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Financial Services 360 newsletter

November 2023

Welcome to our Financial Services 360. This provides concise updates on some of the key UK legal and regulatory matters from each quarter relevant to UK financial services firms, including UK asset managers, private banks and others.

In this edition for Q3 2023, we cover a variety of topics split into four sections:

- **General regulatory updates**: this includes topics likely to be relevant to a wide range of UK financial services firms.
- **Funds and asset managers**: this includes topics relevant to funds with a UK nexus and their managers, investment managers, depositaries and other related parties.
- **ESG update**: this includes regulatory developments in ESG relevant to financial services firms.
- **Horizon Scanning**: this includes some regulatory developments to look out for in the coming months.

If you have any questions on any of the topics covered please do not hesitate to contact a member of the Farrer & Co Financial Services team.

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General regulatory updates

Bank account closures and "debanking"

The issue of customer bank account closures has recently been high in both the news and the regulatory agenda. We covered this topic in our recent webinar.

There are forthcoming changes to existing legislation on covering payment accounts, and there have also been developments relating to access to banking by Politically Exposed Persons (**PEPs**).

On 2 October 2023, HM Treasury published a policy statement regarding its next steps for making changes to the payment account termination provisions of the Payment Services Regulations 2017. The notice period required to close a payment account will be extended from two months to 90 days, unless for a serious and uncorrected breach (such as nonpayment) or other serious occurrence. Firms will need to provide "clear and tailored" explanations for terminating a contract unless to do so would be unlawful. The policy statement makes clear the Government's position that financial services should be provided without discrimination as to a user's lawful views or expression of beliefs, that it will be monitoring payment account terminations and that it will not hesitate to act if sees evidence to the contrary.

HM Treasury intend to publish the amending statutory instrument (SI) by end 2023, but it should be noted that the Government is encouraging firms to make these changes as soon as possible.

Under section 77 of the Financial Services and Markets Act 2000 (FSMA 2023), HM Treasury is required to amend the Money Laundering, Terrorist Financing, and Transfer of Funds Regulations 2017 so that domestic PEPs will be subject to lesser enhanced due diligence than foreign PEPs, in the absence of any other enhanced risk factors.

In compliance with section 78 of FSMA 2023, on 5 September the FCA launched a review into the treatment by firms of PEPs, to end in June 2024. The FCA intends to review how firms are (amongst other things):

- applying the definition of PEPs to individuals;

- conducting proportionate risk assessments of UK PEPs, their family members and known close associates;
- applying enhanced due diligence and ongoing monitoring proportionately and in line with risk; and
- deciding to reject or close accounts for PEPs, their family members and known close associates.

On 19 September **the FCA** published its report about current account closures. The FCA was specifically looking at whether account providers have been closing accounts of customers because of their lawfully expressed political views or beliefs. The FCA had requested data from 34 firms on the number of accounts terminated or suspended, number and types of declined accounts, reasons for doing so, and complaints. The FCA reported that it did not receive any information which indicated that accounts have been closed due to the political beliefs or views lawfully expressed by account holders: most of the reported closures were due to customer behaviour. However, it intends to undertake further supervisory and analytical work in this area.

FCA perimeter report

On 20 July 2023, the FCA published its annual Perimeter Report, setting out its approach to the regulatory perimeter in the UK (the **Perimeter**) and where it might act against unregulated activities. It also provided some examples of its work with specific sectors, with some highlights as follows:

- **Consumer Investments**: There are a number of updates on areas such as the overseas fund regime, marketing of high-risk investments to retail consumers, unregulated CISs, the application of financial promotions rules relating to high-risk investments, exemptions in the financial promotion rules for high net worth and sophisticated investors, the new regulatory gateway, and the marketing of contracts for differences and other high risk products.
- **Payments**: The FCA regulates more than 1,900 payment services firms that hold over £27bn in safeguarded funds. There are various market developments, including open banking, stablecoins, central bank digital currencies and the New Payments Architecture which is intended to replace the current clearing and settlement systems of BACS and Faster Payments.

- **Wholesale markets**: There is a section on ESG data and ratings providers, including the HM Treasury consultation on regulating ESG ratings providers and the new draft voluntary Code of Conduct for ESG data and ratings providers.

Appointed Representatives

On 28 September the FCA published an update on its work on the Appointed Representatives' (**ARs**) regime, and how it is making better use of data to ensure that principal firms are supervising their ARs more effectively. This was further to the new rules the FCA put in place last year, which included enhanced oversight and reporting requirements.

There are currently 2,900 principals with around 35,000 ARs (14,000 of which are introducers). The FCA reports that as well as introducing the new rules, it has created a new department to oversee ARs, and this extra oversight has resulted in principals terminating their relationships with over 1,300 ARs. Some areas of ongoing concern include overseas ARs and principal firms holding adequate professional indemnity insurance for their ARs.

The FCA reminded principal firms to ensure that they had clear processes or structured plans for how they oversee their ARs. The FCA noted that over 70 per cent of principals that offered regulatory hosting services have at least one full-time equivalent employee performing direct oversight for every five ARs in their network. Other firms could use this benchmark with which to compare their own oversight model.

The FCA separately reminded principal firms which operate as regulatory hosts of their responsibilities in July 2023, and noted that on average regulatory hosts receive more complaints and create more FCA supervisory cases than other principals.

For more data, firms may wish to consult the FCA's outcomes and metrics page.

Financial promotions – new gateway

On 12 September, the FCA published its policy statement and near final rules on the new financial promotions gateway. After February 2024, authorised firms will no longer be able to approve other firms' financial promotions without permission to do so.

The FCA is opening a gateway ("the s.21 gateway") for firms to apply for permission to approve other firms' financial promotions ("s.21 approvers"), which opens on 6 November and closes on 6 February 2024.

Firms will not need to apply for permission to approve financial promotions by their own ARs, by unauthorised firms in their groups, or for their own financial promotions to be communicated by unauthorised persons.

Once the new regime is in place, firms that are permitted to approve financial promotions will be subject to various FCA reporting requirements, including:

- submission of a full report bi-annually, to include the total number of financial promotions approved with a breakdown relating to certain investments, for example, non-mass market investments, and the revenue generated by the firm's approvals;
- notification if they approve amendments to, or withdraw approval of, a financial promotion due to a "notifiable concern" (for example, which could cause consumer harm); and
- notification if they approve a financial promotion of a product subject to a mass-marketing ban or qualifying cryptoasset.

Cryptoasset financial promotions

On 8 October the new regime for financial promotions relating to cryptoassets came into force. Firms wishing to promote cryptoassets in the UK must now either be authorised by or registered with the FCA, or have their marketing approved by an authorised firm. The FCA announced that it had issued 146 alerts on the first day of the new regime.

On 25 October, the FCA published a statement regarding cryptoasset promotions, setting out three common issues they have found with cryptoasset financial promotions since the new regime came into force:

- Promotions make claims about the "safety", "security" or ease of using crypto services, without highlighting the risk involved.
- Risk warnings are not sufficiently visible, due to small fonts, hard to read colouring or non-prominent positioning.

- Firms are failing to provide customers with adequate information on the risks associated with specific products being promoted.

The FCA also updated that they are working with businesses including social media platforms and search engines to remove or block illegal promotions, have issued 221 alerts since the regime went live, and have already placed restrictions on an authorised firm to restrict it from approving cryptoasset financial promotions (see below).

The FCA has imposed restrictions on rebuildingsociety.com Ltd, preventing it from approving cryptoasset financial promotions and also requiring it to withdraw existing approvals of financial promotions. The firm has announced that they are intending to appeal the restriction. Rebuildingsociety.com had partnered with Binance, which has been unable to secure FCA registration, in order to approve its financial promotions. Binance has temporarily stopped accepting new UK customers.

Pensions transfers cases

The FCA has been continuing its enforcement action against firms which had provided unsuitable advice to members of the British Steel Pension Scheme (**BSPS**). Having completed its investigations, the FCA is deciding on appropriate sanctions for firms found at fault, sanctions have ranged from public censure to financial penalties of over £2m. This is in addition to the redress firms have been required to pay to customers so far under the FCA's redress scheme.

The penalties relate to advice given to members of the BSPS to transfer out of their defined benefit BSPS pensions, into defined contribution pensions with no guaranteed retirement income. Of the 8,000 people who transferred out, the FCA found that almost half (46 per cent) did so after receiving unsuitable advice. In many cases, firms failed to advise with due skill, care and diligence and in some cases had acted recklessly or dishonestly. A key structural issue was a contingent charging model whereby advisers were only paid a fee if a transfer took place (a practice now banned), incentivising unscrupulous advisers to recommend transfers even when they were not in clients' best interests.

The FCA's continuing actions have shown the scope of its enforcement action. This is of concern not only to pensions advisers active at the time, but also to those considering M&A in the wealth management sector. Potential acquirers in this space should take extra care

when performing due diligence on target wealth management firms to uncover any potential liability in respect of such pension transfer advice.

Morgan Stanley fine

On 23 August Ofgem announced that it has issued a £5.41m fine to Morgan Stanley & Co. International plc (**Morgan Stanley**) for its failure to properly record and retain electronic communications relating to trading in wholesale energy products. The energy regulator found that wholesale energy traders at the firm had discussed energy market transactions on privately owned phones through WhatsApp.

This was in breach of the REMIT Enforcement regulations, which require firms to take reasonable steps to:

(a) prevent the making, sending or receiving of certain telephone and electronic communications that they cannot ensure are recorded and retained; and

(b) ensure that such communications were recorded and retained.

Although Morgan Stanley were found to have policies in place preventing WhatsApp trading communications, it was found nevertheless not to have sufficiently enforced those polices. Agreeing to settle the case, Morgan Stanley's £5.41m fine represented a 30 per cent reduction on the even higher £7.73m figure which Ofgem initially deemed appropriate.

Whilst this fine was imposed by the UK energy regulator, it serves as a reminder to financial services firms of the importance of designing and enforcing appropriate communication monitoring policies, given that FCA authorised firms have similar obligations under SYSC 10A of the FCA Handbook. It also highlights the importance which the UK regulators place on telephone and electronic communications recording obligations and their willingness to impose significant fines to ensure compliance with such rules.

D&I in financial services

On 25 September, the FCA and PRA published consultations relating to their proposals to introduce a new regulatory framework for Diversity & Inclusion in the financial sector, including proposed changes to their rulebooks.

The FCA proposes to:

- apply minimum standards to all firms with the aim of reducing discrimination and misconduct. The proposals include specific inclusion of non-financial misconduct (NFM) considerations into The Conduct Rules, Fit and Proper assessments, and the Suitability guidance on the Threshold Conditions; and

- apply additional measures to larger firms (in summary, subject to limited exceptions, those with more than 250 employees or any CRR or Solvency II firm). The proposals include requirements to:

    - collect, report and disclose certain D&I data;

    - establish, implement and maintain a D&I strategy;

    - determine and set diversity targets;

    - recognise a lack of D&I as a non-financial risk.

The PRA are proposing similar requirements with regards to mandatory D&I strategies, targets, board governance, reporting and disclosure.

The consultations close on 18 December 2023 and the requirements are due to come into force one year after the final rules and policy statements are published.

Economic Crime and Corporate Transparency Act 2023

The Economic Crime and Corporate Transparency Bill received Royal Assent on 26 October 2023, and has become the Economic Crime and Corporate Transparency Act 2023 (**ECCTA**).

The key reforms and developments which have been introduced by ECCTA are:

- The failure to prevent fraud offence, which imposes criminal liability on a company / corporation that fails to prevent fraud if one of its associated persons commits a “fraud offence” intended to benefit the company / corporation. There is a defence if the company / corporation has adequate procedures in place designated to prevent fraud and the commission of fraud; and

- A change in corporate criminal liability via the expansion of the class of persons whose conduct can be attributed to the company / corporation. Under section 196 ECCTA, if a senior manager, while acting within the actual or apparent scope of their authority, commits a relevant offence, the organisation will also be guilty of the offence.

ECCTA also introduces fundamental changes to expand the role and powers of Companies House, including:

- an enhanced ability to verify the identities of company directors;

- the ability to share information with government and criminal investigation agencies; and

- greater powers to check, query or reject information submitted to it and / or removing information already on the register (in certain circumstances).

The reforms are not yet in force, and will be implemented in stages, although section 196 will come into force two months from the date of Royal Assent. The identity verification procedures will need also need a longer time to implement due to the technology and other processes which need to be put in place first before they can go live.

Funds and asset managers

Assessments of value

Background

On 10 August, the FCA published the findings of its recent review into Authorised Fund Managers' (**AFMs**) Assessments of Value (**AoVs**). The findings were more positive than previously. In particular, the FCA noted that most firms were making fewer assumptions within their analysis that they cannot evidence as reasonable, and are presenting higher quality management information to AFM boards and AoV committees.

However, the FCA still had some concerns and set out its key findings.

Key Findings:

- Most firms' independent non-executive directors (**INEDs**) were found to not to provide sufficient challenge. The FCA reminded firms that INEDs must be both sufficiently involved in the AoV process to understand the firm's methodology, yet sufficiently distanced from collection and analysis of AoV information to maintain independence.

- The level of fees should not only be considered in relation to the market. Any market rate comparison should be limited to genuinely analogous funds (for example, a fund which does not include a platform charge is not comparable to a fund which does).

- Some of the firms reviewed were found to have overstated fund performance to justify charges. It may be necessary to ascribe poor performance ratings even to funds which have achieved capital growth, where they nevertheless underperform relevant comparator benchmarks. Where performance is poor, firms may need to consider cutting fees.

- Improved information inputs and analysis for AoVs were not always translating into improved decision making, as some firms were ignoring, or unreasonably explaining away indicators of poor value arising from that analysis.

- Finally, the FCA emphasised that it was the sole responsibility of AFM boards to ensure that fees were justified, and it was not acceptable to claim that the decisions were made by other members of their groups or more senior committees.

Financial Promotions for high-risk investments

On 27 September, the FCA published an update on its review of how firms offering restricted mass market investments (**RMMIs**) have implemented some of the FCA's new rules relating to the marketing of high-risk investments (**HRIs**) to retail clients. The FCA undertook this review as it had previously found poor compliance in the peer-to-peer and investment-based crowdfunding relating to the initial requirements to include risk warnings, so it decided to undertake a detailed review into compliance with the remaining requirements by a selection of 13 firms.

The FCA reviewed in detail the approach of the firms to the new requirements relating to incentives to invest, the cooling off period, risk warnings, client categorisation and appropriateness, and set out examples of good and poor practice.

Incentives to Invest: The FCA noted that most firms had withdrawn incentives (such as a referral bonus) to invest. However, in some cases, new consumers could qualify for incentives if they stayed invested for a minimum time period. Firms were reminded that any incentive offered to retail clients to invest in a HRI as part of a financial promotion was prohibited, regardless of a qualifying time period.

The FCA considers it poor practice not to consider the full range of incentives offered by the firm against the ban.

Cooling-off period: All firms had implemented the required minimum 24-hour cooling off period before consumers were able to view any direct offer financial promotions or commit to any investments. The FCA noted some examples of good practice, including giving clear information regarding the cooling off period and blocking consumers from being able to view investments opportunities during the cooling off period.

However, the FCA also noted various examples of poor practice, including not giving consumers the express option to proceed with or leave the investment journey at the end of the period, or giving greater prominence to the option to proceed.

Risk warnings: The FCA's review noted that firms often gave the personalised risk warning later on in the journey, which then did not meet prominence requirements. The FCA considers it good practice to include additional warnings at points in the journey where the firm felt it would aid consumer understanding of the risks. Firms were also reminded to take note of its recent social media guidance consultation.

Client Categorisation: Overall, the FCA found that consumers were being given clear and accurate information to help them self-categorise. However, the FCA reminded firms that they should not indicate the information consumers would need to give in order to proceed.

The FCA considered it good practice for firms to verify the self-categorisation of consumers, for example, by providing tools for them to calculate their net worth. It considered it poor practice for firms to invite consumers to repeat the categorisation, or to pre-categorise consumers.

Appropriateness - Design of the Assessment: The FCA found that some firms had designed their assessment in a way that undermined the purpose of the assessments. For example, firms had designed their assessments to ensure that consumers passed them by using a significant proportion of binary questions, or including clearly implausible options in

multiple choice questions. Some firms did not require full marks from consumers to "pass" the test. The FCA encouraged these firms to consider whether there were any particular questions or combination of questions where incorrect answers would suggest fundamental misunderstanding of a key risk of the product.

The FCA also restated that the assessment must cover all of the relevant features of the RMMI products offered by the firm.

Firms offering RMMIs, non mass market investments, and cryptoassets (which are now covered by the same rules) should carefully consider the FCA's review and ensure they are meeting the relevant requirements.

Speech by Ashley Alder at the Investment Association

On 11 October Ashley Alder, Chair of the FCA, gave a speech on the FCA's priorities for updating and improving the UK regime for asset management, further to the FCA's discussion paper that was published earlier this year (an update to which was also published at the same time). He highlighted three areas of focus for the FCA, having considered the responses received:

Making the regime for alternative fund managers more proportionate: The FCA had received feedback that industry were keen for the core AIFMD framework to be retained, while making it more proportionate and more tailored to the UK market. Instead of the full regime only applying to firms above a certain threshold of assets under management, the FCA will use a set of consistent rules across all managers of alternative funds, ensuring that the regime operates proportionately depending on the nature and scale of a firm's business. The FCA is also considering making reporting requirements less onerous.

Updating the regime for retail funds: The FCA intends to simplify the retail rules for non-UCITS retail schemes (**NURS**) funds, currently regulated under both the Collective Investment Schemes Sourcebook (**COLL**) and the rules and legislation applicable to alternative investment funds, including the Investment Funds Sourcebook (**FUND**). The FCA will also give further consideration to rebranding these funds.

Supporting technological innovation: The discussion paper mentioned how distributed ledger technology might be used by fund managers to offer fully digitised funds to the public. The FCA has been working with HM Treasury on a blueprint for fund tokenisation, including holding a tech sprint. They are also building in extra capacity to support innovation, including

work on other initiatives such as the Direct2Fund proposal which is designed to improve the efficiency of the UK fund dealing model.

Finally, Mr Alder referred to the wider debate about ways to mobilise domestic savings to fund productive investment in the UK, including new initiatives such as the Mansion House reforms, which aim to direct more money from UK pension funds into UK growth companies. He also referred to the value for money framework for DC pension funds, and the FCA's ongoing review with the Treasury of the advice guidance boundary.

Next steps: the FCA will be consulting on amending AIFMD and NURS funds next year, and in 2024 they will review the regulatory reporting regime. Mr Alder noted that the FCA will not take forward some of the proposals set out in the discussion paper, including consolidating the rules and developing a "basic" category of authorised fund.

SEC rules

On 23 August 2023, the United States Securities and Exchange Commission (**SEC**) adopted new rules with the aim of enhancing the regulation of private fund advisers, by increasing transparency, competition and efficiency in the private funds market.

The rules come into force 60 days after publication, but there is a staggered compliance timetable depending on a firm's funds under management. There is an exemption for securitised asset funds.

The final rules will require SEC-registered private fund advisers to provide investors with:

- quarterly statements, setting out information regarding the fund's fees, expenses and performance;
- an annual financial statement for each private fund it advises; and
- (in connection with an adviser-led secondary transaction) a fairness or valuation opinion.

Advisers will also be required to retain certain books and records relating to their quarterly statements, and to undergo an annual audit.

Under the final rules, private fund advisers will be prohibited from providing investors with preferential treatment regarding redemptions and information if such treatment would have a material and negative effect on other investors (“**the preferential treatment rule**”). This will be subject to a disclosure-based exception.

Agreements entered into prior to the new rules coming into force will be given legacy status, so that advisers and investors will not need to renegotiate new contracts.

It is also intended that the rules will restrict other private fund adviser activity that is contrary to the public interest and investor protection (“**the restricted activities rule**”). For example, advisers will be prevented from charging or allocating to the fund fees or expenses relating to an investigation of the adviser.

There will be an applicable disclosure / investor consent exception.

Non-US advisers are generally exempt from the new rules with regards to non-US funds, even if the funds have US-based investors or make US investments. However, a non-US adviser could be brought within the new rule, for example, if a fund structure includes a Delaware feeder or a parallel vehicle or has a US sub-adviser. There could also be instances where a non-US manager is a joint venture with a US adviser or is an affiliated US adviser.

The proposed rules, although less onerous than the ones originally proposed in February 2022, have been subject to criticism by industry and trade bodies.

On 1 September 2023 a number of trade associations filed a petition for review with the fifth circuit court of appeal. The petitioners claimed that the proposed rules would:

- prohibit many of the bespoke contractual terms which investors negotiate to meet their specific needs; and

- require costly reporting that was wholly unnecessary.

The petitioners further claimed that the rules exceeded the SEC’s statutory authority, were adopted without compliance with notice-and-comment requirements, and were otherwise arbitrary, capricious, an abuse of discretion, and contrary to law.

It is considered unlikely that the implementation of the rules will be postponed subject to the outcome of this case.

ESG update

It has been a busy time for ESG reporting standards. Of particular interest is the European Commission's consultation on the SFDR and how it is working in practice.

The Sustainable Finance Disclosures Regulation (SFDR)

On 14 September 2023, the European Commission launched a consultation on proposed amendments to the SFDR. The Commission is interested in understanding how the SFDR has been implemented and any potential shortcomings, including in its interaction with the other parts of the European framework for sustainable finance, and in exploring possible options to improve the framework. In particular, the Commission is concerned that the requirements are being used as a labelling regime (light green or dark green being Article 8 and Article 9), which was not intended.

In a recent speech, Commissioner McGuinness discussed this and expressed concern that there was a risk of greenwashing and mis-selling, due to the way in which the SFDR is being used, as it does not set out binding thresholds, or define what a sustainable investment is. The Commission is also conscious of the wider financial regulatory context and the international context. The Regulation was intended to be flexible, but the Commission is now considering whether it would be preferable to introduce product categories.

We wait to see if the revised SFDR will be more in line with the approach taken by the FCA in its delayed Sustainability Disclosure Requirements (**SDR**), the final rules of which should be published by the end of this year.

International Sustainability Standards Board: IFRS S1 and S2

The ISSB published its first two IFRS Sustainability Disclosure Standards (**ISSB Standards**) IFRS S1 and IFRS S2, on 26 June 2023. The publication of these ISSB Standards has been welcomed by the FCA (which co-led some of the work) and endorsed by the International Organization of Securities Commissions (**IOSCO**).

On 2 August 2023, the Department of Business and Trade (**DBT**) published a statement setting out its intention to create UK Sustainability Disclosure Standards. These will set out

corporate disclosures on the sustainability-related risks and opportunities that companies face. They will form the basis of any future requirements in UK legislation or regulation for companies to report on risks and opportunities relating to sustainability matters. They intend to base them on the ISSB Standards and will only deviate from this global baseline "if absolutely necessary for UK specific matters".

In its August Primary Markets Bulletin, the FCA set out its next steps for implementing the ISSB standards. The FCA is intending to consult in the first half of 2024 on proposals to implement disclosure rules referencing UK-endorsed IFRS S1 and IFRS S2 for listed companies. Subject to DBT's timetable, its aim is to finalise its policy position by the end of 2024, with a view to bring new requirements into force for accounting periods beginning on or after 1 January 2025. The first reporting would begin from 2026.

Taskforce on Nature-related Financial Disclosures (TNFD) Recommendations

On the 19 September the TNFD published its final Recommendations for a disclosure regime.

It is hoped that this voluntary regime will offer a framework through which organisations might undertake nature-related risk and opportunity assessments and, in doing so, will inform better decision making by companies and capital providers, and ultimately contribute to a shift in global financial flows toward nature-positive outcomes and the goals adopted by COP 15 to safeguard and restore biodiversity.

Transition Plan Taskforce final disclosure framework

On 9 October 2023 the UK Transition Plan Taskforce published its final disclosure framework. The taskforce was launched by HM Treasury to develop a gold standard for best practice climate transition plans. The FCA welcomed the launch of the framework and reminded firms that it had previously announced that it will consult next year on rules and guidance for listed companies to disclose in line with the UK-endorsed ISSB standards and the TPT Framework as a complementary package. It encouraged firms to engage early with the Framework and "get started".

Horizon Scanning

FCA review of private markets valuations

In early October, it was reported that Nikhil Rathi, the Chief Executive of the FCA, confirmed that the FCA is planning a potentially wide-ranging review of valuations used in private markets (such as private equity and commercial real estate).

This follows on from the historic growth of private markets following the 2008 financial crisis and the recent and rapid hikes in central bank interest rates. It also dovetails with the Financial Stability Board's establishment of a new working group to examine the build-up of leverage in "non-bank financial institutions" which would include, for instance, private equity and hedge funds.

In particular, Nikhil Rathi noted that the FCA would be looking into where build-up of risk may have taken place, how valuations are governed in private markets and how that may feed back into the wider financial system.

The FCA has not yet published anything on the proposed review. This does however suggest that the regulatory direction of travel, in the UK at least, is towards increased scrutiny of private fund managers' risk management tools, especially in respect of leverage, and private fund managers should keep an eye out for future FCA publications on this proposed review.

ESMA common supervisory action on MiFID

On 3 October ESMA announced that in 2024 it will launch a common supervisory action on MiFID sustainability requirements and product governance processes and procedures, jointly with national competent authorities. The supervisory action will cover the following areas:

- How firms collect information on their clients' "sustainability preferences".
- Which arrangements firms have put in place to understand and correctly categorise investment products with sustainability factors for the purpose of the suitability assessment.
- How firms ensure the suitability of an investment with respect to sustainability (including the use of a "portfolio approach").
- How firms specify any sustainability-related objectives a product is compatible with as part of the target market assessment of the investment product.

Changes to the Overseas Funds Regime

According to press articles, the FCA intends to roll out its new Overseas Funds Regime from next April. The FCA has been providing HM Treasury with advice on how to determine equivalence. It is not known yet whether extra requirements will be imposed.

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Meet our contributors

Picture top left to bottom right:
Grania Baird, Partner
Andy Peterkin, Partner
Jessica Reed, Partner
Katy Ruddell, Senior Counsel
Nandini Sur, Senior Associate
Edward Twigger, Associate
Kya Fear, Associate
Leon Chng, Associate
Beth Walsh, Associate
Suzanne Conticelli, Knowledge Lawyer
Nina Caplin, Knowledge Lawyer
Leo Salem, Trainee Solicitor

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