HOWARD KENNEDY

# A GUIDE TO THE FCA'S REGULATORY INITIATIVES GRID

HOWARD KENNEDY

**This document has been created by Howard Kennedy to compliment the FCA's Regulatory Initiatives Grid which was published on 7 May 2020. The Grid was published by the FCA to provide a clear understanding of the regulatory pipeline and to help stakeholders plan for initiatives that might have significant operational impact on them**

**This document should be read in conjunction with the Grid as it provides background and context to measures described in the Retail investments, Investment Management and Wholesale Financial Markets sections. It also breaks down the various initiatives by relevance to different stakeholders and rates each initiatives relative importance to the financial services industry. Please note, this document is not intended to be a comprehensive summary of all regulatory initiatives on the horizon, but rather a guide to help interested parties to understand the FCA's grid better and to assess what elements (if any) are likely to be relevant to their business.**

**There are some big changes on the horizon for many involved in the financial services industry. If you would like to chat about how one of the initiatives will affect you or your business, contact James Kaufmann.**



Howard Kennedy LLP, June 2020

This table shows the **regulatory initiatives (x-axis)** discussed in the Grid which are relevant to the investment management industry and **to whom they are likely to be of interest in the first instance (y-axis)**

| | FCA CFI: Accessing and using wholesale data | FCA: Policy - EU Regulated Covered Bond Regulation | FCA: Guidance on Market Abuse Regulation | FCA Consultation: OEICs | FCA: Prohibiting cryptoassets investment products | FCA Consultation: Platform Transfer exit changes | FCA: Platform Transfer rules changes | FCA / HM Treasury Review: Evaluation of RDR and FAMR | FCA Review: MIFID II implementation | HM Treasury Consultation: Overseas funds regime | BofE / FCA: Survey into open ended funds | HM Treasury Consultation / FCA: Review of UK Funds | HM Treasury / FCA / PRA: Investment Firms Prudential Regime |
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| **IM: Traditional assets, not managing funds** | | | | | | | | | | | | | |
| **IM: Traditional assets, managing funds** | | | | | | | | | | | | | |
| **IM: Alternative assets, not managing funds** | | | | | | | | | | | | | |
| **IM: Alternative assets, managing funds** | | | | | | | | | | | | | |
| **Cryptoasset firms** | | | | | | | | | | | | | |
| **Investment advisers** | | | | | | | | | | | | | |
| **VCT funds** | | | | | | | | | | | | | |
| **VCT managers** | | | | | | | | | | | | | |
| **Investors (professional)** | | | | | | | | | | | | | |
| **Consumers (retail)** | | | | | | | | | | | | | |

# Wholesale Financial Markets

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| **1. FCA Call for Input: Accessing and using wholesale data** | 01 October 2020 – Call for input closes | M |
| The FCA has opened a Call for Input (CFI) on the changing use and value of data in wholesale markets. The CFI has two areas of focus:<br>a. The use and supply of market data, with an emphasis on trading data, benchmarks and market data vendors. The FCA want to understand whether data users have concerns relating to how data (used to trade, make investment decisions and evaluate investment decisions) is sold;<br>b. The access to and changing use of data and analytical techniques across wholesale markets<br><br>Respond to the CFI here. | | |
| **2. FCA: Policy work on the EU Regulated Covered Bond Regulation** | Key dates to be announced | H |
| Covered Bonds are debt obligations issued by credit institutions which offer double-recourse protection to bondholders. If the issuer fails, the bondholder has:<br>a. A direct and preferential claims against particular designated assets; and<br>b. An ordinary claim against the issuer's remaining assets.<br><br>Covered bond markets across the EU are fragmented with varying performance between states. This limits standardisation in underwriting and disclosure practices and causes obstacles to deep, liquid and accessible cross-border markets.<br><br>The European Commission is developing a European framework for covered bonds and the FCA will be developing policies relating to this framework. It is unclear how Brexit will affect this. | | |

| 3. FCA: Guidance on Market Abuse Regulation | Q1 2020: Draft Guidance | |
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| The Market Abuse Regulation (MAR) came into force in July 2016; MAR is the UK's civil market abuse regime which runs in parallel to the criminal regime.<br><br>The FCA is creating a best practice guidance note for government departments, industry regulators and public bodies (and their respective staff) setting out how MAR applies to them, what it means in practice and how the FCA can assist. This will cover topics such as insider dealing and unlawful disclosure of inside information. | | **L** |

## Retail Investments

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| **1. FCA Consultation: Open-ended Investment Companies** | 1 October 2020 – Consultation closes; 2021 – implemented | **M** |
| In 2017, the FCA published a discussion paper on whether premium listing obligations applicable to open-ended investment companies (OEICs) should be dis-applied and OEICs should be listed in the standard-listing segment; respondents to the discussion paper believed that there is limited rationale for the premium listing of OEICs and that, given the nature of their shares, a standard listing of these companies' units might be more appropriate.<br><br>The FCA have now published a consultation setting out how they propose to make the necessary changes to the Listing Rules to create a more proportionate listing regime for OEICs in standard listing, whilst ensuring existing investor protections are maintained.<br><br>Respond to the Consultation here. | | |
| **2. FCA: Prohibiting investment products referencing certain cryptoassets** | Q2 2020 – Potential Final Policy Statement and Handbook rules published | **H** |
| The FCA believe that cryptoassets are causing harm to consumers and markets and in October 2018 the UK Cryptoassets Taskforce (consisting of the Treasury, FCA and BofE) published a Final Report setting out the UK's policy and regulatory approach to cryptoassets.<br><br>In July 2019, the FCA published a consultation on a potential ban on the sale to retail consumers of derivatives that reference certain types of cryptoassets. The FCA proposed such a ban because they believe that retail consumers can't reliably assess the value and risks of derivatives (contracts for difference, futures and options) and exchange traded notes (ETNs) that reference certain cryptoassets. The FCA estimated a ban could reduce harm by £75m to £234.3m a year for retail investors.<br><br>The consultation has now closed and the FCA are considering whether to proceed with the rules; if it does, it will publish a final policy statement and Handbook rules in the second quarter of 2020. | | |

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| **3. FCA Consultation: Platform Transfer exit changes** | Key Dates to be announced | **M** |
| In March 2019, the FCA published their Investment Platforms Market Study (IPMS) which included a chapter on exit fees; the FCA stated the believed a ban on platform exit fees is likely to be appropriate as a measure to reduce consumer harm.<br><br>The FCA had hoped to consult on the issue in 2019 but in December 2019 delayed the consultation until Q1 2020. We await further update on the details of the consultation. | | |
| **4. FCA: Platform Transfer rules changes** | 31 July 2020 – New rules come into force | **H** |
| In March 2019, the FCA published their Investment Platforms Market Study (IPMS) which concluded that although the investment platforms sector is generally working well, rule changes were needed to allow consumers to switch firms more easily and to allow platforms to negotiate with fund managers to get discounts on funds available on their platforms.<br><br>The FCA published a consultation alongside the IPMS and in December 2019 published a Policy Statement summarising feedback to this and the final rules. The final package of rules introduce requirements for platforms to:<br>• offer consumers the choice to transfer units in investment funds that are common to both platforms via an in-specie transfer;<br>• request a conversion of unit classes, where this is necessary to enable an in-specie transfer to take place;<br>• ensure that consumers moving onto a new platform are given an option to convert to discounted units, where these are available for them to invest in. | | |

| **5. FCA / HM Treasury Review: Evaluation of Retail Distribution Review and the Financial Advice Market Review** | Autumn 2020 – Publication of RDR and FAMR review findings | |
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| Retail Distribution Review (RDR): a FCA initiative designed to increase clarity about different types of financial services available and improve transparency on the costs associated with financial advice. The RDR raised the minimum level of adviser qualifications, changed the way charges and services were disclosed to consumers, and banned the use of commission to pay for advice. Most changes came into effect in 2012.<br><br>Financial Advice Market Review (FAMR): A FCA / HM Treasury Joint Initiative to identify ways to make the UK's financial advice market work better for consumers by creating affordable and accessible financial advice and guidance. The FAMR led to 28 recommendations being published in 2016 and subsequently implemented.<br><br>The FCA is reviewing whether the RDR and FAMR were successful in achieving their objectives and assessing what consumers need from the market. They opened a call for input in 2019, surveyed 400 firms in August 2019 and have commissioned qualitative research on how consumers interact with the market. The FCA intends to continue their research and analysis of firm data. | | **L** |

# Investment Management

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| **1. FCA Review: MIFID II Product Governance assessments/Review of MIFID II implementation** | Key dates to be announced | **L** |
| MiFID II is an EU regulation that seeks to improve competiveness by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments. It is a revision of MiFID and has applied since January 2018.<br><br>The FCA is undertaking a review of MiFID II implementation to assess how asset managers:<br><br>• oversee the design of their products;<br>• identify their target market; and<br>• monitor their products and distribution activities;<br><br>in compliance with MiFID II's product governance requirements.<br><br>Guidelines on MiFID II's product governance requirements can be found here. | | |

| 2. HM Treasury Consultation: Overseas funds regime | 11 May 2020 – Consultation closed | H |
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| Many investment funds marketed in the UK are domiciled in the EU and gain access to the UK market though the EU passporting regime. Following Brexit, the passporting regime will end at the end of the transition period (although the UK government has introduced a temporary regime so EU funds are able to continue marketing in the UK for a limited time after the transition period ends. However, after this EU funds will need to gain permanent market access to the UK.<br><br>HM Treasury published a consultation in March 2020 setting out the government's proposal for a new process to allow investment funds domiciled overseas to be sold to UK investors. The new 'overseas funds regime' will introduce two regimes based on the principle of equivalence:<br>• A regime for retail investment funds; and<br>• A regime for money market funds.<br><br>The consultation closed on 11 May 2020. | | |
| **3. BofE / FCA: Survey into open ended funds** | Paused until further notice | M |
| In December 2019, the Financial Policy Committee (FCP) published a Financial Stability Report setting out the initial findings of a joint review by the FCA and the BofE on open-ended investment funds and the risks posed by their liquidity mismatch. It is suspected this review was initiated by the collapse of the Woodford Equity Income fund.<br><br>The FCP concluded that if greater consistency between the liquidity of a fund's assets and its redemption terms is to be achieved:<br>• Liquidity of funds' assets should be assessed by reference to the price discount needed for a quick sale of a representative sample (or vertical slice) of those assets or the time period needed for a sale which avoids a material price discount. In the US, the Securities and Exchange Commission has recently adopted measures of liquidity based on this concept;<br>• Redeeming investors should receive a price for their units in the fund that reflects the discount needed to sell the required portion of a fund's assets in the specified redemption notice period, ensuring fair outcomes for redeeming and remaining investors;<br>• Redemption notice periods should reflect the time needed to sell the required portion of a fund's assets without discounts beyond those captured in the price received by redeeming investors. | | |

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| The BofE and FCA had planned to survey on almost 300 funds and the FCA would subsequently hold a consultation. However, this has been put on hold until further notice due to the Covid-19 pandemic. | | |
| **4. HM Treasury Consultation / FCA: Review of UK Funds regime** | 19 August 2020 – Consultation closes | |
| In the Spring Budget 2020, Rishi Sunak announced two specific announcements regarding the government's review of the UK fund regime (which considers taxation and relevant areas of regulation to ensure the ongoing competitiveness and sustainability of the UK regime):<br>1. A review of the VAT charged on fund management fees;<br>2. A consultation seeking to gather evidence and explore the attractiveness of the UK as a location for the intermediate entities through which alternative funds hold fund assets.<br><br>The consultation was published in March 2020 and looks to improve the government's understanding of these intermediate entities within fund structures (e.g. the fund structures commonly used, the commercial drivers of their location and economic benefits of they bring to the jurisdiction they are located in) and explore the barriers the UK corporation tax system creates for the establishment of such companies in the UK.<br><br>Respond to the consultation here. | | **M** |
| **5. HM Treasury / FCA / PRA: Investment Firms Prudential Regime** | To be included in upcoming Financial Services Bill | |
| In March 2020, HM Treasury published a policy statement on Prudential standards in the Financial Services Bill. The policy statement sets out how the UK played an active role in negotiating and agreeing the Third Basel Accord at an international level and is committed to implementing it into UK legislation despite Brexit.<br>The government intends to do this in the upcoming financial services bill as well as implementing prudential rules for UK banks included in the Second Capital Requirements Regulation (CRRII) and implementing an updated prudential regime for investment firms in the UK.<br><br>The policy statement states that the UK is committed to ensuring that prudential requirements for investment firms are proportionate to the risks they pose to the financial system, thereby facilitating healthy competition across the industry and allowing the UK to remain competitive outside of the EU. | | **M** |

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