

August 2020

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Financial Conduct Authority (FCA) developments

*Of relevance to
All firms*

FCA Consultation on extending implementation deadlines for the Certification Regime and the Conduct Rules

The FCA is consulting on extending the deadlines by which FCA solo-regulated firms must have first assessed the fitness and propriety of their Certified Staff and for training staff in the Conduct Rules and reporting Directory Person data.

The Treasury will lay a Statutory Instrument (SI) before Parliament to delay the deadline to the Certification Regime until 31 March 2021. This delay will give firms significantly affected by the coronavirus pandemic time to make the changes they need.

This consultation proposes making changes to the FCA rules to effect this change. It also proposes making a corresponding extension to the deadline for training staff in the Conduct Rules and reporting Directory Person data to 31 March 2021. Extending the deadlines will ensure they remain consistent and will provide extra time for firms that need it, and enable them to deliver effective training on the Conduct Rules. The proposals seek to reduce the burden on firms affected by the pandemic, while ensuring that regulatory standards and consumer protection are upheld.

The FCA want to give regulated firms certainty, so it is consulting alongside the parliamentary process, to allow it to finalise its policy as soon as possible.

The FCA will still publish details of certified employees of solo firms starting from 9 December 2020 on the Financial Services Register, as firms submit them. Where firms are able to provide this information before March 2021, the FCA encourages them to do so.

Who this applies to

- All FCA solo-regulated firms authorised to provide financial services under Financial Services and Markets Act 2000 (FSMA).
- Appointed Representatives (ARs) would also be in scope of the proposed extension to the reporting deadline for Directory Persons.
- These proposals do not apply to benchmark administrators.

Background to the Certification Regime and Conduct Rules

The [Senior Managers & Certification Regime \(SM&CR\)](#) is designed to reduce harm to consumers and strengthen market integrity. FCA solo-regulated firms were given until 9 December 2020 to assess the fitness and propriety of certified staff, submit information to the FCA about certified staff (Directory Persons) for inclusion on the FS Register and provide tailored training to all other employees, except ancillary staff, on the Conduct Rules.

Firms should continue with their programmes of work in these areas and if they are able to certify staff earlier than March 2021 they should do so.

The FCA expects accountable Senior Managers to ensure that all Certified Persons are fit and proper. Firms should not wait to remove staff who are not fit and proper from certified roles. Similarly, accountable Senior Managers must ensure that Conduct Rules training is effective, so that staff are aware of the Conduct Rules and understand how they apply to them in their jobs. These programmes will require planning, time and effort to deliver effectively. The FCA will produce further communications about the FCA's expectations. Senior Managers and Certified Persons are already subject to the Conduct Rules and the FCA will hold them accountable for any misconduct arising during and after the coronavirus pandemic.

Benchmark administrators

The Certification Regime and reporting of Directory Persons do not apply to benchmark administrators, so the FCA does not intend to consult to move the deadline for benchmark administrators. Benchmark administrators have until December 2021 to train non-Senior Manager staff in the Conduct Rules.

The FCA does not consider that the current crisis will prevent effective implementation of Conduct Rules training in these firms and so it is not considering extending this deadline.

The consultation is open until the 14 August 2020.

<https://www.fca.org.uk/publications/consultation-papers/cp20-10-extending-implementation-deadlines-certification-regime-conduct-rules>

New guidance to help firms do more for vulnerable consumers

The FCA has set out new best practice [guidance](#) for firms to do more to protect vulnerable consumers.

More than 24 million people display one or more potential characteristics of vulnerability – which include physical and mental health issues, recent life events such as bereavement, capability and financial resilience. Over a million people received debt advice last year.

The FCA says firms should do more to ensure that vulnerable consumers are receiving positive outcomes.

The [consultation](#) incorporates feedback from a range of bodies including consumer organisations, firms and trade bodies following the [first phase of](#)

[consultation](#) in July 2019.

The FCA found many examples of good practice and firms thinking carefully about their customers and potential vulnerability. However, the FCA is also aware of cases where vulnerability is either not considered by firms or, is positively exploited for gain.

The guidance aims to provide a framework that allows all firms to accurately assess whether they are treating vulnerable consumers fairly, ensuring consistency across the financial services sector.

Alongside the draft guidance the FCA has also [published research](#) on vulnerable consumers' experiences of dealing with financial services firms.

The research, which includes [21 in-depth case studies](#) of consumers displaying a range of indicators of vulnerability, highlights four key themes for firms:

- Recognising vulnerability and understanding customers' needs
- The value of sympathy
- The importance of empowered and knowledgeable staff
- Meeting vulnerable consumers' communication needs

The guidance is open for consultation until 30 September 2020.

<https://www.fca.org.uk/news/press-releases/new-guidance-help-firms-do-more-vulnerable-consumers>

FCA seeks industry views on a new prudential regime for UK investment firms

The FCA published a [discussion paper](#) on a prudential regime for UK investment firms. The discussion paper sets out the technical details and the FCA's views on the Investment Firm Directive ("IFD") and the Investment Firm Regulation ("IFR") which investment firms in EU Member States will need to comply with from 26 June 2021. As the UK has left the EU, it will not implement the IFD/IFR but rather the UK Government intends to legislate to introduce a new prudential regime for UK investment firms.

Christopher Woolard, interim Chief Executive of the FCA, said:

'We have long advocated for a bespoke prudential regime for investment firms.

'A new UK regime would represent a significant improvement in the prudential regulation of investment firms. For the first time, it would deliver a regime that has been designed with investment firms in mind.'

The information in the Discussion Paper will be of interest to all solo-regulated investment firms that are currently authorised under MiFID. It will also be of interest to Collective Portfolio Management Investment Firms and those investment firms authorised by the Prudential Regulation Authority.

Investment firms and other interested stakeholders have until 25 September to respond.

<https://www.fca.org.uk/publication/discussion/dp20-2.pdf>

*Of relevance to
All firms*

Consultation on the Regulatory Framework for Approval of Financial Promotion

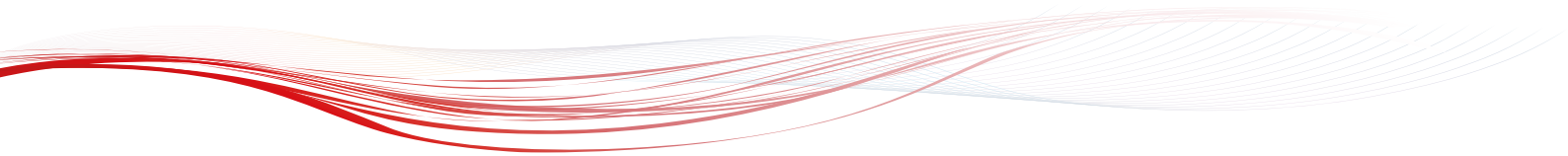
The current requirement for an authorised firm to approve the financial promotion of an unauthorised firm may not operate as a strong enough safeguard to ensure such financial promotions are compliant with FCA rules and that they are fair, clear and not misleading. Currently, any authorised firm is able to approve any financial promotion of an unauthorised firm. There is no specific process through which a firm must be assessed as suitable and competent before it is able to approve the financial promotions of unauthorised firms.

In order to strengthen the FCA's ability to ensure the approval of financial promotions operates effectively, in this consultation the government proposes to establish a regulatory 'gateway', which a firm must pass through before it is able to approve the financial promotions of unauthorised firms. Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the consent of the FCA.

The government seeks the views of stakeholders on the options set out in the consultation, and the questions set out in the consultation form. The government is looking for views from members of the public or industry, but would particularly welcome responses from retail consumers; authorised firms which have undertaken approvals of the financial promotions of unauthorised firms; and unauthorised firms which communicate financial promotions.

The consultation closes on 26 October 2020.

<https://www.gov.uk/government/consultations/regulatory-framework->



Of relevance to
All firms

[for-approval-of-financial-promotions](#)

FCA Dear CEO Letter: Inappropriate use of title transfer collateral arrangements and regulatory permissions for financing transactions

The FCA published a Dear CEO letter to authorised firms acting as brokers in wholesale financial markets, who currently, or may in the future, offer services (including clearing broker and prime broker services) that involve holding clients' cash or securities as collateral.

The letter addresses the inappropriate use of title transfer collateral arrangements (TTCAs) by firms, amounting to failures of CASS compliance. The letter requests firms review the use of TTCAs and provides examples of what the FCA deems to be inappropriate.

Firms are also reminded that under SUP 15.3.11R(1)(A) it is mandatory to disclose any significant breach of a rule and therefore, firms should notify the FCA of any rule breaches that are identified in their approach to CASS compliance regarding TTCAs.

The second concern relates to firms incorrectly classifying financial transactions as falling within the prudential matched principal exemption, and therefore holding lower financial resources than may be required and also acting outside the firm's regulatory permissions.

CEOs are asked to reply to the Dear CEO letter by 14 August 2020, confirming that the senior manager with responsibility for client assets, or alternatively the senior manager responsible for compliance, has considered the issues in the appendix and will bring any issues to the attention of the firm's board. Where rule breaches are identified in relation to using TTCAs or regulatory permissions, the firm should take immediate steps to rectify them and notify the FCA.

<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-inappropriate-use-title-transfer-collateral-arrangements.pdf>

Key Dates



Key Date	Topic
October 2020	Pension transfer specialists to obtain the investment advice qualification

Complyport is a regulatory compliance consulting firm supporting the UK financial services industry for around 20 years. We specialise in providing Governance, Risk and Compliance services to firms in the financial services industry in the UK and overseas. We advise and assist firms to become authorised and to comply with the rules and requirements of regulators on an ongoing basis and have successfully assisted over 300 firms to become authorised with the FCA and have been providing regulatory support to over 500 regulated firms on an ongoing basis at a Group level. With presence in the UK, EU and Hong Kong, Complyport can assist firms across multiple jurisdictions.

Complyport's multidisciplinary consultants possess deep expertise in their field, having acted in FCA skilled person reviews, as expert witnesses in legal cases and as expert investigators for firms or their legal advisers. The team assists firms on issues relating to corporate governance, risk management, business controls, compliance and business improvement. We conduct audits and reviews of a firm's products, processes, policies and procedures to identify scope for business, to determine the impact of regulatory developments and to verify compliance with local regulations. Complyport offers full support with financial reporting, capital adequacy assessments and compliance training as well as a suite of online RegTech applications to enable a firm to demonstrate continued compliance with the regulatory obligations.



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