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Labour’s plans for financial institutions

26 September 2024

Financial Institutions 360 - Q2 2024: Regulatory update

Read other sections of this edition of the Financial Institutions 360:

- Asset management update
- Enforcement and litigation update

King’s Speech

In July the new Labour Government published the King’s Speech, outlining its inaugural legislative programme, which contained the following items of specific interest to financial institutions:

- The Bank Resolution (Recapitalisation) Bill (which was subsequently published). Among other things, this requires the FSCS to provide funds to the Bank of England on request where this is necessary to recapitalise a failing bank. The FSCS will be able to recover this money via an extra levy on the banking sector.
- Pensions Schemes Bill: this will continue work started by the previous government in relation to pensions, including making it easier for pension-holders to consolidate small pension pots, and introducing a standardised value for money framework.
- Digital Information and Smart Data Bill: this will provide a statutory basis for open banking, along with other smart data schemes.
- The National Wealth Fund, on which we have published a separate briefing.
- Renters' Rights Bill and the Leasehold and Commonhold Reform Bill.
- Employment Rights Bill.

Changes to Retail Disclosure rules

In September the Treasury and FCA published updates regarding the Packaged Retail and Insurance-Based Investment Products Regulation (PRIIPs). The previous government had previously announced that it was proposing to repeal this piece of assimilated EU law and replace it with a new framework for Consumer Composite Investments.

On 19 September the Treasury announced that it was planning to lay legislation as soon as possible to provide the FCA with the powers to make the necessary regulatory changes. The Government is expecting that the new regime will be in place by the end of Q2 2025.

The Treasury also announced that it will lay legislation to exempt investment trusts from the current PRIIPs Regulation, as an interim measure.

In light of this announcement, the FCA issued a statement, setting out immediate forbearance in relation to investment trust disclosure requirements. As of the date of the announcement, in scope firms may choose not to follow the requirements of PRIIPs and other technical standards. The FCA reminds firms that they still need to comply with the Consumer Duty, Principle 7 and the relevant requirements of COBS 2.1.1R to act honestly, fairly and professionally in the best interests of clients.

FCA review of treatment of Politically Exposed Persons

The FCA was required under FSMA 2023 to undertake a review of the treatment of Politically Exposed Persons, but had to delay publication of its findings due to the pre-election period. In July it published the outcome of its review, alongside a consultation on proposed amendments to its guidance, which will close in October.

The FCA found that most firms had systems and controls designed to implement its guidance, but did find some issues, including:

- Some firms were using definitions which were wider than those in the Regulations.
- Most firms need to improve their staff training.
- Some firms had not updated their policies to reflect legislative changes to the effect that UK PEPs and their families should be treated as having a lower risk rating than a foreign PEP, unless there were other factors.

Updated Listing Rules

In July 2024 the FCA published its delayed Policy Statement PS24/6, setting out the revised UK Listing Rules, coming in at a near record-breaking 557 pages. These are part of the UK Listing Review, which was launched in 2021 and represents the biggest overhaul of listing rules in 30 years. The FCA has decided, further to the consultation, to keep most of its proposals including:

- Removing the current "premium" and "standard" listing segments and replacing them with "commercial companies" category for equity share listings.

- There will no longer be a need for votes on significant or related party transactions, and greater flexibility in relation to companies listing with dual class share structures (DCSS) or weighted voting rights.

Some proposals were amended following consultation, including allowing institutional investors to hold enhanced voting rights to ensure they are not disincentivised from supporting pre-IPO funding rounds or bringing companies to listing in the UK. This will allow investment groups such as private equity and venture capital firms to be able to hold more voting rights than other shareholders for up to 10 years.

The new rules have already been criticised by some, including the International Corporate Governance Network which has raised concerns that the new regime will water down investor protections.

The new rules came into force on 29 July 2024.

Trading apps experiment

The FCA published a research note relating to Digital Engagement Practices: a trading apps experiment. The FCA reports that their experiment indicated that digital engagement practices used by trading apps, such as push notifications and prize draws, can increase risk taking. The research found that they particularly have an impact on those with low financial literacy, younger participants (18-34) and women. The FCA had previously warned stock trading apps to review game-like design features ahead of the Consumer Duty coming into force.

FCA / PSR joint call for information on big tech and digital wallets

The FCA and the PSR have jointly published a call for information on big tech and digital wallets. The regulators are asking questions relating to:

- The range of benefits that digital wallets bring for service users,
- Whether there are any features that mean payments aren't working as well as they could for consumers and/or businesses,
- Their role in unlocking the potential of direct account-to-account payments and how they could impact competition between payment systems, and
- Whether digital wallets could raise any significant competition, consumer protection or market integrity issues, either now or in the future.

The FCA has regularly stressed that Big Tech's role in financial services is a priority for them, in particular with regards to Big Tech firms' access to data which the FCA believes could unlock benefits for consumers.

Financial Promotions update

On 7 August the FCA published a review of crypto firms' compliance with financial promotions rules which came into force in October of last year. Unsurprisingly some firms have been struggling with the new rules and so the FCA has set out examples of good and poor practice to clarify its expectations.

The FCA asked a sample of firms for information on their onboarding journey and also visited them. The review looked in particular at:

- The presentation of the prescribed 24-hour cooling-off period
- Personalised risk warnings
- Client categorisation
- Appropriateness assessments

The FCA notes that for many crypto firms, this is their first experience of conduct regulation, and they have also had to implement these changes alongside other regulatory changes such as the Travel Rule.

The FCA reminded firms that if they were communicating or approving financial promotions, they must make sure they have strong systems and controls for compliance in place, and should not rely on comparisons with industry peers to benchmark what is acceptable practice.

The FCA also published a webpage setting out its financial promotions quarterly data for Q2. Its interventions in 2024 Q2 resulted in 3,273 promotions being amended or withdrawn by authorised firms, and they issued 528 alerts on unauthorised firms and individuals. 11 per cent of these were clone scams. They obtained VREQs from some firms, including a BNPL firm.

Another case of interest was a high-risk investment firm which had not included the prescribed risk warning required to protect consumers from the potential harm from its products in its social media promotions or in its communications to clients and potential clients. Following FCA intervention, the firm amended its social media promotions and other financial promotions and communications and reviewed its systems and controls.

This article is part of our Q2 update for Financial Institutions.

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