COMPLYPORT REGULATORY ROUNDUP

20 YEARS LEADING COMPLIANCE EXCELLENCE

October 2022 | In this Issue:

Editor's Note

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Hello, and welcome again to Complyport's Regulatory Roundup providing our monthly digest of regulatory updates and news from the past few weeks that we believe will be of interest to you.

f you find these articles of interest then we'd suggest also taking the opportunity to take a look at our website where you'll see that our *Insights & Articles* are updated on a frequent basis in order to provide regular updates in a fast-moving industry. Not everything that receives coverage on the website makes it onto the Regulatory Roundup.

As always, we're here to help and so please feel free to contact us if any of these articles prompt you to think about how we might work together to meet your needs. In addition, please do not hesitate to contact me at richard.corbyn@complyport.co.uk with your thoughts, ideas and feedback on how we can make the Roundup even better. We'd love to hear from you!

Regulation

FCA Proposes New Rules to Tackle Greenwashing

Greenwashing is the practice of corporations seeking to falsely and deceptively persuade the public that they are environmentally friendly when they aren't. Greenwashing is a potentially massive problem as it can lead consumers who have every intention of adopting a 'sustainable' lifestyle towards being unknowingly part of the problem. From an FCA perspective, Sacha Sadan, the FCA's Director of Environment Social and Governance, has stated that greenwashing "erodes trust in all ESG products".

Over recent years greenwashing litigation has been gaining pace, for example, government enforcement actions and civil lawsuits suggesting greenwashing is on the rise globally. Likewise, a few weeks ago the Advertising Standards Authority banned a series of HSBC's adverts relating to their green credentials because they did not mention their financing of fossil fuel projects and links to deforestation, which they judged to be misleading. These efforts coincide with the FCA's recent *Consultation Paper* on Sustainability Disclosure Requirements (SDR) and investment labels, aiming to clamp down on greenwashing.

The FCA is proposing new rules which will protect consumers and instil trust in sustainable investment products, which forms part of the FCA's wider ESG Strategy and Business Plan. The FCA has found that a number of firms may be making "exaggerated or misleading sustainability-related claims about their investment products, claims that don't stand up to scrutiny".

In light of this, CP22/20 proposes to introduce the following:

- Sustainable investment labels which will give consumers the confidence to choose the right products for them.
- Three categories for sustainable investment products:

1. Sustainable focus (these products aim to invest in assets that are environmentally and/or socially sustainable);
2. Sustainable improvers (products which aim to invest in assets that have potential to deliver measurable improvements in their environmental and/or social sustainability over time);
3. Sustainable impact (these products aim to achieve a positive, measurable contribution to real world sustainability outcomes).

- Consumer-facing disclosures to help consumers understand the key sustainability-related features of an investment product.
- Detailed disclosures targeted at wider audiences such as institutional investors or retail investors who want to know more.
- Naming and marketing rules which restrict how certain sustainability-related terms such as 'ESG', 'green' or 'sustainable' can be used in product names and marketing for products which don't satisfy the sustainable investment labels.
- Requirements for distributors to ensure that product-level information is made available to consumers.
- A general 'anti-greenwashing' rule applied to all regulated firms which reiterates existing rules to clarify that sustainability-related claims must be clear, fair and not misleading.

25 January 2023 is the deadline for responses to CP22/20. The final rules and guidance will be published in a Policy Statement in Q2 2023.

DP22/5 – Big Tech Entry and Expansion in Retail Financial Services

On 25th October 2022 the FCA released DP22/5, discussing the potential of Big Tech firms entering into the retail financial services space. It concerns itself with the dilemma that whilst such firms can provide innovative, efficient products and services and due to their established standing, they could also potentially harm competition and consumer outcomes going forward.

The FCA wants to hear views regarding the biggest competition benefits for consumers that Big Tech firms could create but also the areas where they could cause the greatest risk of harm.

The analysis has focused on four retail sectors due to the importance to consumers' financial lives and potential competition impact big tech firms could have, namely:

- Payments
- Deposit taking
- Consumer Credit
- Insurance

Having identified the four retail sectors, the FCA has found five key themes emerging. These are as follows:

- Potential for Big Tech firms to enhance the overall value of their ecosystems with further entry and expansion in retail financial services sectors through innovative propositions.
- In the short term, a partnership-based model is likely to continue to be the dominant entry strategy for Big Tech firms. In the longer term they may seek to rely less on partnerships and compete more directly with existing firms.
- Big Tech firms' entry may not be sequential or predictable. While initial forms of entry may be hard to predict, once momentum builds, we might see significant market changes occur quickly.
- In the short-term and possibly enduring longer, Big Tech firms' entry in financial services could benefit many consumers.
- In the longer term, there is a risk that the competition benefits from Big Tech entry in financial services could be eroded if these firms can create and exploit entrenched market power to harm healthy competition and worsen consumer outcomes.

A feedback statement is planned to be published in the first half of 2023, setting out the FCA's responses and also developing a regulatory approach in response to the feedback received.

Update on the Consumer Duty

Following on from articles in our recent Roundups, in seems likely that the Consumer Duty will remain a regular fixture for the foreseeable future.

Just to recap, the Duty has been introduced by FCA to ensure appropriate standards of care are provided to retail customers. Final rules on the Duty were published in the Summer in PS22/9 with additional guidance in FG22/5. The Duty will create a 12th Principle for Businesses (found within PRIN 2.1) - the Consumer Principle. It requires firms to "act to deliver good outcomes for retail customers."

The 4 outcomes where FCA wants to see improvement are:

- Products and Services
- Consumer Understanding
- Consumer Support
- Price and Value

We previously provided a breakdown of each outcome in our previous Roundup, including the actions needed to satisfy them. In this issue, we will focus on the particular areas the FCA has provided further updates on since (in the form of webinars and letters) as well as the upcoming deadline on April 2023 for manufacturers.

With the recent implementation plan deadline of the 31st October 2022, firms' boards (or equivalent governing body) should have by now agreed, scrutinised, and sent off their plans to the FCA.

The current Consumer Duty timeline:

- **30th April 2023** – Manufacturers to complete existing product and services reviews to meet the four outcomes and reach out to Distributors.
- **31st July 2023** – Deadline to fully implement and comply with the Duty.
- **31st July 2024** – Implementation deadline for closed products and services.

What can firms expect now?

Unfortunately, this is not the last we will hear of implementation plans. Firms must now prepare to be challenged on the claims outlined in their plans. As part of the FCA's supervisory strategy, selected firms will be questioned on the adequacy of their plans by FCA supervisors. There are no set criteria to determine which firms will be challenged, so it is paramount that all firms prepare for this. However, the FCA has equipped firms with an extensive set of questions found at the end of each Consumer Duty outcome chapter of guidance paper FG22/5. The FCA have made it clear that these will be the same questions posed to firms by supervisors.

Some questions the FCA placed a particular focus on during a recent webinar on the Duty are:

- How has the firm approached the Duty?
- How is the firm thinking about good outcomes?
- What gaps has it identified between its current practice and practice it needs to get to? (Gap analysis)
- Are the actions agreed in the plans deliverable?
- Is the Duty embedded throughout the culture of the firm?

The FCA has made it clear they will be looking to be more closely involved with firms. Also, that they are now acting faster where breaches occur and will not hesitate to use enforcement powers when firms fail to comply. Firms submitting applications for authorisation will be required to evidence compliance with the Duty when coming through the gateway.

Duty Champions

Boards will now begin to oversee the implementation of the Duty and ensure it is delivered on time. The FCA will expect to see the Duty embedded across all aspects of a firm's culture, strategy and business objectives. To facilitate this, the Board must appoint a Duty Champion. The Champion will be likely be an Independent Non-Executive Director (NED). However, the FCA understands that for some smaller firms, appointing an NED may not always be possible. Nevertheless, the role of the Champion is to ensure that the Duty is regularly being brought up and discussed meaningfully at Board meetings.

To evidence compliance with the Duty here, firms must clearly document Board papers, minutes and actions taken as a result of the Champion advocating for good consumer outcomes. The aim here is that the Champion will be able to challenge Board members on how effectively they embed the Duty's four outcomes and what actions they will take towards them. Crucially, the responsibility of the Champion is not to implement the duty, but to oversee it.

What must Manufacturers do?

As per rules in PS22/9, the April 2023 deadline requires manufacturers to have completed all existing and open product reviews necessary to meet the outcomes of the Duty. The results of which must then be shared with distributors to meet their obligations under Duty, and to identify and enact any changes that must be made.

FCA has stressed that to effectively implement the Duty, firms will need to compile the relevant data needed to provide insight. The FCA recommends that firms utilise focus groups of customers or distributors, and test communications to see how well consumers understand what's being directed to them, including website material.

How can Complyport Help?

If this article has prompted any questions about the new Consumer Duty, or if your firm requires assistance in order to comply with the updated rules by the implementation deadline, then please contact Jan Hagen via jan.hagen@complyport.co.uk to book in a free consultation.

Industry Updates

PRA Statement

Credit risk mitigation (CRM) eligibility, risk-based capital treatment, and leverage ratio treatment of guarantees under the Energy Markets Financing Scheme (EMFS)

What is the Energy Markets Financing Scheme (EMFS)?

On 17th October HM Treasury and the Bank of England launched the Energy Markets Financing Scheme (EMFS) to address the extraordinary liquidity requirements faced by energy companies operating in UK wholesale physical gas and electricity markets.

The extraordinary liquidity requirements have arisen due to the unprecedented price volatility in wholesale energy markets, which are reacting to the conflict in Ukraine and retaliatory sanctions regime imposed on Russia, Belarus and now Iran. As this conflict continues to unfold energy firms are facing large liquidity needs due to their hedging activities relied on to manage energy price risks.

The EMFS will enable the provision of short-term financial support, by way of a guarantee, to energy firms of good credit quality for the purpose of meeting the collateral requirements that arise due to this hedging activity in over-the-counter (OTC) and exchange-traded markets. This support will be limited to use only where the purpose is to reduce the risk or costs of contractual commitments related to the purchase or sale of electricity or gas intended for ultimate supply in the UK domestic market.

PRA Statement in response to the EMFS

On 18th October the Prudential Regulation Authority released a statement of their observations on the capital requirements relating to firm' exposures under the scheme. The key points for firms extending credit facilities to energy companies under the scheme are listed below.

- **Credit Risk Mitigation Eligibility**

PRA has stated that in their opinion the terms of the guarantee provided under the scheme do not contain features that would render the guarantee ineligible for recognition as unfunded credit risk protection under the CRR. If firms are satisfied the guarantee meets the conditions in Articles 194 and 213-215 of the CRR, they may be able to adjust their capital requirements.

- **Observation on the EMFS scope of protection**

Based on the terms of the credit provided under the EMFS, the guarantee excludes cover for default interest and some fees owed by a borrower to a lender.

The PRA has reminded firms that where they recognise the EMFS guarantee as eligible unfunded credit protection in relation to an exposure then to be consistent with CRR Article 215.1c(ii) they need to adjust the value of the guarantee to reflect these limitations of the coverage.

In addition, the PRA's statement highlighted that the EMFS guarantee does not cover funds advanced after the lender becomes aware funds previously advanced are being used for a non-scheme purpose, or of a downgrade in the borrower's credit rating to below the scheme minimum. They clarify that sums advanced in these circumstances are consequently not guaranteed and should be assigned the obligor's risk weight.

- **Standardised Approach (SA) to Credit Risk (CRR)**

PRA has confirmed that firms applying the Standardised Approach for credit risk should assign the relevant prescribed central bank risk weight to the portion of an exposure benefiting from the protection of a guarantee provided by the Bank under the EMFS. Any residual part of the exposure that is not covered by the guarantee should be assigned the SA risk weight that would apply if the exposure were not guaranteed.

- **Internal Ratings Based (IRB) Approach to Credit Risk (CRR)**

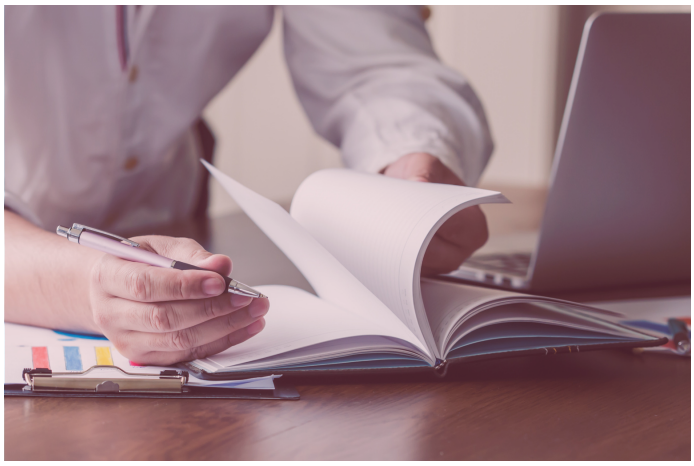
PRA has confirmed that firms applying an Internal Ratings Based (IRB) approach for exposures to the obligor, with a Permanent Partial Use (PPU) exemption for exposures to the guarantor should assign the portion of an exposure benefiting from the protection of a guarantee provided by the Bank under the scheme with the relevant central bank risk weight prescribed by the SA.
Any residual part of the exposure that is not covered by the guarantee should be risk weighted according to the relevant approved IRB approach as if the exposure were not guaranteed.

Alternatively, firms applying an IRB approach for exposures to the obligor and for exposures to the guarantor should do so in a manner that is consistent with their approved IRB models and their IRB permissions.

- **Leverage Ratio Measurement**

In their statement the PRA provide a short but concise view on the treatment of exposures under the scheme in firms leverage ration measurements.

Quoting the PRA, firms should include exposures relating to the scheme in their leverage ratio total exposure measure, as calculated in accordance with the Leverage Ratio (CRR) Part of the PRA Rulebook.



Financial Crime

Introducing the new Economic Crime and Corporate Transparency Bill 2022

The UK economy remains one of the most attractive spaces for global business. However, this leaves it open to increasing risk from perpetrators who see an opportunity to take advantage of this in the form of fraud and money laundering. This has a roll-on effect of exposing the UK to serious organised crime funded by such acts and facilitates corruption abroad. The National Crime Agency estimates that money laundering costs the UK in excess £100 billion per year.

To tackle this issue, the government published the Economic Crime and Corporate Transparency Bill in September 2022 with an updated policy paper on 8th November 2022. This follows the Economic Crime (Transparency and Enforcement) Act passed earlier this year, which focused on laundered and fraudulent Russian money and other foreign elites abusing the UK economy

What are the new changes?

The Economic Crime and Corporate Transparency Bill will aim to:

- Reform Companies House
- Reform limited partnerships
- Give additional powers to seize and recover criminal cryptoassets
- Give businesses confidence to share information needed to tackle economic crime
- Deliver new intelligence gathering powers for law enforcement and remove insignificant burdens on business

Reforms to Companies House

The Bill will introduce new identity verification for all new and existing registered company directors, those who deliver documents to the Registrar and People with Significant Control. The objective of this is to increase the accuracy of data held at Companies House and in turn this will increase efficiency of business decisions and any law enforcement investigations that may take place.

The Bill will also strengthen the powers of the Registrar, allowing them to check, remove or decline both existing and new information on the companies register. This serves as a preventative

measure, which will allow the Registrar to have a more active role over the creation of companies and ensure existing information is reliable. The common theme of the Bill is to ensure all data is complete and accurate and so this will also be reflected in the financial information held on the register.

Next, new intelligence gathering powers for law enforcement. The Bill will equip Companies House with the improved abilities to cross-check data with other public and private bodies. As a result of departments working more closely together, we can expect to see a more efficient and streamlined investigative process, aiding law enforcement in acting quickly where there is suspicious behaviour.

Lastly, to combat fraud there will be an enhanced protection of personal information held at Companies house to better protect individuals.

Reforms to Limited Partnerships

On limited partnerships, the Bill will crack down on their misuse by overhauling the law that governs them. The introduction of new requirements will see a more rigid registration process overall. Within this, the law will require limited partnerships to maintain a connection to the UK, increase transparency, and arguably the most important change – enable the Registrar to deregister limited partnerships which are dissolved, not carrying on business, or where a court deems it is in the public interest to deregister. Notably, the scope of the Bill will extend to Scottish limited partnerships.

Failure to comply with the new rules may result in penalties imposed on partners of the limited partnerships, including fines, prison sentences and deregistration altogether. See more detail on the problems here associated with LLPs in our separate article below.

Cryptoassets

The law is yet to catch up with the growing use and trading of cryptoassets in modern day times. This has inadvertently created a loophole with criminals taking advantage of the lack of regulation surrounding digital coins to launder the proceeds of criminal activities. The new Bill aims to bridge this gap by essentially enabling law enforcement to quickly seize and recover cryptoassets linked to crime or illicit activity such as fraud or money laundering.

The Bill will do so by amending criminal confiscation powers in Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (POCA). It will also strengthen civil recovery powers found in Part 5 of the act. This will enable law enforcement to more efficiently prevent and take action against criminals abusing cryptoassets.

Additional Anti-Money Laundering powers

In the absence of quick and easy data sharing capabilities on suspected money laundering, the risk posed increases. The reforms in anti-money laundering (AML) powers will now enable businesses to better share information to prevent, detect and investigate crimes. The Bill will do this by removing civil liability for breaches of confidentiality for businesses that use this information to tackle money laundering.

The Bill will also enhance the National Crime Agency's Financial Intelligence Unit's current abilities to collect information relating to money laundering and terrorist financing. It will do this by disapplying the requirement to submit a Suspicious Activity Report before you can request an Information Order.

It is yet to be seen whether the new Bill will do enough to combat economic crime in the UK, although the changes are likely to have a big impact. At present, the Bill is still in the early stages having gone through two readings in the House of Commons. As it moves into the committee stage, we await to see if any changes will be made.

UK Limited Liability Partnerships and Financial Crime

Transparency Internationals recent report 'Partners in Crime' exposes the scale of abuse of Limited Liability Partnership (LLP) company structure in helping assist with activity constituted as serious financial crime with a conservative estimate of economic damage being in the hundreds of billions of pounds. It was discovered that one in ten LLPs ever incorporated in Britain bear the hallmarks of shell companies used to conduct these acts of serious financial crime.

LLPs are a type of corporate structure that is attractive as it can be set up in a way that provides multiple layers of secrecy, making it difficult to establish who really owns them and thus be used to disguise serious financial crime. This popularity is demonstrated as Transparency International analysed 146,948 LLPs incorporate between April 2001 (first time LLPs were established) and September 2021 which revealed 21,002 (14%) showing three or more money laundering red flags.

Duncan Hames, Director of Policy at Transparency International UK stated, "Key to getting on the front foot is a long-overdue reform of Companies House, effective anti-money laundering regulators and properly resourced law enforcement that can provide a credible deterrent to economic crime."

This has led to Transparency international calling on the UK government to:

- Get Companies House reform right the first time
  - Prohibit all UK companies, including LLPs, from being controlled by opaque offshore companies.
  - Give Companies House powers to review 'know your customer' checks carried out by company formation agents where rogue behaviour is suspected.
  - Increase the cost of company incorporation to at least £50 to enable Companies House to have a sustainable self-funding model.

- Ensure an effective first line of defence against economic crime
  - Overhaul the UK's fragmented and ineffective system of anti-money laundering supervision.
  - Commission an independent investigation of high-risk company formation agents to review their compliance with anti-money laundering rules.

- Create a credible deterrent against UK companies for economic crime
  - Ensure Companies House has the resources to make use of its new powers
  - oImplement, by the FCA, recommendations outlining emerging money laundering risks associated with UK electronic money institutions set out in Transparency International's 2021 report 'Together in Electric Schemes'

Crypto

UK Police Forces Trained to Seize Crypto-Assets

According to recent announcements by the NPCC, crypto tactical advisers are now stationed in police departments nationwide. This move will assist police forces in investigating and seizing digital assets linked with criminal activity. Andrew Gould, staff officer for NPCC's cryptocurrency portfolio, confirmed that these expertly trained crypto consultants are included in every regional crime unit within the UK.

Mr. Gould confirmed the above while attending a hearing for the new Economic, Crime and Corporate Transparency bill which is expected to provide to law enforcement powers to freeze crypto assets that have links to criminal activities, with more ease. Especially targeting criminals that utilise cryptocurrencies for money laundering and terrorist financing.

By utilising the above, as well as acquiring the services of Komainu, a digital asset custodian wallet provider, and £100m from the government, law enforcement has managed to seize hundreds of millions of pounds worth of crypto-assets.

However, continuous technological innovation makes these digital assets more diverse, complex, and technical, which proves to be tremendously arduous and time consuming for the officers to track, and especially during a time where the police are losing staff to big private firms that offer lucrative pay checks which is the biggest drawback that the force is currently facing.

2022 Crunch Time: International Regulation of Cryptoasset Activities

Current regulatory landscape

As cryptocurrency has become a more significant factor in the global investment landscape, governments in countries around the world have been prompted to take different approaches to regulating the asset class. Below are examples of the approach of different regimes.

- While there are no cryptocurrency-specific laws in the UK, cryptocurrency is considered as property (not legal tender), and crypto exchanges must register with the FCA. Crypto derivatives trading is banned in the UK as well. As of 30 August 2022, crypto exchange and custodian wallet providers are required to comply with the reporting obligations implemented by the Office of Financial Sanctions Implementation (OFSI).
- The US announced a new framework in 2022 that opened the door to further regulation. The new directive has handed power to existing market regulators such as the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).
- Cryptocurrency is legal throughout most of the EU, although exchange governance depends on individual member states. In recent years, the EU's Fifth and Sixth Anti-Money Laundering Directives (5AMLD and 6AMLD) have come into effect, which tighten KYC/CFT obligations and standard reporting requirements. In September 2020, the European Commission proposed the Markets in Crypto-Assets Regulation (MiCA)—a framework that increases consumer protections, establishes clear crypto industry conduct, and introduces new licensing requirements. It was passed into law in 2022.

- China classifies cryptocurrencies as property for the purposes of determining inheritances. The People's Bank of China (PBOC) bans crypto exchanges from operating in the country, stating that they facilitate public financing without approval. In September of 2021, cryptocurrencies were banned outright. However, the country has been working on developing the digital yuan (e-CNY). In August 2022, it officially began rolling out the next round of its central bank digital currency (CBDC) pilot test program.
- While crypto is not considered legal tender in Canada, the country has been more proactive than others about crypto regulation. Canada became the first country to approve a Bitcoin exchange-traded fund (ETF), with several of them now trading on the Toronto Stock Exchange. Canada classifies all crypto investment firms as money service businesses (MSBs) and requires that they register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

FSB Ecosystem Report and Global Stablecoin Report

Crypto-assets markets are fast evolving and could reach a point where they represent a threat to global financial stability due to their scale, structural vulnerabilities and increasing interconnectedness with the traditional financial system. Moreover, this rapid evolution and international nature of these markets increases the risks for potential regulatory gaps. Although the extent and nature of use of crypto assets varies somewhat across jurisdictions, financial stability risks could rapidly escalate, underscoring the need for timely and pre-emptive evaluation of possible policy responses.

Vulnerabilities that could undermine the integrity and functioning of crypto-asset markets:

- Low levels of investor and consumer understanding of crypto-assets including costs, fees, conflicts of interest and lack of redress and/or recovery and resolution mechanisms, and uncertainties around the operational resilience of some crypto-asset focused institutions.
- Given the public prominence of crypto-assets and crypto-asset trading platforms, any loss of confidence in crypto-assets could have implications that exceed those commensurate to the actual magnitude and direct financial interconnectedness of crypto-asset markets.
- The environmental impact of energy intensive consensus mechanisms used for certain crypto assets.
- Wider public policy issues related to crypto assets beyond the FSB's remit that have important implications, such as the use of cryptoassets in the context of money laundering, cyber-crime, and ransomware.

Summary of proposed framework on crypto activities

The global financial authority, Financial Stability Board (FSB), recently proposed a regulatory framework for cryptocurrencies to the nations with the 20 largest economies (known as the G-20 nations), outlining concerns about crypto markets and activities.

The published report/proposal calls for stricter regulation of crypto assets, namely stablecoins, and a clear framework outlining risks and compliance for crypto regulation. Furthermore, the FSB says that the crypto market has come to the point where more focused regulation is necessary.

Short summary of the discussion points within the report:

- Stablecoins—cryptocurrencies whose value is pegged, or tied, to that of another currency, commodity, or financial instrument—are seen in the report as the greatest risk to global financial stability among crypto assets.
- Crypto assets should be regulated in a similar manner to any other kind of asset. This is an attempt to stop traditional financial activities migrating to less regulated crypto asset markets.
- Authorities should have the appropriate powers, tools, and resources to regulate, supervise, and oversee crypto asset activities and markets. It also recommends that authorities should cooperate and coordinate with each other, both domestically and internationally.

- Crypto asset issuers and service providers should be obliged to establish robust governance frameworks. Moreover, they also need to have effective risk management frameworks that comprehensively address all material risks associated with their activities.
- A combination of multiple functions amongst crypto asset service providers may result in complex risk profiles, as well as conflicts of interest. Existing market regulations can be applied to mitigate conflicts of interest and investor risks arising from the combination of services and functions.
- Ten high-level recommendations have been agreed on for the regulation, supervision, and oversight of global stablecoin (GSC) arrangements, both at the domestic and international level.

Finally, it is important to note that the FSB cannot create policy, but it hopes to influence policy makers to adopt this crypto regulation framework. These recommendations have been released to strengthen international regulation of crypto assets and so-called global stablecoin (GSC) arrangements. The recommendations address risks that crypto assets and GSC arrangements pose to financial stability. Other types of risks posed by these innovations – such as money laundering and terrorism-financing, data privacy, cyber security and consumer protection – are not directly part of the recommendations and have yet to be adequately addressed.

It is expected that by December 2022, the market will have two major developments taking place: a potential detailing of the FSB's suggestions for regulation and the passing of the MiCA bill by the European Union which may encourage crypto regulation in other countries as well.

First Global Crypto Tax Reporting Framework

The new OECD's (Organization for Economic Co-operation and Development) Crypto-Asset Reporting Framework's (CARF) purpose is to address directly the global tax transparency within the digital asset sector. The new framework will service every type of cryptocurrency from stable coins and tokenised financial instruments, to NFT's and crypto tokens.

The reporting will encapsulate customer-level activity for actions such as buying, selling, trading, and transferring digital assets on and off platforms. Furthermore, a requirement for transaction level tracking with fair market value will be implemented.

Businesses will be expected to carry out enhanced due diligence upon account opening, which are comparable to the already existing CRS reporting which collects individual customer tax details through self-certification.

These developments developed in the light of the rapid development and growth of the crypto-asset market within the last few years. However, not all typed of crypto-assets will be within the scope of CARF. The three exempt categories are:

1. Central Bank Digital Currencies (CBDC's)
2. Specified Electronic Money Products
3. Crypto-Assets that cannot be used for payments or investment purposes

CARF will further provide clarity on crypto tax reporting rules in relation to the four pillars below:

- Crypto-Assets in Scope – Cryptocurrencies that can be used for payments or investment purposes. Non-fungible tokens (NFT's) are exempted; however, they could be pulled back into scope as they are traded on online marketplaces.
- Intermediaries Subject to Reporting – Entities or individuals that as a business enable and execute crypto asset transactions, such as centralised exchanges, brokers, operators of ATM's, and certain decentralised exchanges will be subject to reporting.
- Information to be Reported – Requirements include annual aggregate transaction by crypto asset type on crypto-to-crypto and crypto-to-fiat exchanges, transfers of relevant digital assets, including transfers to un-hosted wallets, and customer information related to certain high-value (greater than USD $50k) retail payments in crypto processed on behalf of merchants.
- Taxpayer Documentation Requirements - Due diligence procedures will be implemented that build on the self-certification requirements under CRS and FATF, for the purpose of identifying and verifying crypto asset users' tax residence and identity.

Local tax jurisdictions will need to adopt the CARF framework and build IT solutions to support data submissions and exchanges prior to implementation, thus, these rules are likely to be implemented over the next few years.

CARF is expected to be implemented globally with the exemption of the US as they are in the midst of developing their own reporting regime under the Infrastructure Investment and Jobs Act passed in 2021.

Penalties/Sanctions

FCA fines Sigma Broking Limited £530,000 following market abuse reporting failures

In October, Sigma Broking Limited (Sigma) was fined £531,000 for failing to make reports which left potential market abuse undetected. Additionally, two of Sigma's former directors and one current director were fined amounts totalling £200,000, as well as preventing the former directors from holding significant management functions in firms regulated by the FCA.

The FCA found that between December 2014 and August 2016, Sigma failed to report 56,000 contracts for difference transactions and 97 suspicious transactions to the regulator. The failings were attributed to inadequate governance and oversight by the board of directors.

Mark Steward, Executive Director of Enforcement and Market Oversight stated "Accurate transaction reporting and effective surveillance are crucial tools in identifying dodgy dealing that undermines clean markets. These bans and the scale of the fines we have imposed demonstrate our determination to ensure firms – and those who lead them – meet the reporting standards we expect."

Barclays – Decision Notice

Barclays PLC and Barclays Bank PLC are facing a total fine of £50 million, or failure to make the required disclosures to the market and their shareholders about fees paid towards Qatari investors during the 2008 financial crisis. The FCA found no legitimate justification for the failures to disclose, highlighting the criticality of transparency to financial markets, particularly in periods of financial stress. The FCA findings have been referred to the Upper Tribunal and are pending the final decision.

Gatehouse Bank – Poor AML Checks

Gatehouse Bank PLC, a UK regulated bank, was the recipient of a penalty of over £2.2 million for serious shortcomings in its AML policies and procedures for a period between June 2014 and July 2017. The FCA stressed that Gatehouse Bank's failure in not having adequate systems and controls allowed large sums of money to enter accounts, without being properly vetted for financial crime risks. The FCA also stated its intention to continue to hold firms accountable for poor anti-money laundering systems and controls. Ultimately, Gatehouse agreed to resolve this matter and qualified for a 30% discount on the initial financial penalty, resulting in an outstanding amount of £1.58 million.

Harlequin Resorts boss jailed for 12 years for fraud estimating £226 million

David Ames, the Chairman of Harlequin business group, was sentenced to 12 years at Southwark Crown Court on 30 September for defrauding over 8000 British investors following an investigation by the Serious Fraud Office (SFO).

Between 2010 and 2015 Ames encouraged mainly elderly investors to invest their pensions and life savings in holiday properties in the Caribbean. The scheme had no funding and almost none of the investors made a return.

The SFO found that Ames failed to respond to at least eight warnings about the Harlequin businesses from business associates, financial professionals and authorities, wrongly blamed his associates and lied to investors. Ames' victims were forced to delay their retirement, re-mortgage their homes, leading to the breakdown of investors' relationships with families, while Ames profited from £6.2 million, frequently enjoying holidays in exotic destinations.

SFO director Lisa Osofsky said, "As today's sentencing shows, we will not tolerate those who abuse that trust, showing contempt for their victims and the law while squandering other people's money for their own gain". Ames' conviction was the fourth successful prosecution of an individual by the SFO since May this year.

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Complyport advises and assists firms to become authorised and to comply with the rules and requirements of regulators on an ongoing basis. Our vision is to be there for our clients every step of the way, helping them change, grow, and excel through expertise, insight, and innovation, and in so doing to become our clients' most valued supplier and trusted advisor.

We have successfully assisted over 1000 firms to become authorised with the FCA and EU and are providing regulatory support to over 600 regulated firms on an ongoing basis globally. With presence in the UK and EU, as well as via our Associates Network, Complyport can assist firms across multiple jurisdictions.

Complyport's multidisciplinary consultants possess deep expertise in their field, having acted in FCA skilled person reviews, as expert witnesses in legal cases and as expert investigators for firms or their legal advisers.

Day to day, we conduct audits and reviews of a firm's products, processes, policies, and procedures to identify scope for business, to determine the impact of regulatory developments and to verify compliance with local regulations. Our clients tell us we live our values; we are driven, agile and collaborative.

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