

### FCA consults on further climate-related disclosure rules

The FCA is developing proposals to require asset managers, life insurers, and FCA-regulated pension providers to make climate-related disclosures, which are aligned with the recommendations of the Taskforce on Climate related Financial Disclosures (TCFD). They have published new proposals on which will apply to listed companies and certain regulated firms.

In the consultations the FCA is proposing:

- [to extend the application of its TCFD-aligned Listing Rule](#) for premium-listed commercial companies to issuers of standard listed equity shares.
- [to introduce TCFD-aligned disclosure requirements](#) for asset managers, life insurers, and FCA-regulated pension providers, with a focus on the information needs of clients and consumers.

Sheldon Mills, Executive Director of Consumer and Competition at the FCA said: 'Climate-related disclosures do not yet meet investors' and market participants' needs. The new rules will help markets, investors and ultimately consumers better understand the impact of climate change and make more informed decisions.'

Alongside these proposals, the FCA is also seeking views on other topical environmental, social and governance (ESG) issues in capital markets and inviting feedback to consultations by 10 September 2021.

**Newgate's advice:** Newgate can provide insight as to how these disclosure rules are likely to affect your firm as well as developing relevant policies, procedures, and reporting disclosures.

#### Impact assessment key:



**Impact:**



- FCA consults on further climate-related disclosure rules
- Consumer warning on Binance Markets Limited and the Binance Group
- FCA research reveals increase in cryptoasset ownership
- Consultation on new authorised fund regime for investing in long term assets
- Consultation on a new 'Consumer Duty'
- FCA review finds weaknesses in some 'host' Authorised Fund Management firms' governance and operations
- EU Commission's announce approval of the UK's adequacy
- Speech by Mark Steward, Executive Director of Enforcement and Market Oversight
- Speech by Nikhil Rathi, the CEO of the FCA
- Government's response to consultation on a Regulatory Framework for Approval of Financial Promotions

## Consumer warning on Binance Markets Limited and the Binance Group

On the 26th June, the FCA ruled that Binance, the world's biggest cryptocurrency exchange cannot conduct any regulated activity in the UK.

The FCA have stressed that Binance Markets Limited (part of a wider Group Binance Group), nor any other entity within the group holds any form of UK authorisation, registration or licence to conduct regulated activity in the UK.

The FCA also reiterated their concerns with cryptocurrency and noted that most firms advertising and selling investments in cryptoassets are not currently authorised by the FCA.

**Newgate's advice:** This case demonstrates the scrutiny cryptoasset firms are facing from the FCA. Newgate can assist in helping your cryptoasset firm become authorised.

Please contact Newgate Compliance for further information.

**Impact:**



## FCA research reveals increase in cryptoasset ownership

Recent consumer research published by the FCA estimates that 2.3 million adults now hold cryptoassets (up from 1.9 million last year), while 78% of adults have now heard of cryptoassets, up from 73% in a year.

38% of crypto users regard them as a gamble (down from 47% last year) and increasing numbers see them as either a complement or alternative to mainstream investments. 1 in 10 who had heard of cryptocurrency said they are aware of consumer warnings on the FCA website.

Sheldon Mills, FCA's Executive Director, Consumers and Competition said: It is important for customers to understand that because these products are largely unregulated that if something goes wrong they are unlikely to have access to the FSCS or the Financial Ombudsman Service. If consumers invest

in these types of products, they should be prepared to lose all their money.'

**Newgate's advice:** This highlights the FCA's concern over rising cryptoasset ownership. If your firm is planning on entering the crypto space, Newgate Compliance can provide advice and assistance on what you will be able to do and whether you will need FCA authorisation.

**Impact:**



## Consultation on new authorised fund regime for investing in long term assets

The FCA are consulting on a regime to enable UK-authorized open-ended funds to invest more efficiently in long-term, illiquid assets. The FCA have noted that some investors feel there are barriers to this type of investment, related to fund structures as well as to wider issues.

Announcing the creation of the Long-Term Asset Fund (LTAF), the FCA has stated that they hope this will help overcome issues related to fund structures and facilitate an environment where investors that wish to invest in productive finance assets can do so.

## Consultation on a new ‘Consumer Duty’

The FCA are consulting on a new ‘Consumer Duty’ that would set clearer and higher expectations for firms’ standards of care towards consumers. The FCA stated that this would require a shift in culture and behaviour for many firms.

The ‘Consumer Duty’ would have 3 key elements:

- A Consumer Principle, which sets a clear tone and uses language that reflects the overall standards of behaviour expected from firms.
- ‘Cross-cutting Rules’ which develop and clarify the Consumer Principle’s overarching expectations of firm conduct and set out how it should apply in practice.
- ‘Four Outcomes’: a suite of rules and guidance that set more detailed expectations for firm conduct in relation to 4 specific outcomes for the key elements of the firm-customer relationship.

Following, [their recently published guidance on the issue](#), the FCA also reiterated that vulnerable customers are at greater risk of harm and noted

The FCA sought feedback on the consultation which closed on 25 June 2021.

**Newgate’s advice:** Newgate will keep you updated as this consultation develops and inform if it is likely to mean any changes for your firm.

**Impact:**



firms should take additional care to ensure vulnerable consumers receive outcomes that are as good as for other consumers.

The FCA are inviting feedback on this proposal by 31 July 2021.

**Newgate’s advice:** The FCA is increasingly focussed on ensuring that firms are treating consumers fairly and the new ‘Consumer Duty’ is designed to ensure consumers can make, and act on well-informed decisions. We will update firms as this consultation develops.

**Impact:**



## FCA review finds weaknesses in some ‘host’ Authorised Fund Management firms’ governance and operations

The FCA has called for Authorised Managers (known as AFMs) to improve their operating standards and controls. The FCA noted that ‘host’ AFMs are fund operators that delegate investment management to third party investment managers outside of their corporate group.

In the FCA’s review of host AFMs between Q4 2019 and Q4 2020, the FCA acknowledged that while some firms are operating well, others have weaknesses in governance structures, conflicts of interest management, and operational controls. Some firms refer to funds as if they are solely operated by third-party investment managers or fund sponsors rather than themselves. There is also a lack of focus on controlling the risk of harm from investors exposed to inappropriate or poor value products.

## EU Commission’s announce approval of the UK’s adequacy

On the 28 June, the EU Commission announced that adequacy decisions for the UK have been approved, meaning that the EU has determined the UK’s data protection laws to be robust enough to ensure data can safely flow to the UK from the EU (and EEA).

Information Commissioner, Elizabeth Denham said: “This is a positive result for UK businesses and organisations. Approved adequacy means that businesses can continue to receive data from the EU without having to make any changes to their data protection practices.”

**Newgate’s advice:** Newgate can provide updated Data policies to take into account changes arising as a result of Brexit. Please contact your Newgate Compliance Consultant for more information.

Sheldon Mills, Executive Director, Consumers and Competition at the FCA said: ‘Authorised Fund Managers play an important role as fund operators and we want to ensure they contribute to a thriving investment management industry. Our review indicates that some firms are not sufficiently meeting FCA standards and we want to see significant improvement in this area.’

Further information on the review is available here: <https://www.fca.org.uk/publications/multi-firm-reviews/host-authorized-fund-management-firms>

**Newgate’s advice:** If you are an AFM you must ensure you are meeting FCA standards and the fund complies with FCA rules. Please contact your Newgate Compliance Consultant who can provide further detail on the FCA’s review and what it may mean for your firm.

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## **Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, delivered at FCA Investigations & Enforcement Summit.**

On 18 May 2021, Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, gave a speech to the FCA Investigations & Enforcement Summit, outlining the FCA's approach to the rise in scams and what firms should be doing to prevent harm. He noted that although the FCA remains active in tackling investment fraud activities in the UK, there can be different results in terms of regulatory power and consumer protection and outcome, depending on numerous technical distinctions.

Mr Steward discussed the rise in unregulated advertisements which are cheap, easy to manufacture, and can target investors in the same way legitimate advertisers find customers. In response to the rise in these advertisements, the FCA have increased proactive monitoring of the internet using a dragnet approach aiming to capture suspicious advertising on the same day or 24 hours after it first appears. Mr Steward also stated the FCA are now able to add firms to their Warning List on the same day or 24 hours after.

Mr Steward also discussed the evolution of social media which has largely been unregulated. The FCA have been engaging with social media firms about a change to the law as a result of Brexit, which requires them, for the first time, to comply with section 21 of the

## **Speech by Nikhil Rathi, the CEO of the FCA, delivered at City Week 2021**

On the 22 June, Nikhil Rathi, the CEO of the FCA delivered a speech at City Week 2021, focussing on the changing landscape of financial markets what the regulatory environment of the future will look like.

Mr Rathi stated that leaving the EU has given the UK the freedom to tailor its rules to better suit UK markets by making them more efficient and targeted, and removing unnecessary barriers to entry. He also noted that there are 1,450 EEA firms currently accessing UK markets via the Temporary Permissions

Financial Services and Markets Act 2000 which prohibits the communication of invitations or inducements to engage in investment activity by persons other than those issued or approved by FCA authorised firms. When providing value adding services social media firms must now comply with section 21, and Mr Steward noted the initial engagement has been encouraging. Mr Steward also noted that the FCA are prepared to act if they do not see effective compliance.

The FCA currently have 50 active investigations involving unauthorised activity involving 183 suspects. Mr Steward stated the FCA has a substantial role to play in combatting scams and frauds. However, it was noted firms should also be doing more to prevent harm and regulated firms who let down their guard, especially in assisting firms on the FCA's Warning List, may well face action from the FCA for doing so.

**Newgate's advice:** Firms are advised to utilise the FCA's Warning List to ensure they do not assist firms contained on there: <https://www.fca.org.uk/scamsmart/warning-list/search>.

**Impact:**



Regime (TPR). As there is a move to a more permanent arrangement, the FCA will rigorously review all firms seeking UK authorisation.

**Newgate's advice:** If you are looking to become authorised in the UK, our dedicated authorisation team can assist. Please contact [info@newgatecompliance.com](mailto:info@newgatecompliance.com) for further information.

## Government's response to consultation on a Regulatory Framework for Approval of Financial Promotions

The government has published a response to a consultation it ran on the introduction of a 'regulatory gateway' for authorised firms approving the financial promotions of unauthorised firms. Currently, any authorised firm can approve any financial promotion of an unauthorised firm with no process through which a firm must be assessed as suitable and competent.

In their response to the consultation, the government has stated it intends to bring forward legislation to implement the regulatory gateway which a firm must pass through before it is able to approve the financial promotions of unauthorised firms. Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the consent of the FCA. A new 'Financial Promotion Requirement' imposed on all authorised persons would prohibit them from approving the financial promotions of unauthorised persons. Firms applying for authorisation would also need to apply to have this requirement varied or

cancelled, should they wish to be able to approve financial promotions.

**Newgate's advice:** If you currently approve financial promotions for unauthorised firms, you will be caught under this legislation. Please contact your Newgate Compliance Consultant who can provide further information and guidance on the new Financial Promotion Requirement.

**Impact:**

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