

Newgate News

Approved Persons Regime (APR) and coronavirus: the FCA's expectations

Relevant to: Principal firms with Appointed Representative arrangements
30/06/2020

Impact:



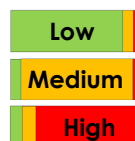
Extensions available for temporary arrangements

The Financial Conduct Authority (FCA) have set out expectations to help benchmark administrators and firms using Appointed Representative (AR) arrangements apply the Approved Persons Regime (APR) during coronavirus.

Temporary arrangements allowing an individual to cover for an Approved Person without being approved, where the absence is temporary or reasonably unforeseen, has been extended from 12-weeks to 36 weeks.

Temporary arrangements that last longer than 12-weeks, firms should notify the FCA that they consent to a modification of the 12-week rule. Modifications should be made by the Principal rather than the AR to the FCA.

Impact assessment key:



June 2020

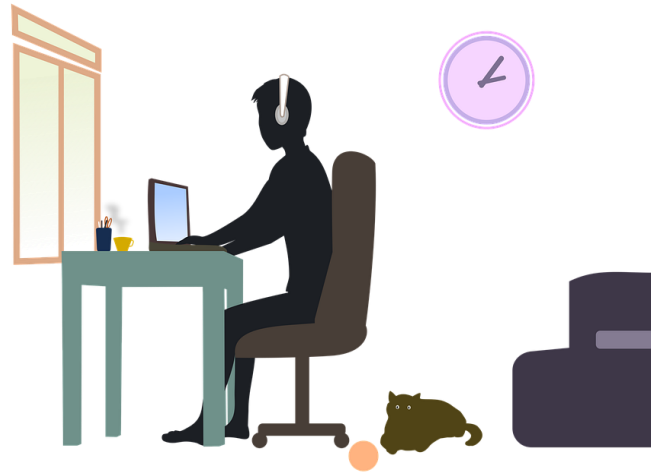
- APR and COVID-19
- SM&CR updates
- Climate Financial Risk Forum's guide
- EBA Guidelines
- New prudential regime for UK investment firms
- Fake Financial Services Register link
- Enhanced Financial Services Register
- New Data Collection Platform
- Cryptoasset businesses to register before the end of June
- Open access regime for the trading and clearing of exchange-traded derivatives

Furloughed staff

So long as an individual is not permanently leaving their post, furloughed staff can retain their approval during absence and will not need to be re-approved by the FCA when they return. Principal firms are still responsible for ensuring Approved Persons are fit and proper.

Notifications to the FCA

It is not necessary for firms to notify the FCA via Form D of the temporary arrangements. Firms should however clearly document this information internally for the use of staff and in the event of the FCA's request. The FCA require firms to keep a 'running commentary' of their personnel performing significant influence functions and their responsibilities during this period. Firms should ensure their ARs do the same.



<https://www.fca.org.uk/news/statements/approved-persons-regime-coronavirus-expectations>

Newgate's advice: *Principal firms should ensure that:*

- *The controllers, directors, partners, proprietors, and managers of an AR are fit and proper;*
- *The AR is solvent and suitable to act for the firm;*
- *The principal has adequate controls over the AR's activities;*
- *The appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions; and*
- *The principal can monitor and enforce compliance with relevant requirements*



Fake Financial Services Register link

Relevant to: All firms
11/06/2020

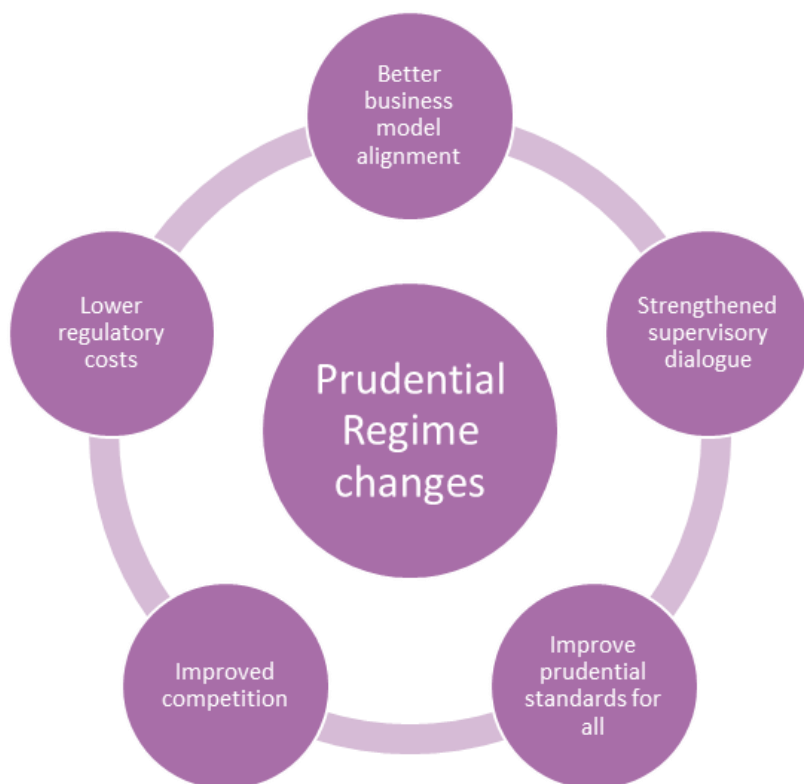
The FCA have spotted an attempt to reproduce the Financial Services Register on a non-FCA website under the domain: www.register-fca.org.

Impact:



<https://www.fca.org.uk/news/statements/fake-financial-services-register-link>

Newgate's advice: *Ensure you are using the correct URLs and email addresses. In May 2020 the FCA released a statement for firms in the event that fraudulent domains and emails are used. Please find this via the following link: <https://www.fca.org.uk/news/statements/fake-fca-email>*



FCA seeks industry views on a new prudential regime for UK investment firms

Relevant to: Solo-regulated MiFID investment firms and Collective Portfolio Management Investment Firms

23/06/2020

Impact:



The FCA has published a discussion paper on a prudential regime for UK investment firms. This marks the first step in introducing a set of prudential rules for investment firms to better reflect their business models and the risk of harm they pose to consumers and markets. The Discussion Paper sets out initial views as well as technical details on the Investment Firm Directive (IFD) and the Investment Firm Regulation (IFR). To be implemented in 2021.

<https://www.fca.org.uk/news/press-releases/fca-seeks-industry-views-new-prudential-regime-uk-investment-firms>

Newgate's advice: *We will ensure that you remain up to date with any changes to your compliance obligations. See the FCA's guidance from June 2020 outlining their capital adequacy expectations:* <https://www.fca.org.uk/publications/finalised-guidance/fg20-1-assessing-adequate-financial-resources>

Features of the new regime:

- Lower regulatory costs to result in much more proportionate regulatory reporting and disclosure requirements.
- The new K-factor approach better aligns with the business models.
- Strengthened supervisory dialogue - the linking of requirements between business model and risk of harm should allow FCA supervisors and investment firms to focus during the supervisory review process on mitigating the risk of harm.
- Improved competition – all investment firms carrying out the same investment activity are treated in a simpler and more consistent manner.
- Better prudential outcomes – the new regime should improve prudential standards for investment firms overall, for example through the introduction of a proportionate, minimum liquidity requirement for all investment firms.

FCA to launch enhanced Financial Services Register

Relevant to: All firms

09/07/2020

The FCA will be replacing its existing Financial Services Register with an enhanced Financial Services Register on the 27th July 2020. The FCA will add a directory of certified staff and assessed persons to the Register later this year.

The existing Financial Services Register will cease to be available from 6pm on Friday 24 July so that work can take place over the weekend to make the enhanced Register ready for the start of business on Monday 27 July

<https://www.fca.org.uk/news/news-stories/fca-launch-enhanced-financial-services-register>

Impact:



Newgate's advice: Firms should update any links they have to pages on the current Financial Services Register, other than those to the homepage, once the enhanced Register launches. All current links will be redirected to the enhanced Register's homepage.

EBA Guidelines on ICT and Security Risk Management

Relevant to: All MiFID firms

25/06/2020

The FCA has notified the

Impact:



European Banking Authority (EBA) of their intention to comply with their final Guidelines on ICT and security risk management for credit institutions, Capital Requirements Regulation (CRR) investment firms and payment service providers (PSPs). The FCA intend to publish final rules in Q1 of 2021.

<https://www.fca.org.uk/news/statements/eba-guidelines-ict-and-security-risk-management>

Newgate's advice: Firms should ensure that they have sound ICT and security risk management tools in place. Please contact Newgate for a review of your framework documents. Guidelines published by the EBA highlight how you can approach IT and security, this can be found at the following link: <https://eba.europa.eu/eba-publishes-guidelines-ict-and-security-risk-management>



Chris Woolard discusses emergency regulation and learning from COVID-19

Relevant to: All firms

10/06/2020

Impact:

Chris Woolard, the FCA's Interim Chief Executive, spoke to Ozge Ibrahim about the regulatory response to COVID-19.

Key messages from the podcast:

- The FCA intends to readdress delayed initiatives in a 'phased way' between summer and autumn;
- The FCA's Business Plan sets out priorities for the year and this includes retail investments, payments of firms and how big data and the growth of more open systems might affect pricing for consumers;
- The Business Plan also lays out plans to strengthen markets and the importance of working towards the zero-carbon economy. This includes the expansion in growth of so-called green finance and the issuance of green bonds and green investment;
- The FCA also wants to explore the assets that asset managers and banks are holding; and
- Regarding enforcement and sanctions, the FCA are focusing on scams.

<https://www.fca.org.uk/news/news-stories/chris-woolard-discusses-emergency-regulation-and-learning-coronavirus-crisis>



"The FCA intends to readdress delayed initiatives in a 'phased way' between summer and autumn", says Chris Woolard

Newgate's advice: *Firms carrying out investment advice and asset management in particular are encouraged to start embedding ESG initiatives into the firm's framework documents, if not already done so. Please reach out to your Newgate consultant for additional support. Newgate shall continue to track developments around sustainability and ESG related regulation over the coming year and shall provide updates accordingly.*

The introduction of RegData

Impact:

Relevant to: All firms registered on Gabriel

22/06/2020

Firms to prepare for phased move to FCA's new data collection platform RegData which replaces Gabriel. Firms' moving dates will be determined by the nature of their reporting obligations and reporting schedules and you will not be able to access RegData until users' data have been moved from Gabriel. The FCA will email firms' principal user and associated users 3 weeks before their moving date, with reminders 5 days and 1 day to go.

There will be no change to the way firms currently provide data.

<https://www.fca.org.uk/news/news-stories/firms-prepare-phased-move-fcas-new-data-collection-platform-regdata>

Newgate's advice:

- *Please ensure that your contacts details in Gabriel are correct;*
- *You have nominated the correct principal user and assigned administrator rights correctly in Gabriel;*
- *Accurate information is entered into Gabriel about all other active users and non-active users have been disabled; and*
- *You continue to use Gabriel with your current login details until you have been moved to the new platform. Users that have not been registered yet will still be able to do so when they next log in to Gabriel.*

FCA reminds cryptoasset businesses to register before the end of June

Relevant to: Firms carrying out cryptoasset activity

Impact:

22/06/2020

The deadline for firms that carrying out cryptoasset activity in the UK to be registered with the FCA to comply with new regulations was the 30th June 2020.

Any businesses that started carrying on business in the UK immediately before 10th January 2020 and are not registered by the FCA from the 10th January 2021 deadline will have to cease carrying on business. New businesses which began operating after the 10th January 2020 must be registered with the FCA before carrying out any business. This includes firms authorised or registered under the Financial Services and Markets Act 2000, Electronic Money Regulations 2011 or Payment Services Regulations 2017 but undertaking cryptoasset activity subject to the MLRs will also be required to apply for registration.

<https://www.fca.org.uk/news/press-releases/fca-reminds-cryptoasset-businesses-register-end-june>

Newgate's advice:

Please contact Newgate for assistance with late applications.



The Climate Financial Risk Forum Guide

Impact:

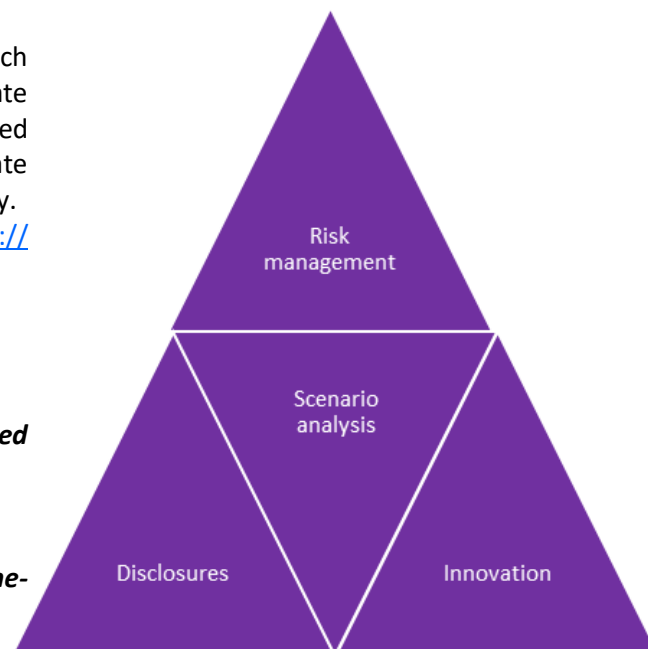
Relevant to: all firms

29/06/2020

The Climate Financial Risk Forum (CFRF) was jointly established in March 2019 by the PRA and the FCA, reflecting the importance of climate change to their respective strategic objectives. CFRF's recently published guide aims to help firms understand the risks that arise from climate change and provide support on how to integrate risks into their strategy. The guide can be found by using the following link: <https://www.fca.org.uk/news/press-releases/climate-financial-risk-forum-publishes-guide-financial-industry-address-climate-related>

Newgate's advice:

- *Firms should ensure that climate-related financial risks are inputted into governance and risks management processes;*
- *Disclosures should be updated to reflect climate-related risks;*
- *Compliance documents should include scenario-based analysis;*
- *Please contact Newgate for assistance with updates to your framework documents.*



The Guide's key focus points

Extension of the Senior Managers & Certification Regime (SM&CR) implementation periods for solo-regulated firms

Impact:

Relevant to: All FCA solo-regulated firms

30/06/2020

The deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of the Certified Persons has been delayed from the 9th December 2020 until the 31st March 2021. Consultation is also underway for a similar extension of the deadline on the following:

- The date that the Conduct Rules come into force;
- The deadline for submission of information about Directory Persons to the Register; and
- Reference in FCA rules to the deadline for assessing Certified Persons as fit and proper (agreed by the Treasury)

<https://www.fca.org.uk/news/news-stories/extension-smcr-implementation-periods-solo-regulated-firms#:~:text=The%20deadline%20for%20solo%2Dregulated,2020%20until%2031%20March%202021.>

Newgate's advice:

- *Senior Managers must ensure that Conduct Rules training is effective, so that staff are aware of the Conduct Rules and how they apply them in their jobs;*
- *Firms should certify staff earlier than March 2021 if possible;*
- *Firms should not wait to remove staff who are not fit and proper from certified roles; and*
- *No change in deadline for benchmark administrators.*

Open access regime for the trading and clearing of exchange-traded derivatives

Relevant to: Firms dealing in exchange-traded derivatives
11/06/2020

The FCA have amended MiFIR to give one additional year for trading venues and central counterparties (CCPs) offering trading and clearing of exchange-traded derivatives to start applying open access rules. These provisions will not apply until the 4th July 2021 and will continue to apply after the end of the transition period. From the 4th July 2020, trading venues and central counterparties (CCPs) offering the trading and clearing of exchange-traded derivatives will be subject to MiFIR open access regime as set out in articles 35 and 36 of the Regulation.

Under these provisions, trading venues and CCPs may only deny access where the operational risk and complexity arising from granting access would cause undue risk.

<https://www.fca.org.uk/news/statements/open-access-regime-trading-and-clearing-exchange-traded-derivatives>

Newgate's advice:

- *Responding to an open access request in current market conditions while relevant staff are working from home is likely to involve extra resources and operational complexity (e.g. senior management, legal, risk, compliance and IT). Firms should ensure that sufficient controls are in place to mitigate the risks that might emerge from working from home during a pandemic;*
- *When making or assessing open access requests, trading venues should continue to prioritise the maintenance of orderly markets and the continuity of their critical services to the market even if this may delay the assessment of an open access request; and*
- *Where a recipient delays an assessment, it should communicate its position to the requester without delay.*

MiFIR Articles:

Article 35: Double reporting of the same information should be avoided. Reports submitted to trade repositories registered or recognised in accordance with Regulation (EU) No 648/2012 for the relevant financial instruments which contain all the required information for transaction reporting purposes should not need to be reported to competent authorities, but should be transmitted to them by the trade repositories.

Article 36: Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001, which should be fully applicable to the processing of personal data for the purposes of this Regulation.

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