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BDO FS ADVISORY – Managed Compliance Services

Regulatory Update

March 2024

BDO FS Advisory contact points

BDO's Managed Compliance Services Regulatory Update summarises the key regulatory developments.

Our FS Advisory team supports hundreds of clients with various regulatory and non-regulatory matters. Our breadth and depth of expertise gives us a broad perspective on the issues facing the financial services sector. We have aggregated insights from our in-house research, client base, the regulators and professional bodies to support your regulatory considerations and activities.

We hope this pack provides value to you and your colleagues; please do share with us any feedback you may have for our future editions.

Richard Barnwell
Partner

+44 (0)7717214818
richard.barnwell@bdo.co.uk

Osita Egbubine
Associate Director

+44 (0)7823898762
osita.egbubine@bdo.co.uk

Lynne Cooper
Manager

+44 (0)7831973556
lynne.cooper@bdo.co.uk

Contents

01 Consumer Duty Update

02 Economic Crime Update

03 Non-Financial Misconduct

04 ESG Update

05 Summary of Regulatory Publications in February 2024

01

Consumer Duty Update

On Going Service

Investment & Wealth Management

On 15 February, FCA announced a request for information to financial advice firms about charges for ‘on going service’.

On Going Service (OGS) charges are typically levied under contracts with clients for an annual suitability review of a client’s investment portfolio, after the initial advice is provided. The issue identified by the regulator is that in some cases, clients have been paying fees for on going services which they have not received. We explore this issue more below.

The need for an annual review of an investment portfolio stems from a requirement introduced by MiFID for an annual review of continued or ongoing suitability (FCA COBs 9A 3.6-9). This has been interpreted by industry as a regulatory requirement for a client to have a full suitability review on an annual basis. Practices have developed, in some cases, where clients are charged for that to be automatically levied whether the client has the full suitability review or not. The COBs 9/MIFID requirements are more nuanced and allow for a review of continued suitability tailored to the client’s risk profile and profile of their investments. In practice, clients can also decline or delay an ongoing suitability review.

The FCA has highlighted potential issues with adviser charging practices, particularly ongoing service, in December 2022 and again at the beginning of 2023. Under the Consumer Duty Price and Value outcome, the requirement is as follows:

2A.4.1 R For the purposes of this outcome: (1) value is the relationship between the amount paid by a retail customer for the product and the benefits they can reasonably expect to get from the product; and (2) a product provides fair value where the amount paid for the product is reasonable relative to the benefits of the product.

In addition, it is both a foreseeable harm and a failure to act in good faith, to charge customers for services they do not receive. Where the customer is not receiving a benefit but still being charged, the FCA expects the customer to be refunded.

Therefore, there are several potential issues here.

- a lack of flexibility about the annual offering to clients for OGS that can tailor the offering to the client needs.
- contract clauses which stipulate an annual charge for a service whether a client receives it or not.
- failure to refund charges for services not received.
- the quality of the control environment for evidencing clients receive services in line with contractual terms (and that the terms are fair).

On Going Service

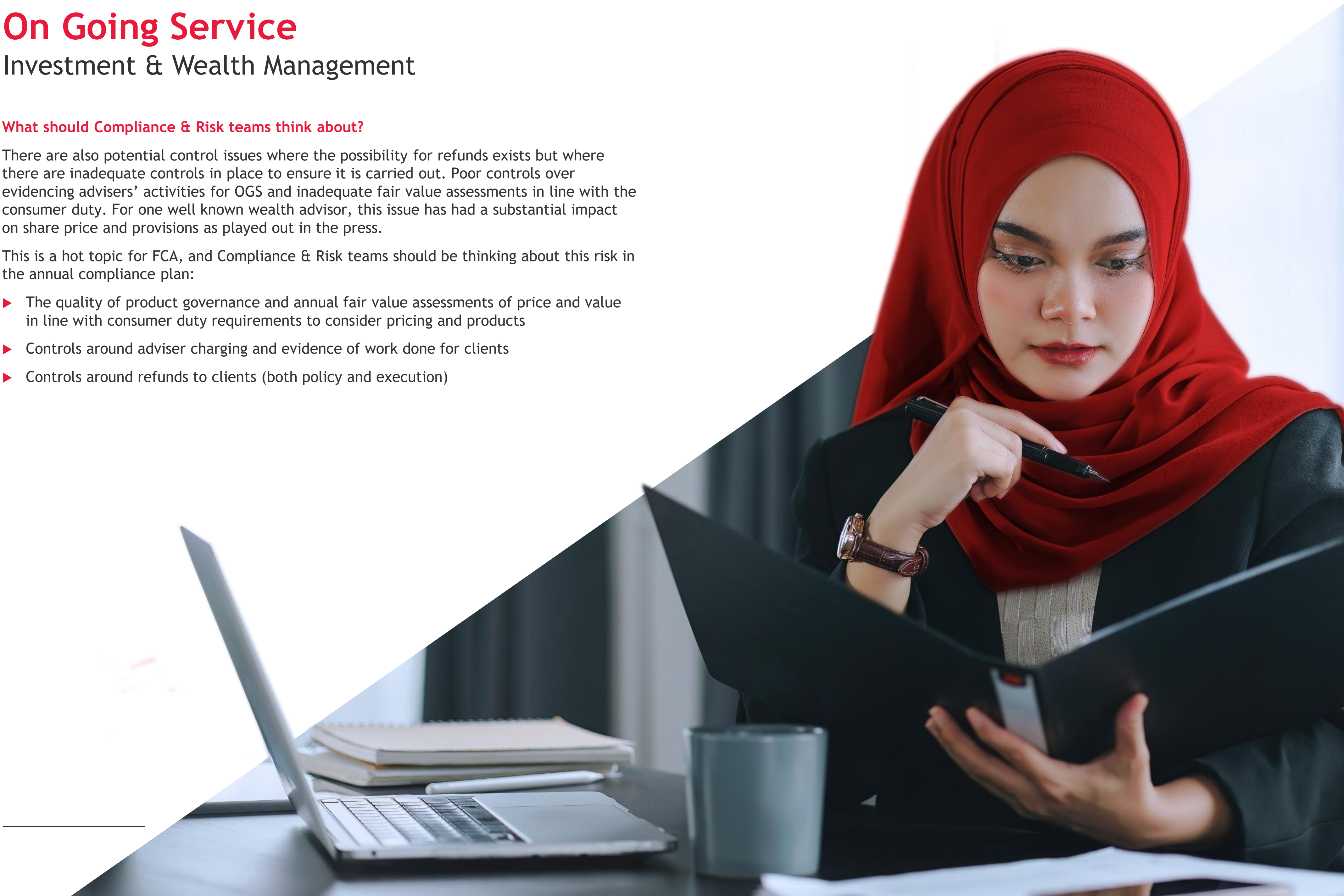
Investment & Wealth Management

What should Compliance & Risk teams think about?

There are also potential control issues where the possibility for refunds exists but where there are inadequate controls in place to ensure it is carried out. Poor controls over evidencing advisers' activities for OGS and inadequate fair value assessments in line with the consumer duty. For one well known wealth advisor, this issue has had a substantial impact on share price and provisions as played out in the press.

This is a hot topic for FCA, and Compliance & Risk teams should be thinking about this risk in the annual compliance plan:

- The quality of product governance and annual fair value assessments of price and value in line with consumer duty requirements to consider pricing and products
- Controls around adviser charging and evidence of work done for clients
- Controls around refunds to clients (both policy and execution)



02

Economic Crime Update

Economic Crime Update

UK Government publishes its national sanctions strategy

On 22 February 2024 the UK Government published its national strategy setting out the UK's approach to using sanctions to address global threats and protect the home market - Deter, Disrupt and Demonstrate.

The strategy outlines how the UK uses, and intends to continue to use, "carefully-deployed" financial sanctions to address "malign activity" and make a real difference in preventing and deterring acts and harmful behaviour such as "disrupting Russia's war machine, confronting cyber gangs that target the UK and addressing human rights abuses and violations in Iran".

What should Compliance & Risk teams think about?

It is important to note that the publication of the UK's sanctions strategy does not symbolise a turning point in the UK sanctions agenda, nor does it bring new expectations over and above enforcing existing high standards. Compliance & Risk teams should, therefore, continue to ensure second line teams prioritise developing and maintaining a sophisticated and agile sanctions compliance framework which enable firms to comply with current regimes as well as adapt to future amendments.

The fundamental considerations for compliance and risk planning on this subject include:

- Business wide risk assessment ('BWRA'): Identifying and assessing their business-wide sanctions risk exposure based on their size, scale, nature, customer base and business activities;
- Clear policies and procedures: Developing and implementing clear policies and procedures for sanctions compliance based on the risks identified in the BWRA and the sanctions compliance controls deployed;
- Effective screening systems: Using reliable and appropriate screening systems to identify sanctioned individuals, entities, and countries, and ensuring list management protocols are robust;
- Governance – ensuring that appropriate escalation channels are in place to take risk-based decisions on potential and true matches;
- Regular training and awareness – providing regular training to staff on sanctions compliance, how to identify potential sanctions nexuses and what next steps to take, and any relevant updates to the applicable sanctions regimes;
- Regular audits – conducting regular audits/gaining third party assurance to ensure that the firms sanctions compliance programmes are operating effectively and as expected; and
- Swift reporting and response – establishing a framework for prompt external reporting of potential sanctions breaches and taking appropriate action (e.g., account freezing).

February 2024 FATF Plenary outcomes

On 23 February 2024, the FATF publishes the outcomes of its Plenary which took place over 21-23 February. Key updates include, but are not limited to:

1. Addition of Kenya and Namibia to the list of 'Jurisdictions Under Increased Monitoring';
2. Removal of Barbados, Gibraltar, Uganda and the United Arab Emirates from the list of 'Jurisdictions Under Increased Monitoring';
3. The FATF 'High-Risk Jurisdictions subject to a Call for Action' list has not changed;
4. The FATF will soon publish updated guidance on beneficial ownership and transparency of legal arrangements. This will reflect input from public consultations on the draft guidance following the FATF'S October Plenary; and
5. The FATF intend to consult on updates to Recommendation 16 to help make cross-border payments faster, cheaper, more transparent and more inclusive whilst ensuring AML/CFT compliance.

Related to points #1, #2 and #3, above, HM Treasury has also published an Advisory Notice clarifying its stance on the application of Enhance Due Diligence ('EDD') measures to relationships involving jurisdictions identified as having strategic deficiencies in their AML/CTF regimes (i.e., FATF 'Jurisdictions Under Increased Monitoring' and 'High-Risk Jurisdictions subject to a Call for Action'). Amongst other things, this confirms that the FATF 'Jurisdictions Under Increased Monitoring' and 'High-Risk Jurisdictions subject to a Call for Action' are now considered 'High-Risk Third Countries' as defined by Regulation 33 of the UK Money Laundering Regulations.

What should Compliance & Risk teams think about?

With respect to updates #1, #2 and #3 above, and following recent updates to the UK AML/CFT framework, Compliance & Risk teams should evaluate how the second line has effectively reflected the changes to the 'High-Risk Third Countries' in their AML/CFT frameworks with respect to EDD. Firms should be preparing to update their country, customer, and business-wide risk assessment approaches, EDD procedures, governance mechanisms and training material accordingly.

Regarding update #4, above, Compliance & Risk should plan assurance on how the firm's control function has incorporated the FATF guidance on beneficial ownership and transparency of legal arrangements when published. This is likely to build on the existing FATF Guidance on Beneficial Ownership of Legal Persons (published in March 2023) supporting firms to use a "multi-pronged approach" to collect and verify beneficial ownership information to ultimately gain comfort that ML/TF risks are being appropriately identified and managed/mitigated.

03

Non-Financial Misconduct

What is the FCA’s Non-Financial Misconduct (NFM) survey and how does it link to the broader regulatory agenda?

The Financial Conduct Authority (FCA) recently intensified its supervisory work on Non-Financial Misconduct (NFM) by issuing a “Notice to Provide Information” to the Insurance sector (under section 165(1) of the Financial Services and Markets Act 2000 (FSMA)) related to incidents of NFM.

While targeted at the insurance sector initially, the NFM Survey signals the broader direction of regulatory travel that firms across other financial sectors should be mindful of and should ensure are on their radars.

NFM is an area that sits at the heart of the recent FCA Diversity and Inclusion (D&I) Consultation Paper and the Treasury Select Committee’s Enquiry into “Sexism in the City”. It demonstrates the ongoing regulatory focus on conduct, diversity, and inclusion (D&I), governance and accountability - and perhaps the golden thread linking each of these areas - culture.

The FCA is using the survey to collect data on: the volume and type of incidents of NFM, the methods of detection (e.g. whistleblowing), and the actions taken to address incidents. It has stated that the information collected will enable “a clearer understanding of when and where NFM occurs, … a baseline assessment of each sector and inform … ongoing supervisory work”.

What is Non-Financial Misconduct?

The FCA describes NFM as behaviour or actions within a financial services firm that do not directly relate to the financial aspects of the firm's business but can still have a significant impact on its conduct, integrity, and reputation. This can include things like bullying, harassment, discrimination, or any other behaviour that creates a hostile or complicit work environment.

Why is the FCA concerned about NFM?

As referenced above, the FCA believes that NFM can be a measure of a firm's culture and is therefore relevant to the assessment of a firm's ability to conduct business in line with regulatory standards. A poor culture is more likely to facilitate or be complicit in enabling poor decision making and/or permitting activities that breach regulatory standards.

However, there has been some debate around whether NFM falls within the FCA's remit - and even legal challenge. For example, around whether certain behaviours (particularly outside of the workplace) do speak directly to an individual’s fitness and propriety to work within the financial sector or not.

Despite this (and the clear need for robust processes that enable firms to identify and act on any allegations of NFM in a fair and appropriate way), there is a growing body of research that seemingly supports that – yes – there are established links between positive (diverse and inclusive) cultures - and outcomes (in terms of conduct, decision-making, and even innovation and commercial outcomes) – that align with the FCA’s statutory objectives of protecting consumers, ensuring the integrity of the UK financial system, and promoting effective competition.

As such, the direction of travel is clear - it's not just about complying with rules - it's about embedding a culture that promotes (and incentivises) the right behaviours and is inclusive and psychologically safe (so that any issues that do arise are promptly identified and addressed).

But how do firms go about doing this?

Embedding a healthy culture

Culture is not a new topic for the FCA, and most firms will be very familiar with the FCA’s four “drivers of culture”: purpose, leadership, approach to rewarding and managing people, and governance. Purpose has received significant attention, being described as a firm’s “reason for existing, and why the world would be worse off without the value it provides” (FCA, Marc Teasdale, Director of Wholesale Supervision). The premise being those different purposes (e.g., a customer-centric versus non-customer-centric purpose) drive different decision-making and outcomes.

However, establishing a clear purpose, values, and desired culture is one thing – ensuring that that culture has been embedded, is quite another. The UK Corporate Governance Code (2024) has even been updated to make that distinction, and it now requires boards (of listed firms) not only to assess and monitor culture but also how the desired culture has been embedded.

This is often an area firms struggle with as culture can seem intangible – and so a few points to consider:

- Firstly, do you have all the right foundations in place? Such as a defined purpose and values that are clear and well-understood. Your firm’s purpose and values should be threaded through your people policies and incentivisation arrangements.
- How do you evaluate your culture? Do you have a robust framework for this – or is your firm’s approach less well defined?

What is the FCA's Non-Financial Misconduct (NFM) survey and how does it link to the broader regulatory agenda?

- What role do the three lines of defence play when it comes to culture? For example, does culture feature on your compliance monitoring plans? If not, how does your board gain assurance around whether the desired culture has been embedded?
- How do you monitor culture and what management information is used to support this? Are your metrics carefully considered and supported by analysis and insights?

The culture conversation is not one likely to ebb away, and so if you don't have clear or comforting answers to the above, it's worth confronting this head on.

Encouraging "speaking up" and fostering psychological safety

The FCA describes NFM as behaviour or actions within a financial services firm that do not directly relate to the financial aspects of the firm's business but can still have a significant impact on its conduct, integrity, and reputation. This can include things like bullying, harassment, discrimination, or any other behaviour that creates a hostile or complicit work environment.

Why is the FCA concerned about NFM?

The NFM Survey not only requests data for NFM incidents, but also the method by which the incidents were detected. Whistleblowing is of course a key mechanism for raising concerns, and firms should consider reviewing the design and effectiveness - not only of their policies - but of their end-to-end process, including:

- The channels (communication methods) in place, and the clarity/prominence of these - and training and awareness;
- The controls regarding confidentiality and ensuring there are no adverse consequences for whistleblowers;
- The assessment and escalation processes - including mitigation of conflicts of interest and the role of the whistleblower's champion; and
- Management information, reporting, and outcomes - including actions taken in relation to substantiated concerns.

Whistleblowing also won't be the most appropriate channel for all concerns, and firms should reflect on the other mechanisms they have in place to encourage employees to share their opinions and concerns.

Perhaps most importantly, there also needs to be an awareness that – without a safe and inclusive environment, people may not be/feel able to speak up, even where there are channels to do so in place. And so fostering psychological safety is key. Psychological safety in the workplace should create an environment where employees feel safe to innovate, voice their opinions, and admit mistakes. The aviation industry is often cited as an example where an open culture exits to continually improve safety by learning from flight data and incidents. Psychological safety is not just about being nice or avoiding conflict. Instead, it's about encouraging open dialogue, promoting diversity of thought, and ensuring that everyone's views are heard and respected. A psychologically safe environment can lead to better decision-making, increased innovation, and improved risk management.

As a few points to consider:

- How do you know if employees feel safe and able to speak up?
- What mechanisms do you have in place to encourage speaking up – beyond your whistleblowing channels?
- How do you monitor the effectiveness of your speak up channels and culture? And use this information to inform continuous improvements?

Enhancing diversity and inclusion

NFM is a core element of the recent FCA D&I Consultation Paper (CP23/20). The proposals include better integrating NFM considerations into fitness and propriety (F&P) assessments, the Conduct Rules, and the suitability criteria for firms to operate in the financial sector (i.e., the Threshold Conditions).

However, the crux of the focus on NFM, is about tackling poor behaviours, and particularly (but not exclusively) discriminatory behaviours, to create a safe and inclusive environment where diverse talent can thrive.

And so when you're considering the CP proposals and how your firm plans to implement these, it's worth making sure that:

- Your firm is focusing on fostering inclusion as well as diversity - this means thinking about inclusion as part of your strategy as well as inclusion metrics.
- NFM is considered, not just in the context of F&P assessments and conduct rule reporting, but in terms of the mechanisms for identifying, managing, and learning from NFM (as referenced in the section above).

What is the FCA's Non-Financial Misconduct (NFM) survey and how does it link to the broader regulatory agenda?

Ensuring effective governance

The NFM Survey also asks questions around governance and management information (MI). This is no surprise given that governance is one of the FCA's four drivers of culture. But what does good governance look like? And how does good governance promote healthy culture and conduct? Firms are required (in accordance with SYSC General requirements - 4.1.1R) to "have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility" and "effective processes to identify, manage, monitor and report the risks it is or might be exposed to." But there's more to consider here. For example:

- The composition of your board and board committees – do you have the right mixture of skills, experience, and diversity? (to provide a range of perspectives and experiences that can help to challenge groupthink and drive better decision-making).
- Board culture - Is the board and committee culture itself facilitative of effective discussion and decision-making? (e.g., is it inclusive and focused on continuous improvement).
- Board effectiveness – do you have appropriate mechanisms in place to evaluate the performance of the board and board committees? These reviews should be regular and robust (e.g., should include consideration of the above, as well as MI, decision-making and overall functioning).
- MI – does your firm have the right MI at board level and across broader governance forums? Coverage, content, quality, timeliness are all important – particularly when it comes to areas such as culture, D&I, and NFM. We have often seen limited metrics and meaningful analysis in these areas which raises the question as to how boards get comfortable that a healthy culture has been embedded.

What should Compliance & Risk teams think about?

- **How it all fits together**: Compliance & Risk teams should consider how the firm conducts Fit & Proper assessments, regulatory references and reporting on conduct rule breaches. Typically, these activities straddle multiple teams, e.g., Risk, Compliance, HR, etc therefore it's important that any third line function has the big picture on specific accountabilities for these processes within first and second lines to provide effective assurance coverage. Co-ordination for the third line's reliance on second line's assurance over some of these activities can produce efficiencies for the third line and incorporate the input of compliance experts with specialisms not typically found in the third line function.
- **Culture**: The firm's overall framework for creating and embedding a healthy culture, D&I, and monitoring culture will be a critical tool for addressing NFM. Culture as a component of audits can help the Compliance & Risk function identify problematic behaviours early before they evolve into sub-cultures within teams.
- **Tone from the top**: Board and governance arrangements, particularly the effectiveness of the arrangements, should be considered for the annual plan if not already confirmed. Compliance & Risk teams should also evaluate the firm's conduct policies and procedures, including whistleblowing and other "speak up" mechanisms that feed into the governance arrangements, as well as the disciplinary processes, remuneration and incentivisation arrangements that are put out by the Board. The firm's current state of NFM risk is likely driven, in part, as an outcome of these inputs and outputs that help frame the firm's culture. Therefore, Compliance & Risk functions should be assessing these flows of information to understand what is feeding the NFM risk.

04

ESG Update

Taskforce for Nature-related Financial Disclosure: Current expectations and future developments

According to the Word Economic Forum's report Future Of Nature And Business: "Nature is declining at an unprecedented rate, with nearly 1 million species at risk of extinction because of human activity". As other ESG factors continue to evolve, 'nature risk' is emerging as a critical aspect of strategic risk management. In this scenario, regulatory scrutiny, business risks and demands from stakeholders continue to increase and financial institutions are under pressure to evaluate, disclose and actively address nature-related risks.

In response to the increasing demand for nature-related risks to be factored into financial and business decisions, the Taskforce on Nature-related Financial Disclosures (TNFD) introduced a set of disclosure recommendations and guidance to encourage and enable firms to assess, report and act on their nature-related dependencies, impacts, risks and opportunities.

To support TNFD implementation in the financial sector, the Taskforce published Sector Guidance for financial institutions on how they should report on the TNFD recommendations. The Taskforce is seeking feedback on the guidance, by 29 March 2024, and while they do not intend to change its recommended disclosures, periodic updates will be published over the next two years, incorporating feedback from market participants and other stakeholders.

What is the TNFD Framework?

The TNFD is a framework of 14 recommendations on how to report on nature-related risks and opportunities. The objective behind TNFD reporting is to build data and information that can be used for decision making and supporting financial flows towards biodiversity friendly projects.

Firms will find a familiar format in the TNFD recommendations as they were designed to be consistent with the language, structure, and approach of the Task Force on Climate related Financial Disclosures (TCFD) recommendations and around the four disclosure pillars: Governance, Strategy, Risk Management and Metrics and Targets. This structure will be useful as firms may wish to consolidate both the TNFD and the TCFD within one comprehensive report.

The guidance is intended to be applied on reporting at entity-level and provides an overview of how to report on the 14 recommendations, on a comply or explain basis, providing detail by sub-sector. The guidance also includes a recommended set of TNFD disclosure metrics.

The recent TNFD consultation requested feedback from financial institutions on these proposed disclosure metrics, and the extent to which the metrics are relevant, useful and ample enough. Where possible, firms should consider the proposed metrics and comment on whether these seem appropriate and useful for financial institutions.

What should Compliance & Risk teams think about?

Firms engaging early will need to review and update their ESG strategies and plans to be TNFD aligned. This includes incorporating nature-related considerations into business strategies and it is recommended that these considerations are aligned with decarbonisation and/or transition plans.

Compliance & Risk teams, therefore, will need to provide assurance over the firm's completion of critical activities, including development of a strategy, governance, risk management and metrics and targets in relation to nature-related risks and opportunities.

Furthermore, the Compliance & Risk function will need to check that the first and second lines are appropriately introducing or updating internal human rights policies and engagement activities, with respect to Indigenous Peoples, Local Communities and other stakeholders who can be affected by the firm's financial activities.

TNFD is at the moment a voluntary framework. However, on 23 February 2024, the Government responded to the Environmental Audit Committee report on the financial sector and the UK's net zero transition, recommending that Ministers set out an overarching implementation timetable for mandatory TNFD reporting.

More broadly, ESG expectations keep continuing to evolve. Whether firms decide to engage with TNFD now or later, will be a business decision. However, early consideration may give firms a competitive advantage against peers.

05

Summary of regulatory publications in February 2024

REGULATORY ROUND UP FOR MARCH 2024

General

Consumer Duty implementation: good practice and areas for improvement / Consumer Duty firm survey – Autumn 2023

The FCA has published a webpage highlighting good practice and areas for improvement with regards to Consumer Duty implementation

What firms are impacted?

Firms in scope of the Consumer Duty

Summary of the regulatory update

The publication summarises the FCA's findings from its multi-firm review as follows:

- ***Culture Governance and Monitoring***: Some firms have taken positive steps towards demonstrating that their organisational culture is more aligned with the requirements of the Duty. This includes altering the company purpose to focus on customer outcomes; accelerating business changes to deliver better outcomes, increasing customer focus at Board level, and updating staff bonus structures. Poor practice was identified in firms where the Duty is still primarily driven by programme teams or second line functions without adequate input by the Board.
- ***Customers in Vulnerable Circumstances***: Good practice identified include the consideration by some firms of the needs of vulnerable customers in product and service design and in improvements in the capture of information about customers vulnerabilities or expanded support. Weaknesses include non-prioritisation (or in some cases, non-consideration) of vulnerable customers' needs, adopting a generalised approach to identifying vulnerable customers and asking customers unnecessarily to provide evidence of vulnerability.
- ***Products and Services***: Some firms are carefully and precisely defining a negative target market for their products and services, refining data and monitoring capabilities to track customers who have bought those products though being outside of the target market, and improving their product development processes to focus on how new products will meet the needs of the target market. Weaknesses identified include not sharing information effectively across supply chains and not ensuring their distribution strategies are driving good customer outcomes.
- ***Price and Value***: Good practice include firms assessing whether the total cost to the customer provides fair value and enhancing the benefits of products and services to improve value. Areas for improvement include weak value assessments that rely solely on an assessment of similar product offerings in the market, and being unable to justify the benefits customers are getting for the fees they are paying.
- ***Consumer Understanding***: Some firms have developed customer understanding frameworks and worked with experts to improve communications. Areas of improvement include some firms continuing to push products and services to customers that are too high-risk or complex for them and being unclear with customers about what charges apply and when.

When does it take effect?
Immediately.

What should firms be thinking about?

Firms in scope of the Duty should consider these findings and continue to make improvements in line with the FCA's observations.

REGULATORY ROUND UP FOR MARCH 2024

General

FCA to improve pace and transparency around enforcement cases: CP24/2

The Financial Conduct Authority (FCA) has committed to carrying out enforcement cases more quickly as it seeks to increase the deterrent impact of its enforcement actions. They have published CP24/2: Our Enforcement Guide and publicising enforcement investigations - a new approach.

What firms are impacted?

All regulated firms.

Summary of the regulatory update

In the future, the FCA will focus on a streamlined portfolio of cases, aligned to its strategic priorities where it can deliver the greatest impact. The FCA will also close those cases where no outcome is achievable, more quickly.

As part of the new approach, the FCA has opened a consultation on plans to be more transparent when an enforcement investigation is opened. Under its plans, the FCA will make amendments to its enforcement processes as follows:

- It will announce the opening of an enforcement investigation, including the identity of the subject of the investigation when it is in the public interest to do so. It will also publish updates on the investigation. A new public interest framework will be designed to inform the decision-making process on whether to publish or not. These will generally not include investigations into individuals.
- It also proposes amendments to the Enforcement Guide sourcebook within the FCA Handbook to make it more focussed and less duplicative of other parts of the Handbook such as the Decision Procedure and Penalties Manual (DEPP) and the Financial Services and Markets Act (FSMA).

The moves are a step change from the current process where investigations are only announced in very limited circumstances.

When does it take effect?

The press release and the Consultation Paper were published on the 27 February 2024. Following the consultation, the FCA will publish a policy statement and feedback statement.

What should firms be thinking about?

Regulated firms should consider the consultation paper and the possible impact the FCA's proposed approach may have. Firms can provide feedback on the proposals by sending answers to the questions in the CP by 16 April 2024, using the online response form.

REGULATORY ROUND UP FOR MARCH 2024

General

Portfolio Letter: Interim Update on the FCA's Asset Management & Alternatives Supervisory Strategy

The Financial Conduct Authority (FCA) has provided an interim update on the Dear CEO letter issued in August 2022 and February 2023.

What firms are impacted?

Wholesale Buy Side firms (Investment Managers and Fund Managers)

Summary of the regulatory update

The FCA has published this update to reflect updates in its supervisory approach for firms in this sector. The update reflects changes in the external risk environment, work that has been completed since the previous CEO letters were issued, and the FCA's areas of focus for the Asset Management & Alternatives sector over the next year. The FCA's letter emphasises that good governance remains a vital tool to ensuring firms navigate the current period of macroeconomic events that creates new challenges for firms in this sector. A number of the areas highlighted are referenced in a separate BDO article about regulatory areas of focus for 2024 (see here). The FCA's strategic areas of focus are as follows:

- ***Assessments of Value (AoV) and Consumer Duty***: The FCA will build on previous work carried out in reviewing Authorised Fund Managers' (AFM) AoVs. It will be assessing how asset managers have considered price and value of products and services provided to unit-linked funds. It will also be evaluating firm's compliance under the Duty with closed products rules.
- ***Operational Resilience***: The FCA will carry out further work in evaluating in-scope firms' readiness for the operational resilience rules going live next year.
- ***ESG***: The FCA has reiterated its expectations that firms should be able to justify any ESG claims made in their financial promotions and product literature. This is especially important as firms grapple with attracting and maintaining assets under management leading to some firms implementing cost cutting programmes. The FCA will therefore be assessing the adequacy of firms' governance and resourcing of operational resilience and SDR change programmes.
- ***Valuation of Private Assets***: The FCA will be conducting a multi-firm review examining valuation practices for private assets including examining the governance of valuation processes, including the role of valuation committees, and their effectiveness in ensuring high-quality results.
- ***Enhanced Risk-based surveillance***: The FCA will be enhancing its monitoring of firms in the portfolio with significant market impact, present idiosyncratic risks to the system or are identified as outliers. In doing this, the FCA will be assessing the robustness of systems and controls in areas such as sanctions compliance and other financial crimes.
- ***Smarter Regulatory Framework***: The FCA will be implementing the Smarter Regulatory Framework with a focus on MIFID, AIFMD and UCITS. This will also include work on amendments to the disclosure regime for retail distribution of asset management products and on the advice boundary.

When does it take effect?
N/A

What should firms be thinking about?

Impacted firms should discuss the letter with the Board and Executive Committee and consider whether the risks of harm are present within the firm.

REGULATORY ROUND UP FOR MARCH 2024

General

Market Watch 77: Newsletter on market conduct and transaction reporting issues

In this Market Watch, the Financial Conduct Authority (FCA) share their observations on trade by organised crime groups (OCGs) and how firms can mitigate the risks of being used to facilitate their trade.

What firms are impacted?

Investment firms advising on M&A transactions or executing trades on behalf of their clients.

Summary of the regulatory update

Suspicious trading by members of OCGs in products whose underlying securities are UK and internationally listed equities forms a significant component of the overall volume of suspicious trading the FCA has observed in equity markets.

Executing firms should be alert to the possibility of being used to facilitate insider dealing by members of OCGs. This is in line with their obligations to counter the risk of being used to further financial crime under SYSC 6.1.1R. Suspicions that a firm might be executing trades on behalf of OCGs could be triggered by:

- clients regularly generating Suspicious Transaction and Order Reports (STORs)
- clients frequently trading before announcements of M&A activity
- clients opening positions shortly before, and closing those positions immediately after, publication of speculation about M&A in the media
- several clients trading in the same security for the first time
- clients with any connection to other current or former clients about whom the firm has concerns, or whose trade has resulted in STORs. This might include trading in similar ways.

The FCA suggests that firms could carry out the following to reduce the risk of being used to facilitate insider dealing by OCGs.

- communicating to all clients that the firm has a zero-tolerance approach to market abuse and its regular communications with the regulators / law enforcement
- Taking steps to ensure overseas broking firms that are clients have documented evidence of adequate surveillance arrangements
- Treating regarding trades placed before media reports of M&A as potentially suspicious, and submitting STORs as appropriate
- Taking steps to reduce the amount of information in the public domain that indicate that staff members have access to inside information, including in social media profiles.

When does it take effect?

The Market Watch was published on the 14 February 2024 and is immediately applicable.

What should firms be thinking about?

Impacted firms should consider the FCA’s observations and review their internal procedures in light of the observations made and additional guidance provided.

REGULATORY ROUND UP FOR MARCH 2024

General
Changes to UK EMIR reporting requirements: draft questions and answers
The Financial Conduct Authority (FCA) has published a consultation paper and is seeking feedback alongside the Bank of England (the Bank) on their draft guidance for reporting under the revised UK EMIR Article 9 reporting requirements.
What firms are impacted? Counterparties in scope of EMIR reporting, trade repositories recognised under UK EMIR, third party service providers.
Summary of the regulatory update On 24 February 2023, the FCA published a joint Policy Statement (PS23/2) with the Bank confirming changes to the derivative reporting framework under UK EMIR. The majority of the new requirements are applicable from 30 September 2024, with a transition period for some aspects. As part of the original consultation process, the FCA received requests for supporting guidance on how the updated UK derivatives reporting framework will be implemented. In response, the FCA is providing guidance to support the implementation of the updated UK EMIR reporting requirements that go live on 30 September 2024. This guidance is in the form of questions and answers (Q&As) grouped into topics. Before the FCA finalises these Q&As, they are consulting on them jointly with the Bank to get feedback from industry. The Q&As in this first guidance cover: 1. Transitional Arrangements 2. Reconciliations 3. Errors and Omissions 4. Derivative Identifiers 5. Action and Events The consultation also covers amendments to the UK EMIR Validation Rules to address industry feedback and correct identified errors.
When does it take effect? The guidance was published on the 8 January 2024. The consultation closes on 28 March 2024.
What should firms be thinking about? Firms in scope of EMIR reporting should review the proposals in the consultation and respond accordingly. Where firms rely on third parties for their EMIR reporting, they should work with them to ensure the proposals are properly understood and implemented in the lead up to the 30 Sep 2024 go live date of the new reporting requirements.

REGULATORY ROUND UP FOR MARCH 2024

General
Reducing and Preventing Financial Crime
The Financial Conduct Authority (FCA) has provided an update on their progress on reducing and preventing financial crime and are looking ahead to identify 4 areas of focus in the coming year.
What firms are impacted? All authorised firms and firms registered with the FCA for money laundering purposes.
Summary of the regulatory update As we pass the midpoint of the 3-year strategy, the FCA has summarised the work delivered over the last 18 months and sets out the four areas it is focussing on in the coming months. • Tackling fraud- The FCA points to the reduction in the amount of overall losses in 2023. It points to the prevention work it has done in conjunction with influencers, search engines, and other regulators to raise public awareness and remove illegal financial promotions. • Money Laundering and sanctions: It assessed the status of a significant number of firms' sanctions monitoring capabilities and published those results in Sep 2023, it has tightened the gateway for authorisation applications with a significant number of applicant firms failing to demonstrate they had the right systems and controls to mitigate financial crime, and shared results of its reviews into AML controls related to cash deposits with the Post Office. Looking ahead, the FCA identify 4 areas of focus where further collaborative effort can help further reduce and prevent financial crime: 1. Data and Technology: The FCA will be expanding its use of synthetic data and analytics tools to identify financial crime instances. It also encourages firms to consider how criminals may use technology to target the firms' clients, whether their investments in technology are appropriate and timely. 2. Collaboration: The FCA strongly encourages firms and cross-sector partners to participate in data-sharing initiatives and explore the latest advances in data-sharing technology. 3. Consumer Awareness: The FCA is asking firms to consider if they are doing all they can to alert their customers to relevant fraud risks and test the outcomes. 4. Metrics: The FCA encourages firms to consider how they can measure their own effectiveness in preventing financial crime by developing appropriate metrics.
When does it take effect? N/A
What should firms be thinking about? Firms should review their current financial crime framework and consider any areas where they can further enhance their efforts to help slow down fraud and reduce money laundering.

REGULATORY ROUND UP FOR MARCH 2024

General
FCA requests information from firms about delivery of their ongoing advice services and the Consumer Duty
The FCA is writing to a number of financial adviser firms requesting information about their delivery of ongoing services, for which their clients continue to be charged after advice has been given.
What firms are impacted? Regulated firms providing investment advice to consumers.
Summary of the regulatory update In its survey, the FCA asks if firms have assessed their ongoing services in response to the introduction of the Consumer Duty, and whether they have made any changes as a result. It also asks for data on the number of clients due a review of the ongoing suitability of the advice as part of the service, how many received that review, and how many paid for ongoing advice but whose fee was refunded as the suitability review did not happen. The FCA is collecting this information to assess what, if any, further regulatory work it may undertake in this area. The FCA anticipates providing a further update having considered the firms' responses. Around 20 of the largest advice firms are receiving the survey so the widest possible understanding of market practice is achieved. Their selection is not based on any particular concerns with those firms. The regulator had indicated it would undertake some cross-firm work in this area in a letter sent in December 2022. In this, the FCA set out its concerns that advice firms were not adequately considering the relevance, nature and costs of these ongoing services for all their clients.
When does it take effect? Impacted firms will have received the notification from the regulator requesting the information.
What should firms be thinking about? Advisory firms should consider their charging structures and review any areas where customers are being charged for ongoing services which the firm may not be providing.

FOR MORE INFORMATION:

Richard Barnwell

+44 (0)77 1721 4818
richard.barnwell@bdo.co.uk

Osita Egbubine

+44 (0)78 2389 8762
osita.egbubine@bdo.co.uk

Lynne Cooper

+44 (0)78 3197 3356
lynne.cooper@bdo.co.uk

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