is independent of the FCA and is appointed by the government's Ministry of Justice (formerly the Department of Constitutional Affairs).

Threshold Conditions

The conditions which a firm must meet before the FCA and the PRA will authorise or continue to authorise it.

Tipping Off

An offence established under various pieces of anti-money laundering and terrorist financing legislation. It involves disclosing the fact that an investigation is, or is likely to be, under way, if that disclosure may imperil any such investigation.

Training and Competence (T&C) Sourcebook

Part of the Business Standards block of the FCA's Handbook which sets out the FCA's requirements in connection with all staff (but

especially for individuals subject to either the APER or a classified as a Senior Manager or a certified individual under the SM&CR). The Sourcebook includes commitments which firms must make in connection with training and competence, including with regard to staff training, maintenance of competence, supervision and record-keeping.

UK Primary Market Function

The competent authority for listing in the UK is the FCA. This used to be known as the UK Listing Authority (UKLA).

Undertakings for Collective Investment in Transferable Securities (UCITS)

A type of collective investment scheme (CIS) established under the UCITS Directives. These directives are intended to harmonise European Union (EU) member states' laws so as to allow for the marketing of UCITS schemes across EU borders.

Unit Trust

A form of collective investment constituted under a trust deed. Unit trusts are open-ended investments; therefore, the underlying value of the assets is always directly represented by the total number of units issued, multiplied by the unit price, less the transaction or management fee charged and any other associated costs. Each fund has a specified investment objective to determine the management aims and limitations.

Voluntary Jurisdiction

The jurisdiction of the Financial Ombudsman Service (FOS) in which persons (whether authorised or unauthorised) participate by contract.

Whistleblowing

The term used when an individual raises concerns over potential wrongdoing. The Public Interest Disclosure Act 1998 provides some statutory protections for whistleblowers.

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