

EFFECTA'S ESSENTIAL INSIGHTS: A REGULATORY UPDATE

UK, October 2022

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

Historically, in the knowledge of it being holiday season, the summer has been a quieter period for regulators in the UK and UAE in terms of issuing final rules or consultation papers. It is safe to say 2022 has not followed this trend and there has been a wave of new papers, final rules and consultations from the FCA. Similarly, a wave of consultation papers, thematic review reports and Dear SEO Letters have also been published by regulators in the UAE.

For this reason, it has been incredibly difficult to pick which topics to include in this Q3 Newsletter. Whilst we hope this newsletter gives its readers the nuts and bolts of many of the regulatory matters currently being reviewed, it is by no means exhaustive. Therefore, should you have a question on any matter even if it

is not contained within this Newsletter, please do reach out. Our consultants are diverse in background and knowledge base, each one holding their own area of expertise, so whatever your question, we will have someone who will be able to help.

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

To review Effecta Middle East's Newsletter, [please click here](#).

In this newsletter EFFECTA UK covers the following topics:

1. Consumer Duty

In July 2022 the Financial Conduct Authority ('FCA') published its final rules in relation to the Consumer Duty ("the Duty"), with affected firms being required to have submitted their implementation plans to their respective Boards by the end of October 2022. The application of the Duty is much wider than anticipated and all firms must have assessed the impact of these rules to their business.

To find out whether the Consumer Duty applies to you, and what its requirements entail, [click here](#).

2. Dear CEO Letter: Asset Managers and Alternative Investment Firms

The FCA issued a Dear CEO letter to Asset Managers and Alternative Investment Firms on 9 August 2022. Within this letter the FCA supported the implementation of the above noted Consumer Duty and highlighted those areas firms should revisit to ensure their policies and procedures are sufficient.

Dear CEO Letters are indicators of the areas the FCA will focus on over the next 12 months. To understand more, [please click here](#).

3. Amendments to the Financial Services and Markets Bill

A proposed Financial Services and Markets Bill was sent to Parliament on 20 July 2022. This action was long anticipated by the market, with the Bill believed to set out the future of Financial Regulation in the UK post-Brexit.

For more information on the latest proposed amendments to the Bill, [please click here](#).

4. Appointed Representative: New Regime

In August 2022, the FCA published a Policy Statement setting out the new rules to improve its Appointed Representative regime. The new rules will be effective from 8 December 2022 and the Regulator expects firms to be fully compliant with the rules from this date.

For more information on the new rules and what firms can be doing to prepare, [click here](#).

5. Market Watch 70

In October 2022, the FCA issued Market Watch 70 which focused on market conduct and transaction reporting issues. This is a key area of focus for the Regulator. As such, Investment Firms, Credit Institutions, Trading Venues, Systematic Internalisers and Approved Reporting Mechanisms must ensure the accuracy and quality of their Transaction Reports. To find out more on what the FCA stated within its most recent regulatory newsletter, [click here](#).

6. Actions from the Regulator

In August 2022, the FCA fined Citigroup Global Markets Limited £12.6 million for failures relating to the detection and monitoring of market abuse.

In October 2022, the FCA fined Gatehouse Bank £1.5million for weaknesses in its financial crime systems and controls.

In October 2022, the FCA fined Sigma Broking Limited over £500,000 for failures in its market abuse framework. In addition, 3 former Directors were individually fined a total of £200,000 and banned from the industry.

For more information [click here](#).



1. Consumer Duty

Background

In its 2022/2023 Business Plan, the FCA highlighted its intention to focus on consumer harm and the efforts firms should be taking to fulfil their duty of care requirements.

It was therefore of no surprise when the FCA published its Final Rules on 'The Consumer Duty' with the associated implementation of a new Principle for firms "to deliver good outcomes for Retail Clients".

What is the intention of the new 'Consumer Duty'?

"The Duty" intends to strengthen and enhance the existing FCA handbook requirements. Whilst there are already several principles that take note of the provision of services to Retail Clients (such as Treating Customers Fairly), the intention of the latest version of "the Duty" is to provide firms with specific and tangible rule requirements that must be met.

Who does the duty apply to?

The Duty applies to all authorised firms involved in the distribution of a product or provision of a service to Retail Clients. For clarity, it is not about whether a firm has a direct relationship with Retail Clients but instead whether a firm is part of a Distribution chain that may have an impact on Retail Clients.

An example of this indirect application was the recent Dear CEO letter to Benchmark Administrators. Within this letter the FCA stated that whilst Benchmark Administrators are not directly within the scope of the Duty, those firms in the Distribution chain will be. Consequently, the FCA expects Benchmark Administrators to identify those parties within the distribution chain who are covered, and to support these parties in meeting their obligations.

For the purposes of the Consumer Duty, a Retail Client is defined as a customer who is not an eligible counterparty or an elective or professional client (as defined in the FCA Conduct of Business Sourcebook).

What are the main changes?

The Duty introduces a new Consumer Principle that states a firm must act to deliver good outcomes for its Retail Clients. This will be Principle 12 in the FCA's Principle for Business Handbook.

The Four Outcomes – the FCA has implemented four key elements which firms falling under Principle 12 will be required to comply with:

- i. Product and Services: Firms must ensure products and services are suitable for each individual retail client.
- ii. Price and Value: Firms must provide consumers with products and services which are fairly priced and valued.
- iii. Customer Understanding: Firms must ensure communications about products and services are provided to Retail Clients in an appropriate manner.
- iv. Consumer Support: Firms must have appropriate systems in place to provide adequate support to customers.

What are the Key Dates?

- 31 October 2022 – Boards / Management bodies of firms to which the Duty applies must have agreed on their firm's plans for implementing the Duty in compliance with the deadlines specified below. Firms should expect to share the implementation plans, board papers and minutes with the FCA if requested.
- 31 July 2023 – For new and existing products and services that are open to sales and renewals, all remedial actions must be implemented before the new rules come into force. Open products and services must comply with the Duty by this specified date.
- 31 July 2024 – Firms must have implemented all steps necessary to ensure that closed products and services comply with the Duty by this date.



What actions should firm's be taking?

If firm's haven't already done so, they must submit their implementation plans to their Board by 31 October 2022.

These plans need to provide the Board with sufficient detail on the Duty, how it applies to the firm and include specific milestones and details of the programme which will be implemented to ensure the firm meets its regulatory requirements by the dates specified above.

The Board must appoint a Consumer Duty champion within Senior Management to run the project and must ensure it receives regular management information on the progress of the implementation plan.

How can Effecta Help?

Effecta is working with firms currently to finalise implementation plans and to scope and plan the programme of work which is required to be completed by July 2023.

If you require help understanding the Consumer Duty and how it applies to your business, please reach out to Effecta directly.



2. Dear CEO Letter: Asset Management & Alternative Investment Firms

Background

The Dear CEO letter provided an update on the FCA's view of the key risks of harm that alternative investment firms, and the markets in which they operate pose to customers.

The letter was a continuation of the FCA's previous letter of January 2020, citing many of the same high-level topics as continuing supervision priorities in this sector over the next 12 months.

What are the FCA's supervisory priorities?

The FCA was clear in highlighting the following as its supervisory priorities for 2022/2023:

- i. Putting Consumers First: Firms' investment strategies must carry appropriate levels of risk for their target market. The FCA focused on Financial Promotion rules and the completion of robust investor assessments.
- ii. Conflicts of Interest: Firms must ensure conflicts are identified and managed appropriately to avoid poor consumer outcomes and a loss of market integrity.
- iii. Market Integrity and Disruption: Firms must ensure their risk functions are appropriately resourced, their market abuse control frameworks are tailored and sufficient for the business in which they operate, and culture is being proactively driven by senior management.
- iv. ESG: In scope firms must ensure they have implemented the disclosure rules.

What are firms expected to do in response to this letter?

The Board or Executive Committee's of firms in this space are expected to have considered the Dear CEO Letter and to have sought assurance internally that each of the above noted priorities are being handled in accordance with regulatory requirements.

In summary, firms need to have been proactive in their assessments and where gaps or potential improvements are identified, should be taking steps to remediate.

How can Effecta help?

Effecta has extensive experience conducting deep dives/thematic reviews on behalf of clients. These reviews involve examining a firm's existing policies, procedures and control framework against the regulatory requirements and identifying whether they are sufficient from an FCA perspective.

Effecta works with firms to complete any identified remediation work, or to produce board reports confirming the adequacy of its control frameworks which can be provided to a third party on request.

If you would like Effecta to complete a deep dive or general health check on your firm, please do get in touch.



3. Amendments to the Financial Services and Markets Bill

What is the Financial Services and Markets Bill?

Whilst an EU member state, the UK applied hundreds of pieces of EU financial services legislation. When the UK left the EU in December 2020 a lot of this legislation was preserved as "retained EU law".

The UK government has been very public in stating it believes that for the most part, issues dealt with by this retained EU law would be better handled by the UK regulators (FCA/PRA).

The Financial Services and Markets Bill is the Government's first step to introducing this transfer back to the UK regulators, with some considering it the beginning of the UK's divergence from the EU.

The Bill features several anticipated changes to the EU legislation as well as setting out the future of Financial Regulation in the UK post-Brexit.

What are the main changes?

The main changes include empowering the FCA and PRA with greater authority and introducing a secondary objective of competition for the UK Regulators. This latter change highlights the Government's objective to make the UK a jurisdiction with less red tape and a place which promotes competition. An objective which is supported further by the proposed removal of the share trading obligation for EU markets and the double volume cap. Both changes which the Government confirmed were made to encourage a more open and competitive market in the UK.

Perhaps the most significant change which the bill could introduce would be to allow the Treasury to have powers to intervene with the Regulators approach on a matter, when it feels there is a 'significant public interest' in doing so. This is in addition to the proposal to enable the Treasury to commission third party reviews of the FCA/PRA.

These proposed powers to the UK Treasury have been widely debated and, in some audiences, criticised on the basis they undermine and could compromise the independence of the Regulators. The Bank of England boss Andrew

Bailey warned against government interference with the regulators stating, 'Anything that would weaken the independence of regulators would undermine the aims of the reforms.'

It should be noted the Treasury powers were backed by the former Prime Minister, Liz Truss. It remains unclear whether the new Prime Minister, Rishi Sunak will endorse or remove these powers, but it is anticipated significant changes will be made to the Bill in the next quarter.

When will the Bill be effective from?

The Bill completed its first two reviews in the House of Commons on 7 September 2022.

The Bill is now in the Committee stage where it will be reviewed in a line-by-line examination after which it will return to the floor of the House of Commons where any further amendments will be proposed. This is expected to happen by the 3 November 2022 after which the Bill will pass to the House of Lords before the final stages of Royal Assent.



4. Appointed Representatives: New Regime

Background

In August 2022, the Financial Conduct Authority (FCA) published a **Policy Statement** setting out new rules to improve its Appointed Representative (AR) regime. The new rules will be applicable to all existing and future firms operating as either a Principal or Appointed Representative.

Why have the new rules been implemented?

The FCA believes that a large number of existing Principals have limited or no on-going control and oversight of their ARs and that this is having a negative impact on the market. In the FCA's Policy Statement, the Regulator highlighted that 61% of the complaints they received in the period 2018 to H1 2019 related to ARs.

When do the new rules come into force?

The new rules become effective on 8 December 2022. The FCA expects firms to be entirely compliant with the new rules from this date. **Therefore, firms must be preparing now.**

What do the new rules aim to achieve?

- Clarify and enhance Principal firms' responsibilities for their ARs
- Improve oversight of ARs
- Place greater internal control and reporting responsibilities on principal firms

What are the new rules?

1. Enhanced Reporting Requirements

The FCA will require Principals to provide significantly more information on their ARs on an initial, annual and ad hoc basis. The types of information required to be provided by Principals are:

- Information on the ARs business activity, including any non-regulated activities.
- Information regarding the nature of the financial arrangements between the Principal and the AR.
- Estimations on revenue in the first year of appointment of an AR.
- Notification of significant changes to any of the above.

2. Enhanced Oversight Requirements

Principals will be required to complete annual self assessments on the fitness and propriety of their AR's as well as the adequacy of their control framework and oversight of the ARs activities; with these assessments being formally documented and available for review at the request of the FCA.

In addition, Principals will be required to:

- Implement wind down plans and controls to ensure their ARs do not operate outside of the scope of their permissions
- Ensure they have systems and controls in place which provide a comparable level of oversight of an AR to those directly employed by the firm

What should firms be doing now?

As detailed above, Principals are required to be compliant with these new rules by 8 December 2022.

The FCA has stated it will issue an information request to all Principals (in the form of a Section 165 template). Firms must be able to provide answers to these information requests without delay and therefore Principals must be taking steps now to ensure they have the systems and controls in place to capture and monitor the relevant information by 8 December 2022.

How can Effecta help?

Effecta is currently working with clients to analyse their control frameworks against the new rules, identifying the steps which need to be taken to ensure they are compliant by 8 December 2022.

If you would like Effecta to conduct a review or to advise you on whether your existing governance and oversight arrangements satisfy the new rules, please do reach out.



5. Market Watch 70

What did this Market Watch cover?

The FCA used this newsletter to focus on the importance of relevant firms submitting accurate transaction reports and (financial instrument reference) data submissions.

The FCA noted the quality of such data reports was often poor and untimely.

Why is the FCA concerned about Transaction and Data reports?

The FCA has always highlighted that Transaction Reports and submitted Instrument Reference data play a key role in its ability to conduct effective market oversight. These data points allow the FCA to know what is happening in the market and are cited as an invaluable tool in the Regulator examining market events and detecting and investigating market abuse and financial crime.

In fact, the recent CumEx-Files scandal is widely reported to have been identified through the submission of transaction reports, highlighting unusual activity in the trading of certain shares.

What are the FCA's concerns?

Whilst the FCA notes that a number of firms are demonstrating a much better understanding of their reporting requirements, the FCA's own data integrity checks are highlighting that the quality of these transaction reports across the markets are still poor.

Further still, the FCA does not believe firms are conducting regular or sufficiently thorough annual or ad hoc reconciliations, with many firms failing to identify or notify the FCA of reporting breaches. The FCA's concern is that firms are not aware of their errors and are thus failing to take remedial action, resulting in firms continuing to breach.

What steps should firms be taking?

The FCA has been increasing its focus on the quality of data reports since the UK left Europe. The FCA uses this data not only for oversight but to obtain an insight into the market, and ensure it has an accurate understanding of where activity is being conducted (regions, trading venues) and by which entities.

Firms must ensure they understand their reporting requirements and are mapping their reports correctly according to the rules. As detailed above, the FCA has concerns firms do not have robust control frameworks which are capable of identifying errors and therefore firms should be reviewing their oversight and ensuring the correct resources and checks are in place; including (but not limited to) conducting at least annual reconciliations on the data reports they submit.

How can Effecta Help?

Effecta conducts Health Checks for its clients which can include a review of a client's transaction reports. Effecta has a strong network and works with well-established and industry recognised affiliates in completing transaction reporting remediations projects.

If you have concerns regarding the accuracy and quality of your data reports or have not completed a health check on this area recently, please do reach out to Effecta.



6. Actions Taken by the Regulator

Citigroup Global Markets Limited fined £12.6m by the FCA

The FCA fined Citigroup Global Markets Limited (Citigroup) £12.6m for failures relating to the detection of market abuse, details of which were released by the FCA on 19 August 2022.

The FCA stated that "By failing to properly implement the MAR trade surveillance requirements, Citigroup Global Markets could not effectively monitor its trading activities for certain types of insider dealing and market manipulation." This statement is in direct reference to the EU regulation on Market Abuse from 2014 in which Article 16 (2) refers to detecting and reporting suspicious orders and transactions.

The FCA also interestingly criticised Citigroup's implementation of MAR stating sufficient steps had not been taken to ensure its effective implementation within the business. The FCA highlighted that had such steps been taken, Citigroup would have identified the applicable risks and implemented enhancements at an earlier stage.

Given regulated firms are currently facing a large amount of regulatory reform post-Brexit, firms should draw some lessons from this FCA notice and the importance of effective implementation of revised or new pieces of legislation. Some things to consider would be:

- To complete comprehensive reviews of regulatory changes against the current business – ensuring your firm is not only following the high-level rules but also paying attention to the supporting guidelines.
- To conduct full risk assessment and gap analyses – to understand what is required to meet the regulations as well as to understand the scope of work and resources required.
- Assigning clear ownership for objectives. This is one of the themes throughout the notice as the FCA noted a lack of communication between Citigroup's internal departments.
- Firms should not rely on global programmes to achieve local compliance. This is particularly important for firms to consider given the potential changes to UK regulations post-Brexit.

Gatehouse Bank fined £1.5m by the FCA

The FCA fined Gatehouse Bank £1.5m for significant weaknesses in its financial crime systems and controls, details of which were released on 14 October 2022.

The FCA noted that Gatehouse had failed to conduct sufficient checks on those clients which would be considered High Risk from an AML perspective, specifically highlighting failures in obtaining information with regards to the customers source of wealth and funds, and the absence on appropriate ongoing AML monitoring.

The FCA also identified failures in Gatehouse's handling of customers with associated PEP's, and a lack of resilience to push back on clients who refused to provide the required information to conduct the appropriate level of due diligence checks.

In October 2022, the FCA fined Sigma Broking Limited £530,000 and banned and fined its former directors

The FCA issued individual fines to 3 Directors of Sigma Broking totalling £200,000 and fined the entity itself a further £530,000 for failures relating to market abuse.

In January 2016, the FCA became aware of transaction reporting anomalies at Sigma on the basis the brokerage house had failed to report any of the equity CFD or spread-bet transactions it had executed since 2014. Furthermore, it was identified Sigma did not report a single STOR (suspicious transaction or order report) during this period.

Following a comprehensive investigation, the FCA concluded Sigma's market abuse control framework was deficient, highlighting there were no formal policies or controls in place to monitor transactions. The firm was found to have breached Principle 3 which states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

In addition to the poor control framework and infrastructure, the FCA identified that Directors



had breached their individual responsibilities to take reasonable steps to ensure that the business for which they were responsible complied with the relevant regulations. Examples of what was defined as poor management were failures to hold regular Board meetings, failure to ensure adequate risk assessments were undertaken prior to engaging in new activity and failure to conduct sufficient due diligence on the fitness and propriety of individuals holding senior management functions.

How can Effecta Help?

In 2022, the FCA have shown a real focus on highlighting the importance of firms completing risk assessments and tailoring their control frameworks to suit the specific risks faced by their businesses. These fines should demonstrate how seriously firms should take ongoing risk assessments and further still how important it is individuals fulfil and discharge their responsibilities to the required standard, specifically those in Senior Management.

Effecta has extensive experience creating risk registers and tailoring control frameworks to its clients' businesses. In addition, Effecta has supported numerous firms in the successful completion of its SMCR projects, ensuring individual responsibilities are clearly delineated and supported.

If you need help to review your risk assessments, control frameworks or senior management documentation, please reach out to Effecta.

