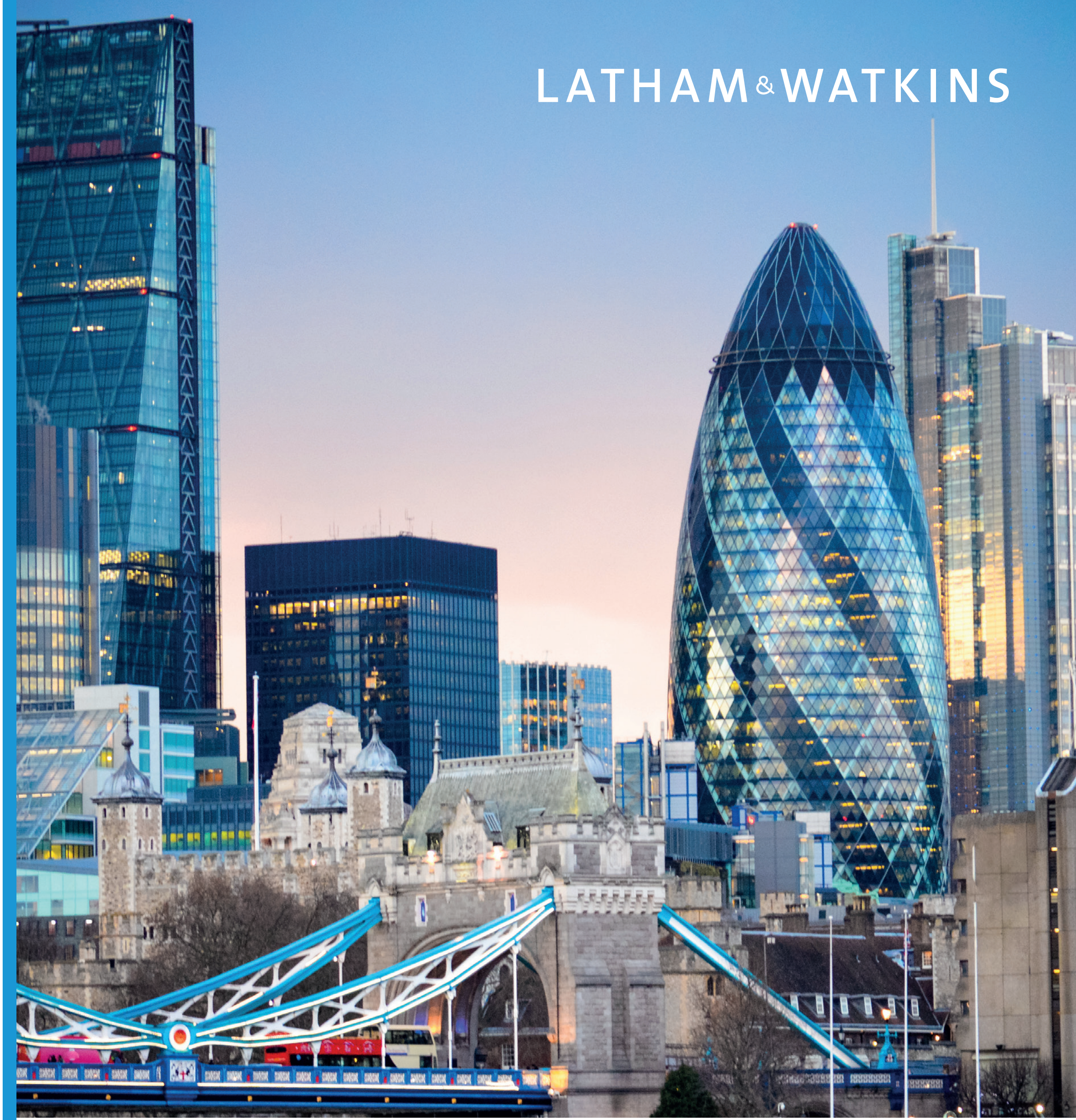
April 2019

PRIVATE BANK BRIEFING



LATHAM & WATKINS

Issues Impacting the Private Bank Sector

Welcome to our quarterly round-up of legal and compliance issues impacting private banks and their clients.

In This Edition

SMCR: FCA to Clarify Position of Head of Legal and Scope of Client Dealing Function

On 23 January 2019, the FCA published a Consultation Paper (CP19/4) concerning further amendments to the Senior Managers and Certification Regime (SMCR). For private banks which are already subject to the SMCR, the consultation sets out the following key proposals:

- Excluding the Head of Legal from the scope of the Senior Managers Regime (SMR)
- Excluding individuals performing purely administrative functions from the scope of the Client Dealing Function

The Head of Legal

The FCA is proposing to exclude the Head of Legal from the SMR. In particular, the FCA notes that as so much of the Head of Legal's work relates to legal advice, legal privilege may in practice restrict the FCA from using its powers and carrying out its usual supervisory processes relating to the Head of Legal, even in relation to the management parts of their job. As a result, the FCA considers that the benefits that normally result from applying the SMR will be reduced substantially, so that any remaining benefits are not sufficient to justify applying the regime. The Head of Legal will, however, fall under the Certification Regime, either as a Material Risk Taker or because the Head of Legal is performing the Significant Management Function. The Head of Legal will also be subject to the Conduct Rules, which the FCA notes will deliver most of the benefits of including these individuals within the SMR, without raising issues in relation to legal privilege.

The FCA previously indicated that the legal function was caught by the SMR, but that due to the uncertainty surrounding this issue any firms that had determined in good faith to exclude the Head of Legal from the regime could continue with their approach while the FCA considered the matter further. Accordingly, many private banks may have chosen not to include their Head of Legal within the scope of the SMR. However, it should be noted that, if the Head of Legal is already an approved Senior Manager because they also perform another Senior Management Function, such as Head of Compliance, then that individual will need to remain approved as a Senior Manager.

The Client Dealing Function

As announced in November 2018, the FCA is seeking to clarify the scope of the Client Dealing Function as a result of confusion regarding the extent to which it captures employees performing purely administrative roles.

As currently worded, the Client Dealing Function includes individuals "taking part in" certain regulated activities, which many firms have read as including individuals in very low-risk roles. The FCA acknowledges that this wording could capture a wide range of individuals, and that it would be disproportionate to apply the regime to employees who pose very little risk of harm to consumers or the firm.

Therefore, the FCA is proposing to amend the scope of the Client Dealing Function to exclude an individual who has no scope to choose, decide, or reach a judgement on what should be done in a given situation, and whose tasks do not require them to exercise significant skill. The relevant factors that firms would be required to consider in assessing individuals would include whether the role:

- Is simple or largely automated; and/or
- Involves exercising discretion or judgment.

Private banks should consider the individuals they have deemed to be in scope of the Client Dealing Function and examine whether their classification ought to be reassessed in light of this clarification.

Next Steps

Responses to CP19/4 are requested by 23 April 2019. The FCA plans to publish its final rules and guidance in a Policy Statement in Q3 2019. The proposed changes would take effect either shortly after the Policy Statement is published, or on 9 December 2019. The FCA indicates that firms currently subject to the SMCR can continue to rely on the statements on the FCA's website in relation to the Head of Legal and the Client Dealing Function until the relevant changes come into force.

SMCR: FCA Final Rules on New Financial Services Directory

On 8 March 2019, the FCA published Policy Statement (PS19/7), which sets out its final rules on "the Directory" — a new public register for checking the details of key individuals working in financial services. The Directory will include information on all certified staff and directors who are not performing Senior Management Functions, as well as Senior Managers.

This Policy Statement follows the FCA's consultation on the Directory last July (see Latham's previous briefing here). The FCA is taking forward its proposals, subject to the following key amendments relevant to private banks:

- The deadline for firms to update information on joiners, leavers, and changes in circumstances has been extended from one or three business days to seven business days.
- The circumstances in which firms will need to provide passport numbers for Directory persons has been limited to instances in which Directory persons do not hold a National Insurance number or those in which the firm has only previously provided a passport number for a Directory person.
- Information on accredited body memberships for customer-facing roles requiring qualification will also be included in the Directory, as well as the different customer engagement methods these individuals offer (*e.g.*, face-to-face, telephone, and/or online).
- The FCA has clarified that the Senior Manager allocated the Prescribed Responsibility for the Certification Regime will be ultimately accountable for the information provided on individuals for the Directory.

The FCA has also extended the initial reporting deadline that will apply to private banks from 10 December 2019 to 9 March 2020. Private banks will be able to start submitting data on Directory persons from around September 2019, and will only need to provide relevant information about any individual who would have been a Directory person before 9 September 2019 if they already hold the relevant information. Therefore, private banks will need to ensure that they can gather and ensure the accuracy of the required information within these reporting deadlines.

AML: New JMLSG Guidance Relating to Anonymous Safe-Deposit Boxes

On 10 January 2019, the Joint Money Laundering Steering Group (JMLSG) announced that it had amended its anti-money laundering and counter-terrorist financing guidance (JMLSG Guidance). The amendments follow the entry into force of certain amendments to the Money Laundering, Terrorist Financing and the Transfer of Funds (Information on the Payer) Regulations 2017.

These amendments relate to anonymous safe-deposit boxes and stem from the Fifth Money Laundering Directive (MLD 5). MLD5 extends the current prohibition on credit and financial institutions — preventing them from setting up anonymous accounts or anonymous passbooks — to include anonymous safe-deposit boxes. This extension has been reflected in paragraph 5.3.67 of Part I of the JMLSG Guidance, which has been updated to specify that firms carrying on business in the UK must not set up an anonymous account, an anonymous passbook, *or an anonymous safe-deposit box* for any new or existing customer.

In addition, the requirement that owners and beneficiaries of existing anonymous accounts and anonymous passbooks must be subject to customer due diligence (CDD) measures before they are used in any way has also been extended to include anonymous safe-deposit boxes. Accordingly, paragraphs 5.3.17 and 5.3.67 of Part I of the JMLSG Guidance have been updated to include anonymous safe-deposit boxes within these CDD requirements.

Private banks therefore will need to ensure that they are in compliance with the prohibition on providing anonymous safe-deposit boxes for any customers (new or existing), and that they have identified all existing anonymous safe-deposit boxes and brought these within the CDD framework.

PRIIPs: Firms to Wait for Potential Reform

Private banks hoping for further clarity concerning the PRIIPs framework will have to wait longer for change. On 8 February 2019, the Joint Committee of the ESAs published its Final Report on amendments to the PRIIPs KID, determining that making amendments to the PRIIPs KID is not appropriate at this time.

Respondents to the November 2018 consultation — in which the ESAs proposed certain targeted amendments to the PRIIPs KID — favoured a more comprehensive review of the PRIIPs framework. In particular, respondents felt that the proposed amendments would be of limited benefit and did not address the fundamental issues. Some respondents were also concerned that, due to the shortened consultation process, there was not time to fully analyse the proposals and their implications.

This feedback — coupled with the fact that amendments to the PRIIPs Regulation to provide for a review of the framework by 31 December 2019 and to extend the exemption for UCITS until 31 December 2021 look likely to be adopted shortly — has led the ESAs to conclude that now is not the right time to tweak the framework. Instead, the ESAs will provide input into the planned review of the PRIIPs KID RTS during 2019. The ESAs will also continue to consider whether it would be beneficial to issue Level 3 guidance in relation to any specific areas in the meantime.

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However, the ESAs are aware that an immediate supervisory response is required in relation to the issues regarding performance scenarios. To address this, the ESAs have produced a Supervisory Statement on performance scenarios, advising that PRIIP manufacturers make additional disclosures to investors to alert them to the limitations of the figures shown and to put the figures in additional context. This Statement builds on the approach suggested in the FCA's January 2018 statement.

Nevertheless, the Supervisory Statement also warns that manufacturers should act proportionately in terms of the additional information they include, and should not encourage investors to disregard the information in the KID.

Although the FCA has been keen to listen to concerns about the PRIIPs Regulation, and has been fairly forthright in voicing its own reservations, the FCA is not planning to take unilateral action to clarify the application of the regime at this stage.

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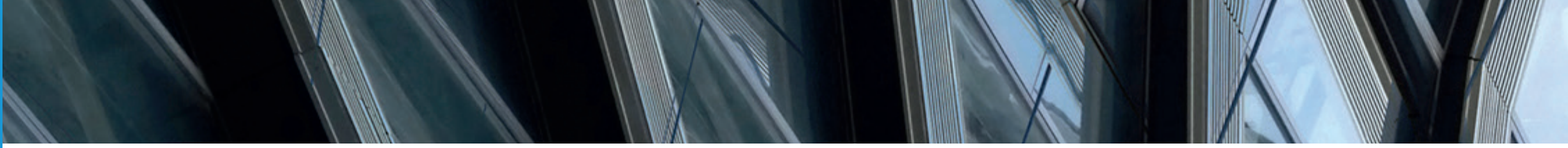
The FCA published the Feedback Statement to its Call for Input on the PRIIPs Regulation on 28 February 2019. The FCA received more than 100 responses, raising various issues in relation to the PRIIPs framework. The FCA agrees that the issues raised in relation to scope (in particular the application of the Regulation to corporate bonds), summary risk indicators, and performance scenarios represent serious concerns and may risk causing consumer harm if not addressed.

However, the FCA considers that action is best taken at EU level to amend the regime, and will continue to discuss these issues with the European Commission and the ESAs in order to push for swift and effective action at EU level. The FCA does acknowledge that Brexit complicates the situation, and notes that it will also consider the extent to which domestic interpretive guidance could mitigate these concerns.

Respondents also raised concerns in relation to transaction costs, but the FCA has been less sympathetic in this respect. The FCA has concluded that unrepresentative transaction costs in KIDs stem from poor application of the PRIIPs methodology, rather than the methodology itself being at fault. Therefore, the FCA will continue to work with market participants to increase understanding and ensure compliance.



MiFID II: Recent FCA Supervisory Work

The FCA has been conducting its first pieces of supervisory work looking at firms' implementation of MiFID II. In January 2019, Andrew Bailey confirmed at a Treasury Committee session that the FCA has been undertaking supervisory work only at this stage (rather than investigation or enforcement work), focusing on research unbundling, costs and charges, and product governance.

The FCA announced in summer 2018 that it was reviewing firms' implementation of the rules on research unbundling. While the formal findings of this review are yet to be published, a speech on MiFID II, delivered by Andrew Bailey at the European Independent Research Providers Association on 25 February 2019 provides some insight into the FCA's findings.

Although the FCA found that firms have been interpreting the rules differently, it does not suggest that this is due to lack of effort or awareness.

In particular, Mr Bailey observed that the new rules are having a positive impact on the accountability and discipline of the buy-side when procuring research, and on the cost of execution. The FCA estimates that the reduction in charges incurred by investors in equity portfolios managed in the UK was around £180 million in 2018. However, Mr Bailey considers that price discovery is still continuing to evolve, and the FCA still harbours concerns about whether research is being priced too low. He also explains that the FCA is keen to scrutinise and test pricing, especially low-cost packages and cheap events. In his view, the market is still developing, and has quite likely not yet found the right pricing equilibrium for research, or felt the full benefit of competition.

The FCA has also provided the formal findings from its review of firms' costs and charges disclosures under MiFID II, published on 28 February 2019. This review focused on ex-ante disclosures in the retail sector. Although the findings largely do not address many of the tricky issues that firms have been grappling with, in particular in relation to ex-post disclosures, they do highlight some important issues that all firms subject to the costs and charges obligations need to consider.

Reassuringly, the FCA acknowledges that firms are aware of the rules and have given serious consideration to implementation. Therefore, although the FCA found that firms have been interpreting the rules differently, it does not suggest that this is due to lack of effort or awareness.

The FCA highlights particular areas for improvement, including:

- Firms could improve disclosure of relevant third-party costs and charges.
- Firms should disclose not only their own transaction costs, but also transaction costs embedded in products. Firms also need to make sure that they do not estimate transaction and incidental costs as zero when they cannot get the data.
- Firms should take reasonable steps to minimise the effort required for a client to request an itemised breakdown.
- Firms should ensure they consistently include charges as both percentages and cash equivalents, as required by the rules.

Private banks should take these findings on board and review their costs and charges disclosures to ensure that they are meeting regulatory expectations.

Outsourcing: EBA Finalises New Outsourcing Guidelines

On 25 February 2019, the European Banking Authority (EBA) published a final report on its draft guidelines on outsourcing arrangements (Guidelines). The Guidelines replace the 2006 Committee of European Banking Supervisors (CEBS) Guidelines on Outsourcing (CEBS Guidelines), and replace and incorporate the EBA's final recommendations on outsourcing to cloud service providers (Cloud Recommendations). The Guidelines apply to a wider range of entities than the CEBS Guidelines and the Cloud Recommendations. This means that, in addition to investment firms and credit institutions, payment and electronic money providers must also comply.

There is also a broadening of the scope of the Guidelines. The Guidelines apply not only to "critical and important functions" (as defined in MiFID II) but also, in the case of certain requirements, to all outsourcings. An "outsourcing" is defined broadly as "an arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself".

One of the significant changes introduced by the Guidelines is the need for firms to implement a written outsourcing policy and to maintain a register of outsourced arrangements. The Guidelines are fairly prescriptive as to the content of such documents, and note that both the policy and register should be produced to a regulator upon demand.

The register is likely to be a tool used by regulators to monitor another key area of focus of the Guidelines: concentration risk. The Guidelines highlight the need for firms to be cognisant of both internal and sectorial concentration risk. This requires institutions to build in appropriate processes to ensure that concentration risk is not only considered during the due diligence phase for new projects, but also monitored and managed throughout the life cycle of the relevant outsourced arrangement.

The Guidelines will come into force on 30 September 2019. Private banks therefore must have the above internal governance procedures in place by this date, and ensure that any outsourcing arrangements entered into, reviewed, or amended after this date comply with the Guidelines. Firms have until 31 December 2021 to update existing outsourcing arrangements not subject to renewal in this period. For entities that are already subject to the Cloud Recommendations, these deadlines will not have any effect on their obligation to comply with the cloud-specific requirements — such requirements will continue to apply as they did prior to publication of the Guidelines.

Private banks should revisit their internal processes and procedures imminently so as to ensure they are in a position to comply with the Guidelines by these deadlines.

Policy: Definition of a Private Bank in FCA Rules

When the FCA consulted on its new rules on overdrafts in 2018, it proposed to make further use of the definition of a private bank already deployed in the FCA Handbook. However, this definition raises some issues regarding scope, as it appears to be unnecessarily restrictive. Therefore, the definition potentially fails to capture various banks and brands typically considered to be private banks.

To qualify as a private bank pursuant to this definition, more than half of the bank's (or brand's) personal current account customers must meet the definition of "eligible individuals". The definition of eligible individuals broadly equates to individuals who have held assets to the value of not less than £250,000 during the previous 12 months. Assets in this context means (i) cash; and (ii) transferable securities, as defined in MiFID II. However, transferable securities only includes certain types of financial instruments such as shares and bonds, but does not include assets held in many collective investment schemes.

This definition of assets is problematic, as typically private bank clients will hold a substantial proportion of their assets in UCITS, AIFs, and similar open-ended funds. It does not appear to be the policy intention to exclude firms from the definition of a private bank simply on the basis that most of their clients hold their assets in collective investment schemes rather than shares or bonds, but unfortunately this is the result of the way in which the definition is drafted.

This issue has been raised with the FCA, and we await the regulator's response. It is important that the implications are considered now, before the definition is used more widely in other contexts.

Compensation: Increase to FOS Award Limit

Private banks should note that the FCA and the Financial Ombudsman Service (FOS) published a joint Policy Statement (PS19/8) on 8 March 2019, on increasing the award limit for the FOS. The Policy Statement provides feedback on the FCA's related Consultation Paper (CP18/31), which was published in October 2018.

The Policy Statement confirms that:

- For complaints referred to the FOS from 1 April 2019 about acts or omissions by firms from 1 April 2019, the award limit will be increased from £150,000 to £350,000.
- For complaints referred to the FOS from 1 April 2019 about acts or omissions prior to 1 April 2019, the award limit will increase from £150,000 to £160,000.

The changes will also introduce rules to ensure that both limits keep pace with inflation in future. The FCA acknowledges that this may cause confusion, and so states that it plans to publish a table on its website so that it is straightforward to see which limit applies at any given time.

Private banks should take note of the changes, and follow the FCA's recommendation to prepare in the following ways:

- Update consumer-facing information about complaints handling procedures
- Ensure that the most recent version of the FOS standard explanatory leaflet is available for customers
- Ensure that complaints handling staff are aware of the increased limits

Consumer Credit: FCA Review of Fees and Charges

The FCA wrote to all credit card firms on 5 March 2019 to highlight the findings from its multi-firm review of fees and charges in prime and sub-prime credit card products and firms. The review considered whether firms were appropriately identifying indicators of potential financial difficulty and acting accordingly when these indicators were present.

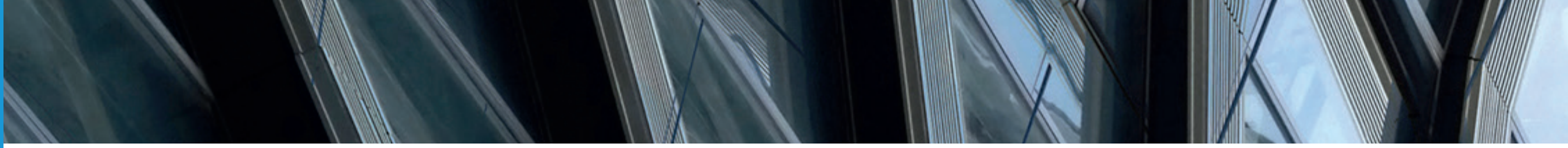
The FCA focused in particular on returned payment fees, over-limit fees, and late fees in its review, as the regulator is concerned that a significant number of customers who miss payments trigger these additional charges, potentially worsening their position. In particular, multiple missed or late payments may be a sign that a customer is in financial difficulty, therefore firms must identify and act upon any signs appropriately.

The FCA reminds firms that under CONC 6.7.3AR, they must monitor a credit card customer's repayment record and any other information held by the firm and take appropriate action if there are signs of actual or possible financial difficulties. Appropriate action includes, amongst other things, considering suspending, reducing, waiving, or cancelling any further interest, fees, or charges.

The FCA emphasises that these findings are equally relevant to prime credit card products and firms, and are not limited to sub-prime customers. Private banks that offer credit cards should therefore ensure that their policies and procedures in relation to fees and charges result in fair consumer outcomes and are compliant with the rules and guidance provided in CONC 7. The FCA provides the following examples of the key questions that firms should be asking to ensure that they are compliant in this area:

- What does your firm regard as signs of actual or possible financial difficulties? Are (multiple) fees and charges considered as one of those signs?
- Does your firm flag on its systems those customers who are repeatedly incurring fees on their account?
- What are the range of actions your firm takes when identifying a sign of actual or potential financial difficulty?

The FCA also highlights that it expects senior managers to ensure the FCA's message reaches the relevant people in their organisation and that firms should ensure employees are clear on where responsibility sits for ensuring the firm addresses the FCA's findings appropriately.



TechTrends: Will Developments in the UK's Regulation of Cryptoassets Bring Them into the Mainstream?

The FCA published a Consultation Paper (CP19/3) on draft guidance on the regulatory status of cryptoassets in January 2019.

The consultation stems from the FCA's work as a member of the UK Cryptoassets Taskforce — a consortium of the FCA, Bank of England, and HM Treasury that was established to assess the risks and potential benefits of cryptoassets and to set out a plan for regulation of cryptoassets in the UK. The FCA's proposed guidance is just one of a number of current regulatory initiatives that will be implemented in the sector this year, including an HM Treasury consultation on changes to the regulatory perimeter and the UK's anti-money laundering regime, and HMRC guidance on the application of corporate tax rules to cryptoassets.

These initiatives mean that it is possible that the UK regulatory position relating to cryptoassets largely will be settled by 2020. Regulatory uncertainty has undoubtedly buffeted mainstream investment in this asset class. However, UK regulators' openness in dealing with that uncertainty could pave the way for cryptoassets to enter the mainstream.

Long-awaited regulatory clarity?

The FCA's draft guidance provides a high degree of clarity as to the treatment of cryptoassets under existing UK regulation. The guidance focuses on whether or not cryptoassets fall within the FCA's regulatory perimeter, and it is clear that this requires a case-by-case determination of the features of each cryptoasset. There are two key perimeter regimes that may apply to cryptoassets in the UK: (i) the "securities" regime; and (ii) the interconnected regimes governing the issuance of electronic money and payment services.

The FCA has clarified that it takes a substance-over-form approach when determining whether a cryptoasset falls within the scope of either regime, and confirms that the regulatory framework is "technology neutral".

(i) The securities regime

The FCA defines cryptoassets that fall within the securities regime as "Security Tokens". The key factor is whether the contractual rights and obligations the token holder has by virtue of holding or owning a cryptoasset match those of owning a traditional specified investment. For example, a cryptoasset that gives holders similar rights to shares, such as voting rights, is likely to fall within the definition of shares. Similarly, a cryptoasset that creates or acknowledges indebtedness by representing money owed to the token holder likely will constitute a debenture.

Other important factors include whether there is a contractual right to a payment or benefit of any kind, and whether the token is transferable and tradeable on cryptoasset exchanges or on any other type of exchange or market.

(ii) The electronic money and payment services regimes

Typically, cryptoassets fall within scope of the electronic money and payment services regimes only if they constitute electronic money. The FCA has clarified that in order for a cryptoasset to constitute electronic money, it will need to satisfy all limbs of the definition of electronic money.

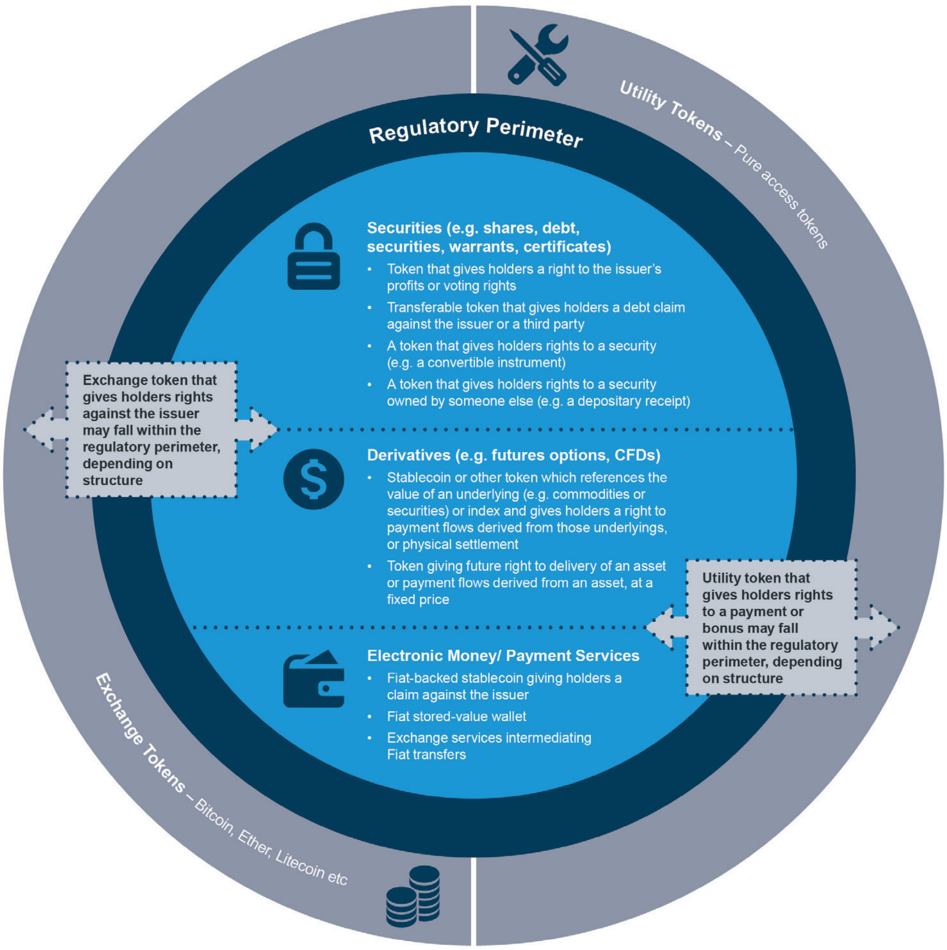
For example, a cryptoasset that does not give holders a right to claim against the issuer for underlying funds will not fall within the definition of electronic money, even if it is pegged to fiat currency using some other mechanism.

Are some cryptoassets unregulated?

The FCA highlights two types of cryptoasset that may fall outside the regulatory perimeter:

- **Exchange Tokens:** These tokens are not issued or backed by any central authority and are designed to be used as a means of exchange. Usually, they are a decentralised tool for buying and selling goods and services without traditional intermediaries.
- **Utility Tokens:** These tokens grant holders access to a current or prospective product or service but do not grant holders rights that are the same as those granted by specified investments. While some Utility Tokens might constitute electronic money if their features meet the definition of electronic money, many will not.

While Exchange Tokens and Utility Tokens may fall outside the FCA's regulatory perimeter, they will not necessarily be outside the scope of all regulation. First, the EU's Fifth Money Laundering Directive (MLD 5), due to apply from the end of 2019, will expand the scope of the EU's anti-money laundering requirements to cover cryptocurrency exchanges and custodial wallet providers, even when they provide services in relation to cryptocurrencies that fall outside the regulatory perimeter. Second, the FCA makes it clear that consumer protection requirements, such as those in the Consumer Rights Act 2015, may apply even to "unregulated" cryptoassets.



Lessons from Enforcement: Some Recent Firsts

First FCA Competition Law Case

The FCA announced its first enforcement decision under its competition law powers on 21 February 2019. The FCA has fined two asset managers for improper information sharing in the lead-up to an IPO and a placing. A third firm was granted immunity, and the FCA took no action against the fourth firm it investigated.

According to the FCA, the infringements consisted of competing asset management firms sharing strategic information on a bilateral basis during one IPO and one placing, shortly before the share prices were set. The firms disclosed and/or accepted otherwise confidential bidding intentions, in the form of the price they were willing to pay, and sometimes the volume they wished to acquire.

The full decision has not yet been published, but given that this case raises important questions about what information appropriately may be shared between firms in the lead-up to an IPO (and potentially in other contexts too), firms hope that it will at least provide some clear guiding principles (if not bright-line distinctions) to follow.

Unfortunately, the preceding FCA enforcement action against Paul Stephany, a former portfolio fund manager at one of the firms involved, sheds little light on where the lines should be drawn. The FCA found that, in relation to the IPO and placing in question, before the order books for the new shares closed, Mr Stephany contacted other fund managers at competitor firms and attempted to influence them to cap their orders at the same price limit as his own orders. Mr Stephany was fined under the FCA's ordinary regulatory powers, rather than its competition law powers, so we do not have the benefit of the FCA's specific competition-law focused analysis.

The FCA found that Mr Stephany had breached Statement of Principle 3 as he failed to observe proper standards of market conduct by attempting to influence the external fund managers. He was also found to have breached Statement of Principle 2 as he failed to demonstrate due skill, care and diligence by failing to give adequate consideration to the risks associated with engaging in communications with the external fund managers. However, the Final Notice gives little away about what sort of interaction (if any) the FCA considers appropriate between competitor firms and other parties involved in the book building process during the lead-up to an IPO or placing.

The publication of the full competition law decision will mark an important moment for the industry. The FCA has had its competition powers since 2015, but this is the first case that has come to fruition. The case also represents the first chance for the FCA to really set out its expectations, and all firms should take note. Private banks should ensure they keep ahead of the FCA's expectations and give competition law risk sufficient consideration in light of the issues the case has raised.

First OFSI Monetary Penalty

The first money penalty imposed by the Office of Financial Sanctions Implementation (OFSI) for breach of financial sanctions regulations also took place in 2019. OFSI was formed in March 2016, and a new enforcement framework for the punishment of breaches of financial sanctions was introduced in April 2017, seeking to address the historically low level of enforcement action in this area.

Although the penalty of £5,000 may not seem significant (particularly as the maximum penalty OFSI can impose is £1 million), this is an important development. The breach in question involved a transaction to the value of £200, and the penalty was reduced by 50% due to the bank having disclosed the breach to OFSI and cooperated with the investigation. OFSI's response sends a message that it is prepared to pursue even what might be considered as a "de minimis" breach (although there is no such concept in the legislation).

The full summary of the breach, when it becomes available, may shed more light on the specific factual circumstances and contain further lessons for the industry. Private banks should take note that this decision may represent a sign of the future approach to financial sanctions enforcement, and should ensure that they continue to give financial sanctions compliance the close attention it deserves.

Brexit: FCA Guidance on Communicating With Customers

On 13 March 2019, the FCA updated its webpage on "preparing your firm for Brexit", including its guidance relating to how firms should communicate with customers. In particular, the FCA emphasises the obligation on firms to pay attention to their customers' information needs and communicate with them about issues relating to Brexit in a way that is clear, fair and not misleading.

Private banks should consider how each type of customer they serve will be impacted and what each customer's needs are, and develop a communications plan accordingly. The FCA notes that there is a difficult balance between communicating to customers in a timely manner and ensuring communications are clear and not confusing (for example if multiple messages are provided that change over time). Firms should therefore consider exactly when customers need information to make relevant decisions, and work backwards from that point. If customers need to act, then the information required must be provided within a realistic timeframe for them to make these decisions. However, firms with credible plans to maintain continuity in any situation will have more time to inform customers of their plans.

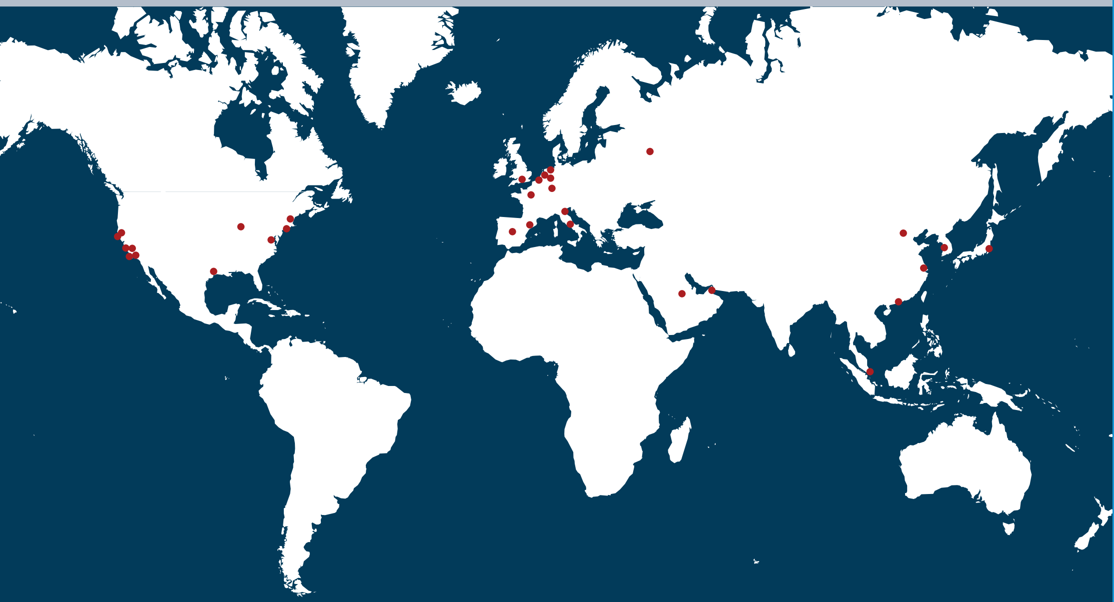
Private banks should also consider what general information can be provided via public channels (for example their website), and how prepared they are to deal with a sudden influx of customer queries. The FCA emphasises that firms must have reactive lines prepared to reassure customers and ensure that they are able to address customer queries accurately, fairly, clearly, and promptly. Private banks may therefore wish to consider having an agreed set of frequently asked questions as a first point for client queries, and to ensure that consistent communications are being delivered, as well as having a wider resourcing plan for addressing customers' questions.

Firms should therefore consider exactly when customers need information to make relevant decisions, and work backwards from that point.

The FCA reminds firms that they must be able to show that they have considered how Brexit, and their plans in relation to Brexit, may affect their customers. Private banks may therefore wish to consider documenting how they plan to communicate with clients in light of this, and their wider obligations to treat customers fairly and communicate with them in a way that is clear, fair and not misleading.

What to Look Out for in Q2 2019

- FCA expected to publish the formal findings from its review of how firms have implemented the MiFID II rules on research unbundling
- UK government to set out its approach to consulting on how to ensure the UK Financial Services regulatory framework adapts to the UK's new position outside the EU
- European legislators to adopt various legislative proposals in advance of the May EU Parliament elections. These include sustainable finance measures, reform of the European System of Financial Supervision, amendments to the CRD IV framework, and new prudential rules for investment firms



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*In cooperation with the Law Office of Salman M. Al-Sudairi