



Regulatory Forward Look 2024



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Dear Client,

2024 is set to be a busy year in the regulatory compliance space. In the UK, the Consumer Duty will be rolled out completely, with the final implementation date set for July and the FCA reminding Firms that the Consumer Duty is not a once and done exercise. The FCA are also consulting on new rules to apply to the burgeoning private asset space.

A General Election set for 2024 could trigger a new wave of consumer protections in the financial services industry, including those that affect firms servicing systemically important institutions like retail banks and pension funds.

Globally, regulators are grappling with a financial services sector that continues to evolve at pace.

In our Regulatory Forward Look 2024, we have outlined significant changes or milestones already pencilled in for 2024.

If you would like to discuss the impact of the changes to your business, please do not hesitate to reach out to us.

Yours Sincerely,



Charlene Fletcher
Partner

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Greenwashing rules: FCA finalises changes to UK Sustainability Disclosure Requirements

The FCA has recently finalised its rules on UK Sustainability Disclosure Requirements (SDR) and investment labels ([Policy Statement \(PS23/16\)](#)).

The proposed framework for the SDR includes, among others, a new labelling regime for sustainable investment products; a requirement to prepare consumer-facing product-level disclosures; ongoing sustainability reporting for firms using investment labels; and new naming and marketing rules, restricting the use of sustainability-related terminology.

Implementation timeline: the rules and guidance relating to the SDR will come into force on the following dates:

- **31 May 2024** – anti-greenwashing rule and guidance will come into force (ESG 4.3.1R);
- **31 July 2024** – firms can begin to use labels, with accompanying disclosures;
- **2 December 2024** – naming and marketing rules will come into force, with accompanying disclosures;
- **2 December 2025** – ongoing product-level and entity-level disclosures for firms with AUM greater than £50 billion will come into force; and
- **2 December 2026** – entity-level disclosures will be extended to firms with AUM greater than £5 billion.

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FPO Exemption

The UK Government has recently announced changes to the Financial Promotion Order 2005 (FPO). These changes come as a result of the consultations launched in 2021, and will:

- Increase the financial thresholds to be eligible for the high-net-worth individual exemption to one of the following:
 1. Income of at least £170,000 in the last financial year,
 2. Net assets of at least £430,000 throughout the last financial year.
- Strengthen the eligibility criteria for the self-certified sophisticated investor exemption by taking both of the following actions:
 1. Removing the criterion of having made more than one investment in an unlisted company in the previous two years,
 2. Increasing the company turnover required to satisfy the 'company director' criterion to £1.6m.
- Require businesses to provide details of themselves (including the company address, contact information, and registration details) in any communications made using the exemptions.
- Update the title of the certified high-net-worth individual exemption by removing 'certified', reflecting the 2005 update to the FPO removing the requirement to be certified by a third party.
- Update the high-net-worth individual and self-certified sophisticated investor statements with the aim to achieve greater engagement from investors and higher awareness of the regulatory protections they will lose.

Implementation timeline: the changes will come fully into force on **31 January 2024**. Under Art 14 FPO, where a firm has already issued a financial promotion to some recipients classified under the current regime, it will be able to continue such engagement relating to the specific financial promotion without requesting an updated investor statement until 31 January 2025.

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Reviewing Regulatory Permissions

The FCA requires all regulated firms to regularly review regulatory permissions to ensure they are up to date and removed where they are not needed. This means that all firms must notify the FCA of material changes and apply to make any necessary changes through FCA Connect in a timely way.

The FCA has a power to cancel a firm's Part 4A permission if it has not carried on a regulated activity for at least 12 months. In FCA's view, reviewing permissions and maintaining only those that firms need is necessary to ensure that the firms will continue to meet the threshold conditions, demonstrate effective oversight of their business, meet their obligations under the Senior Managers Regime, and provide accurate information to consumers.

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LIBOR Transition

LIBOR is an interest rate benchmark used in financial markets which is being phased out. Publication of most LIBOR settings has now ended.

The 3-month synthetic GBP LIBOR will cease at the end of March 2024. 1-, 3- and 6-month synthetic USD LIBOR will be published until the end of September 2024.

As underlined by the Bank of England, all firms should continue to actively transition to move their legacy sterling LIBOR contracts that currently reference temporary synthetic LIBOR to permanent robust alternative rates (such as SONIA). Next steps in LIBOR transition are outline in this [joint statement between the Bank of England, Financial Conduct Authority, and the Working Group on Sterling Risk-Free Reference Rates](#).

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AIFMD II

The European Commission has recently published the final compromise text amending AIFMD (“AIFMD II”). It is likely to be published in the Official Journal by the end of the **first quarter of 2024**. The proposals are likely to come into effect in **2026**, depending on the timing of the formal approval by the European Parliament and the Council of the EU.

AIFMD II introduces a new pan-European regime for loan origination funds (“LOFs”) and AIFMs managing these LOFs. It also addresses delegation, depositaries, AIFMs performing “MiFID top-up activities” and costs. In a nutshell, the changes introduced by AIFMD II include:

- New requirements and restrictions for AIFs which originate loans;
- Leverage limits for AIFs with significant loan origination activity;
- Potential lending passport for EU AIFMs;
- Application of delegation requirements to non-EU distributors;
- Additional disclosure and reporting requirements;
- New rules on liquidity management for open-ended funds.

Many of these changes will apply to all EU full-scope AIFMs (the changes will not be relevant for EU sub-threshold AIFMs). However, the large number of loan origination provisions will only apply where the AIF managed by an EU full-scope AIFM is engaged in the activity of loan origination, (with a few specific exceptions).

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Annual Directory Persons' Attestation

As part of the Senior Managers & Certification Regime (SMCR), the FCA publish and maintain a public directory of all certified and assessed persons (Directory Persons) on the Financial Services Register (the Directory). The primary purpose of this is for consumers and professionals to verify the details of key individuals working in financial services.

Directory Persons, encompassing certified staff (those holding certification function under SMCR), directors not performing Senior Manager Functions, and certain sole traders or Appointed Representatives (ARs), are subject to this directory. Firms are entrusted with the ownership and maintenance of this data, and failure to keep it up to date may lead to breaches of reporting rules in SUP 16.26, resulting in supervisory or enforcement action. Inaccurate data can mislead consumers and trigger regulatory consequences.

To comply with regulations, firms are obligated to manage their directory persons' data, including additions or updates related to roles, activities, accreditations, workplace locations, customer engagement methods, start and end dates. Firms must submit an attestation form if their Directory Person's data has not changed in the last 12 months. Failure to do so incurs a late return fee of £250 and potential enforcement action, with the data marked as outdated on the FS Register.

Confirming Directory Persons' details is crucial for firms. The FS Register serves as a prominent platform for clients and potential clients, with approximately 7.5 million annual users. Accuracy ensures that individuals can contact the right people. Incomplete or outdated information may create a negative impression and expose the business to potential scams and fraud.

Firms are required to complete the Directory Persons' notification on Connect promptly, using the 'Add or Amend Directory Persons' form within 7 business days of any changes and must not wait until the attestation is due.

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Firm Detail Attestation

Firms are required to ensure the accuracy of the information held by the Financial Conduct Authority (FCA) about their details, such as firm names and contact information. This information is crucial for communication, ensuring request of correct regulatory returns, and carrying out thematic analysis across sectors. Certain firm details are also published on the Financial Services Register (FS Register), and any changes can be reported using the Connect system.

For firms authorised under the Financial Services and Markets Act (FSMA), solely regulated by the FCA, and not classified as an ICVC, UCITS qualifier, AIFM qualifier, or dormant account fund operator, SUP 16.10 reporting requirements apply. These requirements mandate an annual check, amendment (if necessary), and confirmation of firm details using the Connect system. Different rules apply to payments or e-money institutions.

The firm details subject to attestation include the registered name, trading name(s), complaints contact details, compliance officer details, registered office, principal place of business, invoicing address, head office, UK branch address, actuary, EEA branch address, firm association branch, professional advisor details, Accounting Reference Date (ARD), website address, firm's auditor/reporting accountant details, and details of locum.

Even if no changes occurred from the previous year, firms must log in to Connect and confirm the accuracy of the details within 60 business days of the firm's Accounting Reference Date (ARD).

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SEC ADV

The Securities and Exchange Commission (SEC) is the U.S. primary financial services regulator and regulates investment advisers, primarily under the Investment Advisers Act of 1940 (the "Advisers Act"), and the rules adopted under that statute.

SEC Form ADV and Annual Submission Requirement:

Professional investment advisers are obligated to submit SEC Form ADV annually, disclosing details about their investment style, assets under management (AUM), and key officers. This submission is a public record requirement for firms managing funds exceeding \$25 million.

Structure and Content of SEC Form ADV:

SEC Form ADV comprises several sections, with the first focusing on identifying key information, including details about the advisers' business, ownership structure, affiliations, business practices, clients' details, key employees, and past disciplinary actions.

The second involves a detailed narrative, prepared in plain English, covering details on the AUM, advisory services, investment strategy, fee schedules, conflicts of interest, and potential impacts of directors' outside business interests. Management backgrounds, including educational history and business experiences, are also included for key advisory personnel.

Filing Requirements and Annual Updating Amendment:

Filing SEC Form ADV requires an annual updating amendment, due within 90 days after the fiscal year-end. The deadline is March 31 (or March 30 during a leap year) for those with a fiscal year ending on December 31. For fiscal years ending in a month other than December, the amendment must be filed within 90 days of the fiscal year-end.

Late Filings:

The SEC staff does not provide a grace period for filing, and failure to submit the annual updating amendment by the deadline constitutes a violation.

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Consumer Duty

The Consumer Duty reflects a significant shift around how the industry should view good customer outcomes. Previously, the emphasis was on treating customers fairly and avoiding poor customer outcomes. Now, firms need to focus on actively seeking good customer outcomes, necessitating a profound cultural change and new behaviours.

Broader Scope effective since 31 July 2023

The Consumer Duty regulation, effective since July 31, 2023, goes beyond mere compliance with rules, reaching into the core of a firm's strategy, culture, and operational framework. Its broader scope encompasses familiar concepts such as customer-centricity, clear communication, responsibility throughout the distribution chain, and fair value assessment. However, what sets it apart is the fact that Consumer Duty regulation differentiates itself both by having a broader scope and an anticipated intensity of monitoring and supervision.

Compliance with the Consumer Duty is not merely a matter of updating policies. Firms must ensure customers' interests are central to their culture, purpose, and embedded throughout the organisation, including strategy, governance, leadership, and people policies.

Responsibilities

After 31 July, 2023, firms are urged to demonstrate their commitment to delivering good consumer outcomes. This involves reviewing their implementation plan, ensuring changes align with the Consumer Duty's objectives, especially regarding vulnerable customers. The focus extends to data and monitoring processes, emphasising the use of information for continuous improvement and evidence of achieving the right outcomes. Firms should also put focus on transparent and clear customer support and communication strategies in dealings with consumers.

31 July 2024: Next critical milestone for closed products

Firms with closed book products face additional challenges, particularly in managing large legacy business efficiently. The next critical milestone is July 31, 2024, by which closed products must be made compliant. Closed products must adhere to Consumer Duty requirements, addressing cross-cutting harm to ensure discontinued products meet necessary standards.

Time is of the essence, and firms should not underestimate the challenges of ensuring good customer outcomes for products designed and sold years ago.

Preparation for the Consumer Duty Annual Report deadline

Firms need to prioritise preparations for the 2024 Consumer Duty annual report, involving:

- Identifying areas of harm and potential gaps.
- Analysing reasons for closing products and services.
- Considering consumer complaints.
- Reviewing closed products against the duty based on implementation scoping work.

A key aspect of the report is that the board must review and approve an assessment of delivering good outcomes for consumers. This includes monitoring results, evidence of outcomes, and actions required to address risks or poor outcomes. Continuous actions, assessments, testing, and evidence are essential for ongoing compliance with the Duty.

Boards must have access to the right Management Information (MI) to make these informed decisions. The FCA may request board reports, showing the importance of data-led reports for compliance demonstration.

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Liquidity mismatch in open ended daily-dealt property funds

In August 2020, the FCA published a consultation paper seeking to reduce the potential for investor harm that comes about because the terms for dealing in units of some property funds are not aligned with the time that it takes to buy or sell the buildings that the funds invest in.

Having considered the industry feedback to the consultation paper, the FCA noted the operational work necessary for fund managers and most other firms to apply mandatory notice periods for property funds, and the need to allow a suitable implementation period before the rules come into force, to allow firms to make operational changes.

The FCA are finalising their policy proposals in view of the feedback received with formal engagement expected in Jan-Mar 2024 and Apr-Jun 2024.

This could potentially impact Managers of UK authorised property funds and discretionary wealth managers, including those who offer model portfolios.

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Overseas Fund Regime ('OFR')

The OFR would see an introduction of a new equivalence regime for retail investment funds and money market funds established outside the UK, allowing recognised funds to be marketed to the public in the UK and providing a new method for offering an overseas fund to UK retail investors.

The FCA released a Consultation Paper in December 2023 proposing these new rules and guidance to put the OFR into operation, so that overseas funds that are authorised and supervised in their home country can apply for FCA recognition under the OFR and provide transparency on which rules Firms need to comply with.

The Consultation Paper sets out how the FCA would recognise funds for offer in the UK, following an equivalence determination by the Treasury under the new regime.

The consultation is open until the 12 February 2024. This is particularly relevant for Investment advisers and Fund managers and distributors of EEA UCITS schemes that are currently in the temporary marketing permissions regime (TMPR).

The Consultation Paper illustrates how data will be collected as part of the OFR application process and the information which the FCA intends to collect on an ongoing basis where recognition is granted.

The FCA intends to publish a final policy statement and final Handbook rules in the first half of 2024.

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Asset Management Taskforce

The City Minister has revived a significant forum that brings together senior leaders from both the industry and the Financial Conduct Authority (FCA). The forum aims to recognise and leverage the possibilities offered by cutting-edge technologies for the asset management sector in the United Kingdom.

The Economic Secretary has also launched a new Technology Working Group (TWG), which will run in parallel to the Taskforce to examine the impact of new technology on the asset management sector.

The TWG will identify the main opportunities presented by technologies including tokenisation, artificial intelligence and distributed ledger technology. 2024 will see a series of meetings being held with the group subsequently providing a final report to the Taskforce.

The report will explain the group's findings and contain guidance and recommendations for government, regulators and industry. Previous reports produced by the Taskforce on the UK funds regime and on stewardship have been very successful in progressing their respective agendas.

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Investment Firms Prudential Regime

Financial resilience and the Prudential Rules for Investment Firms have been an ongoing consideration for the FCA. The FCA produced two papers in 2023 on Prudential considerations for Investment Firms:

- a report on IFPR implementation observations ([Link Here →](#)); and
- an IFPR newsletter illustrating areas for improvements for Firms ([Link Here →](#))

As we go into 2024, Firms should consider these observations by reviewing their internal capital adequacy and risk assessment (ICARA) processes and subsequent reporting under the IFPR, considering how processes can be strengthened and ensure Senior Management teams document a comprehensive approach to assessing risks and harms, quantifying own funds and liquid assets threshold requirements and the framework the Firm has applied to managing own funds and liquid asset resources.

This is particularly relevant for all MIFIDPRU investment firms and also the UK parent entities of investment firm groups, in scope of the IFPR.

Firms are also reminded the FCA hosted two IFPR webinars which are still available for Firms to watch. The first webinar covered more technical aspects of the IFPR, such as groups and own funds requirements. The second webinar focused on some more practical aspects of the regime such as the ICARA process, reporting, and the applications and notifications process.

The FCA aims to produce a consultation paper covering ESG disclosures and MIFIDPRU clarifications between April to June 2024 as noted in the FCA's Regulatory Initiatives Grid.

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Review of the UK Funds Regime

As part of the 2020 budget, the government announced that it would conduct a review of the UK funds regime to consider reforms which hold the potential to enhance the UK's attractiveness as a location for asset management.

The consultation paper stresses the need to adapt and evolve the regulatory and statutory framework for the funds regime with the government seeking to address apparent gaps in the range of fund structures available in the UK.

The review covered direct and indirect tax, as well as the establishment of an unauthorised contractual scheme for professional investors. The FCA continues to engage with stakeholders on how relevant aspects of the regulatory regime might be modernised and improved.

The FCA provided feedback on next steps and consultations are expected to follow in 2024.

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