fieldfisher

# UK regulation of asset managers: change is coming.....

January 2021

Belgium | China | France | Germany | Ireland | Italy | Luxembourg | Netherlands | Spain | UK | US (Silicon Valley) | **fieldfisher.com**

# UK regulation of asset managers: change is coming…..

***More detail is now emerging on the future shape of financial services regulation in the UK – not just Brexit implications but the new direction of travel.***

***In this Briefing Paper, we look at the key areas of focus, considering the information which has been published recently on some specific initiatives. It seeks to explain the position generally but with an eye particularly on the implications for asset managers.***

A good starting point from which to consider the likely shape of future regulation in the UK is **the Chancellor's speech: "The future of financial services in the UK"** delivered on 9 November 2020. Its obviously contains high level sound bites but nonetheless they are important indicators of intent:

"*We are starting a new chapter in the history of financial services and renewing the UK's position as the world's pre-eminent financial centre.*"

"*Our plans will ensure the UK moves forward as an open, attractive and well-regulated market, and continues to lead the world in pioneering new technologies and shifting finance towards a net zero future.*"

"*A vision based not on the race to the bottom but for a financial services industry that is open, innovative and leads the world in the use of green finance.*"

"*A vision for this new chapter in the UK's financial services industry – a vision of a global open industry where British finance and expertise is prized and sought after in Europe and beyond, a technologically advanced industry using all of its ingenuity to deliver better outcomes for consumers and businesses, a greener industry using innovation and finance to tackle climate change and protect our environment and, above all, an industry that serves the people of this country acting in the best interests of communities and citizens creating jobs, supporting businesses empowering growth as we direct all our strength towards economic recovery.*"

## Areas of focus

- ### Openness

  In the spirit of being open, a key expressed aim is access for overseas firms to UK markets in a way that is predictable, safe and transparent.

Much has been discussed on the issue of "equivalence" and we comment on the new Guidance document for the UK's Equivalence Framework for Financial Services later in this Briefing Paper.

Details of the Overseas Fund Regime have now been nearly finalised and we report on progress later in this Briefing Paper.

Equivalence though can be overplayed: openness can involve a range of tools and regulatory framework parameters which go together to improve overseas firms' access to UK markets in a way that is "predictable, safe and transparent". To this end, the Chancellor has announced the following:

- A Call for Evidence on the UK's overseas regime before setting out a future approach in 2021.
- A Taskforce has been set up to make recommendations early in 2021 on the UK's future listings regime.
- A **Consultation is to be published shortly (imminently?) on reforming the UK's regime for investment funds.** The Chancellor is committed already to the UK's first long term asset fund being up and running within a year (expressed to be to encourage UK pension funds to direct more of their capital towards the UK's economic recovery.

  In response to questions on 9 November, the Chancellor stated:

  "*That review will specifically consider whether, and how, fund domicile activity could be focussed in specific UK areas to support our levelling up agenda.*"

# UK regulation of asset managers: change is coming.....

*"To give … a sense of what we are trying to achieve, we know that today defined contribution pension schemes in particular are not particularly well invested in long-term illiquid instruments—roughly 1% of their portfolios compared with about 10% for defined benefit schemes. If we can unlock that difference it is worth tens and tens of billions of pounds of extra investment in long term infrastructure and assets in this country. I think that is a valuable prize and we will make start on making that a reality next year."*

- To ensure that UK financial services exports to the EU remain competitive, the UK will make changes to VAT so that those exports are treated in the same way as for other countries: UK firms can reclaim import VAT on financial services exports to the EU – and so treating exports in the same way as the UK does for other countries so UK financial services exports to the EU remain competitive.

- ### Use of technology

The second area of focus is use of technology to deliver better outcomes for consumers and businesses.

There is to be a Consultation on making new forms of privately issued currencies, known as stablecoins, meet the same high standards of other payment methods and the Bank of England and HM Treasury are considering further whether central banks can issue their own digital currencies as a complement to cash. Ron Kalifa's report on fintech is expected.

- ### the role of private sector contribution in tackling climate change and protecting the environment

The third area emphasised is using private sector innovation, expertise and capital behind the critical global effort to tackle climate change and protect the environment. Note the announcement of the UK's intention to mandate climate disclosures by large companies and financial institutions across the economy by 2025 – going further than the Recommendation by the Taskforce on Climate-Related Financial disclosures and the first G20 country to do so.

The Chancellor indicates there will be a new green taxonomy robustly classifying what we mean by "green" to help firms and investor better understand the impact of their investment on the environment. It does not reference a focus on copying the EU model but delivery of the UK's own regime.

In addition, the UK will, subject to market conditions, issue its first ever Sovereign Green Bond in 2021.

**The Chancellor has therefore set out a wide-ranging list of ambitions but how do these translate into specific developments for UK financial services firms, and asset managers in particular, in the foreseeable future? In the following paragraphs, we look at the more detailed proposals which have been published so far.**

## The immediate post Brexit environment

**Before looking at the "new world", it is worth recording the way in which the onshoring of current EU legislation has now come into effect.**

- ### The EU Withdrawal Agreement and the Temporary Transitional Power

The European Union (Withdrawal Agreement) Act 2020 – the "EUWAA" has been enacted and the Withdrawal Agreement has been approved. Under the Withdrawal Agreement, the UK left the EU on 31 January 2020 at 11pm. The European Union (Withdrawal) Act 2018 – the "EUWA" defines Exit Day by reference to this time and so the Transitional Period (or Implementation Period) ends on 31 December 2020 at 11pm. The EUWAA defines the Implementation Period Completion Date (the "IP Completion Date" or "IPCD") by reference to this time.

# UK regulation of asset managers: change is coming…..

Up to the end of the Transition Period, EU law continued to apply in and to the UK. The amendments made to the Binding Technical Standards ("BTS") in connection with the UK's exit from the EU therefore came into effect on the IP Completion Day rather than the Exit Day.

On 27 October 2020, the FCA finalised various instruments listed in Chapter 1 of Handbook Notice No. 81 making changes to the FCA Handbook and to the BTS for which the FCA, or the FCA and Bank of England, are responsible on the basis explained in Handbook Notice No. 81 in paragraph 2. These included SFTR and MiFID instruments.

The FCA intends to apply the Temporary Transitional Power ("**TTP**") on a broad basis from the end of the Transitional Period until 31 March 2022 so that firms and regulated persons do not generally need to prepare now to meet the changes to their UK regulatory obligations brought about by onshoring.

Where TTP applies, the FCA expect firms to use the TTP period to prepare for full compliance with the onshored UK regime by 31 March 2022.

In some areas however, the FCA expect compliance with changed obligations as from 11pm on 31 December 2020, where they take the view that it is not consistent with their statutory objectives to grant transitional relief where it would not otherwise be appropriate to do so. The Temporary Transitional Power does not apply to onshoring changes for firms, to central securities depositories or central clearing counterparties subject to the reporting obligation under the onshored SFTR regime or to the onshored requirement for trade depositories. It will though apply to securities financing transactions where one of the counterparties is a member of the European System of Central Banks, for which the status quo is retained and counterparties will not need to report those transactions under onshored SFTR until 31 March 2020. Further details are set out in the FCA's page on this topic.

## The post Brexit FCA Handbook

The FCA has made available a version of the FCA Handbook to show the rules that apply from 31 December 2020, including how it intends to use the Temporary Transitional Power which, as mentioned above, is broadly to be until 31 March 2022. There will though be changed obligations from 31 December 2020 for areas including:

- MIFID II transaction reporting
- EMIR reporting obligations
- SFTR reporting obligations
- certain requirements under MAR
- Client Assets Sourcebook requirements (CASS)

The FCA have also provided a Guide to the FCA Handbook for Post-Brexit Transition, published in September 2020 which might be of assistance.

In explaining the FCA's approach to EU non-legislative materials, there is an expectation that the supervisory expectation in respect of guidelines and recommendations remains the same to the extent that they are relevant, as they did before the end of the Transitional Period – on 31 December 2020. The FCA indicate that they will continue to apply such guidelines and recommendations in the light of its own functions in the same manner as before, interpreting them in the light of the UK's withdrawal from the EU and the associated legislative changes. This might possibly translate to mean they continue to apply until the UK purposefully decide to change them.

Post "IPCD", 31 December 2020, the FCA can determine that firms of financial institutions and market participants are no longer expected to make every effort to comply with a particular IPCD guideline, for example due to changes made to relevant legislation and, in this instance, they may (hopefully will) issue guidance accordingly. As regards materials produced by European Supervisory Authority post IPCD, the FCA will set out their expectations as to how it should be treated where the FCA considers it appropriate to do so.

# UK regulation of asset managers: change is coming…..

## The longer term, post Brexit environment

**Now the onshoring exercise has been completed, attention is now being given as to how matters will move forward for the future – and probable changes from the EU onshored approach.**

There has been much (positive) reaction to the Chancellor's speech published on 9 November 2020 setting out the Government's ambitions for the future of UK financial services. The question now is how and when the various welcomed initiatives will become reality and precisely how the Government plans to move the legal and regulatory framework for financial services into the post Brexit era.

In all of the publications regarding the Future Regulatory Framework review, announced back in June 2019, the Government has made the right sorts of comments, setting objectives like:

- building on strengths of the UK's existing regulatory framework, and in particular the role played by expert independent financial services regulators;
- an intention to offer a regime with agility and flexibility to respond quickly and effectively to emerging challenges; and
- to help UK firms seize new business opportunities.

As ever though, the question is how in practice these initiatives are followed through.

HM Treasury's Phase II Consultation **document published in October 2020 might assist in being more precise on the direction of travel.**

The Government sees the UK's departure from the EU as "*an important opportunity to review our framework arrangements and ensure we have an overall approach to regulation of financial services which is right for the UK. The Government believes this would be best achieved by building on the strengths of the FSMA model as it was originally intended to operate, making important adaptations that will facilitate appropriate policy input by Government and Parliament.*"

Phase 1 focussed on the issue of coordination between the UK's regulatory authorities but Phase 2 is moving into the broader regulatory framework, consulting on:

- an overall blueprint for financial services regulation, covering the split of responsibilities between Parliament, the Government and financial services regulators;
- having consulted, this should inform a second Consultation in 2021 which will set out the final package of proposals.

HM Treasury's Second Consultation remains open until 19 January 2021 with responses intended to inform a second Consultation in 2021.

Key issues considered include :

### • Divergence from the EU?

There are significant disadvantages perceived in continuing the current approach, with on-shored EU legislation, as this will be difficult to update over time. So on-shoring the EU regime is only seen as having provided a means of ensuring a smooth transition to the UK's new position, not a long term approach.

Leaving the EU, as the Treasury document points out, "*means the UK is taking back control of the rules governing our world leading financial services sector, so it is also an opportunity to adapt our regulatory approach to meet the specific needs of the UK.*"

(Indeed it is important to appreciate that divergence post Brexit will be a two-way street. The EU may itself already be setting its own different policy objectives – whether around its own sovereign financial sector, around its common currency, the Euro, or driving forward the regulation of financial services without the UK's influence. Within the Brussels environment, words already mentioned include autonomy, sovereignty, reshoring, onshoring and building European capacity.)

### • How to set key policy issues in future

There is a clear concern to ensure that Government and Parliament are responsible for setting the policy framework and will have the opportunity to set out the key public policy issues that must be considered when designing and implementing regulatory standards. Within this October 2020 document, they name five areas in which the Government wishes to drive forward its

policy agenda for financial services.

- facilitate innovation that serves the users of financial services;
- safeguard the UK's financial stability;
- market integrity and consumer protection – under which heading they indicate:
  - improving the PRIIPs regime,
  - improvements to the Market Abuse regime and
  - the regulatory gateway for authorised firms approving the financial promotions of unauthorised firms (on which a Consultation has already been issued);
- open and efficient markets and to attracting liquidity into the UK – so overall ensuring sound capital markets;

• openness. This notion involves the usual and much used "transparency" word that seems to be focussed on enhancing openness to global markets – and "to maximise the transparency agility and expertise of the regulatory model and champion our strengths as a safe, open and global financial centre."

• Leave detailed requirements to regulatory bodies

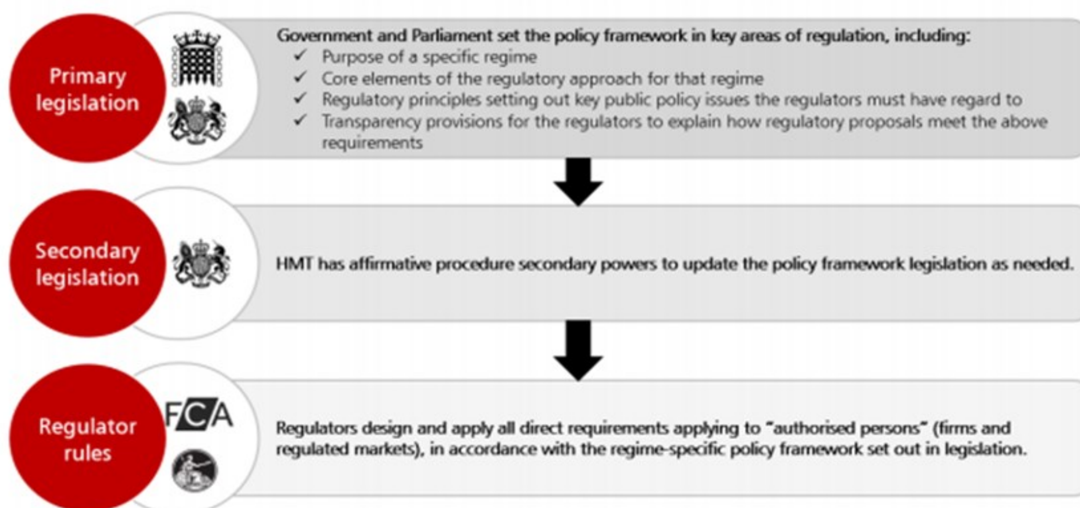
Whilst there was an expressed need for Government and Parliament to make a strategic contribution setting the overall policy framework, specifying priorities and considerations to be taken in account in designing regulatory requirements, there is, on the other side of the equation, an indication that it must be questioned whether there is good use of parliamentary attention and resource for ongoing maintenance of detailed financial services requirements. In addition, if HM Treasury retain responsibility for maintenance of a large body of detailed and technical regulation, this is seen as being less efficient than leaving it to the day to day supervisory function which can detect issues and risks to which the regime may need to respond.

## Features of the new proposed regime

There is to be a revised allocation of responsibilities as set out in the following diagram:

Source: HM Treasury's Financial Services future Regulatory Framework Review Phase II Consultation, October 2020: Chapter 2: The post-EU regulatory framework proposal, paragraph 2.31

Diagram: the proposed allocation of regulatory responsibilities



# UK regulation of asset managers: change is coming.....

Features of the new regime illustrated in the table are expected to include:

- **a high level of policy responsibility for UK regulators, so that regulators effectively internalise a full range of relevant public policy issues**

  The post EU regulatory framework therefore includes suggestions for a clear division of responsibilities (as was originally envisaged by the FSMA model). The default approach would be that any retained EU law provision that is in scope of the regulator's FSMA rulemaking powers would be taken off the statute book to become the responsibility of the appropriate regulator. So the vast bulk of retained EU provisions would be transferred to regulator rule books. Financial regulators should, in most instances, be responsible for setting the requirements that apply to financial services firms and markets.

- **a way for Government and Parliament to set out broader public policy issues and priorities**

  Elements which would remain on the statute book might include:

  - setting the scope of regulated activities: the important question of whether an activity should be subject to regulation is more appropriate for Government and Parliament to decide;
  - the UK's regulatory and trading relationship with other countries, such as equivalence arrangements or mutual recognition agreements

- **a way of ensuring that regulators are open and transparent in explaining how the full range of relevant policy issues have been considered.**

  It is noted that the current FSMA model needs to be strengthened in this connection.

  One interesting area is the proposal for FSMA. HM Treasury asserts that it did not provide for Government or Parliament to set the policy approach for specific areas of financial services regulation. One idea would be for legislation to set out specific policy priorities relevant to the area in question that the regulators should take into consideration when developing policy and designing regulatory requirements. It would be activity specific policy framework legislation at a high level focussing on the purpose approach and key policy considerations.

  Interestingly, the October paper clearly states at page 12 that this activity specific policy framework legislation will be high level, focussing on the overall purpose approach and key policy considerations relevant to each particular regulatory regime: "*The approach would not need to follow the existing EU legislative file structure and, working with the regulators and industry stakeholders, HM Treasury will explore whether moving away from the EU legislative structure makes more sense in the UK context.*"

  In addition to the existing transparency requirements, regulators will be required to explain how their proposals meet the statutory purpose set for a particular regulatory regime, and having taken into consideration activity specific regulatory principles.

Certainly it is acknowledged that the new division of responsibilities proposed would mean that financial services regulators become responsible for the great majority of regulatory requirements that apply directly to financial services firms and markets. It remains to be seen whether this approach will indeed result – as the Consultation suggests "*in greater policy responsibility and discretion for UK regulators than has existed at any time since the early operation of FSMA following its introduction twenty years ago.*"

The need to review suitable accountability arrangements for regulators is noted. Certainly speed of reaction could be improved: in the past, for example, on reviews of the parameters of regulated activities, there could have been speedier progress. One suggestion put forward by the Government is for regulators to consult HM Treasury more systematically on proposed rule changes at an early stage in the policymaking progress and before proposals are published for public consultation, so the Treasury has sufficient time to consider broader public policy implications.

HM Treasury with Parliamentary approval will continue to decide which financial services activities are to be regulated activities. There will inevitably be ongoing discussions about maintaining the perimeter – with HM Treasury consulting the regulators on any changes to the perimeter. The Government is committed to holding an annual perimeter review meeting and there will be a public record of such meeting.

# UK regulation of asset managers: change is coming.....

## Re-examining the Principles

The regulatory Principles - both the Principles of Good Regulation and the Principles for Businesses - in FSMA have served us well, albeit that in the absence of specific regulation to deal with actions which are disliked, perhaps overreliance on these Principles has led to some uncertainty. At least they have usually managed to allow the regulator to deal with problems. Nonetheless, it is now proposed that there should at least be an examination of whether these remain the right cross cutting principles to apply during the regulator's policymaking processes. HM Treasury note that some of the Principles are now twenty years old and the regulatory landscape has changed considerably.

One suggestion put forward by HM Treasury is a regulatory principle requiring the regulators to have regard to the importance of accessible, easy to navigate rule books, taking advantage of practice and innovations that minimise the compliance burden on firms such as machine readable rules. This might be added to the Principles of Good Regulation. Perhaps also the Principles for Businesses might also be revised – as has already been suggested.

The new "activity-specific" regulatory principles proposed in the Consultation would be equivalent to the existing general regulatory principles set out in FSMA – and subordinate to the regulators' statutory objectives. Regulatory principles though would remain important statutory provisions under the FSMA model.

In reorganising its work programme going forwards, the FCA have indicated that they are now aiming to consult in Q1 2021 regarding the proposed new Duty of Care and the Principles for Business. In Feedback Statement 19/2 on a duty of care and potential alternative approaches, they wanted to review how the FCA applied the regulatory framework, particularly the Principles for Businesses and how they might focus on new or revised principles which could strengthen and clarify firms' duties to consumers. The FCA are now aiming to consult on this in Q1 2021.

## Regulators' statutory objectives

The Phase II consultation document invites views on the general issues of the regulators' overarching strategy objectives and how adapting them would compare with the introduction of new regulatory principles as part of the post EU framework proposal.

It is acknowledged that there has been debate about:

- regulators having a statutory duty to support the economic viability of financial services and the ability of this sector to compete internationally;
- whether a secondary objective on competitiveness will deliver appropriate regulatory focus on competitiveness issues.

The argument that one of the reasons for regulatory failure leading up to the financial crisis was an excessive concern for competitiveness is acknowledged, leading to the acceptance of a "light touch" approach to regulation and supervision is acknowledged, but the Consultation does not express a final view on this issue.

## The Financial Services Bill

From 1 January 2021, EU law and EU regulatory structures ceased to apply in the UK and the immediate "onshoring" of current EU legislation took effect. As explained above however, this is not intended to be the ongoing position. **There needs to be a "resetting" of how financial services regulation is made in the UK and the Government's plans for this are becoming clearer.**

Following through on one of the key themes mentioned at the beginning of this Briefing Paper, openness – opening up the UK for business; use of technology to deliver better outcomes; and harnessing private sector innovation, expertise and capital behind the efforts on tackling climate change - we now have some specific terms set out in the Financial Services Bill.

The FCA have commented that the proposals "*should create a more agile and responsive regulatory system*" which the FCA welcome. "*It should enable us to respond flexibly to market developments and changes in society, to protect consumers from harm and to ensure markets work well.*" Nausicaa Delfas, Executive Director of International, FCA speech 12 November 2020.

The Financial Services Bill was introduced to the House of Commons on 21 October 2020. It has three key objectives and measures (with some indications of specifics):

- enhancing the UK's world-leading prudential standards and promoting financial stability – including

# UK regulation of asset managers: change is coming.....

an improved prudential regime for investment firms, making the rules applied to them more proportionate when compared to systemically important banks, including

  - enabling the introduction by the FCA of a tailored Investment Firms Prudential Regime ("**IFPR**"), enabling the majority of this regime to be specified through FCA Rules.
  - dealing with the LIBOR transition.

- promoting openness to overseas markets by
  - introducing the new Overseas Fund Regime to allow overseas collective investment schemes to be marketed to all investors, including retail investors in the UK market on appropriate terms with two new mechanisms, one for retail collective investment schemes and one for money market funds. The TMPR is extended to ensure sufficient time for the Overseas Fund Regime to be established; and
  - following up on the MiFIR option for allowing third country investment firms to provide cross-border investment services and activities to certain professional clients and eligible counterparties in the EU. At the end of the Transitional Period, this equivalence regime – the Title VIII regime, will form part of retained EU law and therefore continue to apply in the UK with changes to ensure it operates following the UK's departure – HM Treasury will have the powers to assess whether a third country is equivalent for the purposes of the Title VIII regime. The Bill updates the Title VIII regime broadly to reflect the changes the EU introduced to their own regime.
- maintaining the effectiveness of the financial services regulatory framework and sound capital markets – making amendments to keep it up to date and effective. This includes empowering the FCA to improve PRIIPs and amending the Market Abuse Regulation.
  - Given the heavy criticism of PRIIPs, under the heading of "Miscellaneous" it is explained in the notes to the Bill that the amendments will enable the FCA to clarify the scope of the Regulation replacing the performance scenario with appropriate information on performance and enable HM Treasury to further extend the exemption currently in place for UCITS retail schemes – there are serious concerns about the unintended consequences of the PRIIPs Regulation and in particular for acquiring the disclosure of potentially misleading information to retail investors and the lack of clarity surrounding its scope is noted, so clearly this is welcome.

The HM Treasury Press Release indicates that "*The Financial Services Bill is an important first step in taking responsibility for our financial services regulation, ensuring that the UK maintains the highest regulatory standards and remains an open and dynamic global financial centre now that we have left the EU. It is part of an ambitious programme to enhance the UK's first class standards and our attractiveness as a location for business, both of which will be crucial to help our economy bounce back.*" (John Glen, Economic Secretary to the Treasury).

## Equivalence frameworks – unilateral for now

Whilst the aim is to manage a comprehensive set of mutual decisions on equivalence cooperatively with the EU, the UK nonetheless has unilaterally published a set of equivalence decisions for the EU and the European economic area Member States so that, insofar as the UK can, it provides clarity for firms both in the UK and Europe as to access to the UK. This is despite the fact that the EU is not prepared at the moment to agree reciprocal access.

Rishi Sunak, the Chancellor, indicated that "*By taking as many equivalence decisions as we can in the absence of clarity from the EU, we are doing what is right for the UK in providing firms with certainty and stability.*" (Chancellor's speech 9 November 2020).

The approach to be taken is expressed to be simple – using equivalence when it is in the UK's economic interest to do so, taking a technical outcomes-based approach that prioritises stability, openness and transparency.

Equivalence will be one of a range of tools to support the openness of the UK's international financial services and facilitate cross border market access. It is an autonomous mechanism by which one jurisdiction can recognise relevant standards in another jurisdiction as equivalent to their own.

Whilst the EU is dragging its heels on agreeing equivalence for the UK under EU equivalence provisions, HM Treasury published in November 2020 its

# UK regulation of asset managers: change is coming…..

Guidance Document for the UK's Equivalence Framework for Financial Services. In doing so, the UK is seeking to demonstrate that it is open to equivalent regimes elsewhere by publishing its UK equivalence framework – on a unilateral basis – and of course this applies more widely than simply the EU, it is looking ahead towards being an open market more widely as part of a determination to promote the UK's position as one of the world's leading financial centres where businesses can connect to clients in Europe, Asia, the US and beyond. As indicated in paragraph 1.1, "*This means pursuing a world-leading approach that enables the UK to promote positive change across global financial markets and enhances cross-border financial flows in the years ahead.*"

"*This document outlines how HM Treasury will operate its model under the equivalence framework for financial services, in such a way that supports the UK's commitment to upholding open and global markets underpinned by the highest standards of regulation and supervisory oversight. This framework at its core operates an outcomes-based model for determining, monitoring and reviewing equivalence, which will take into account the risks to the UK arising from the relevant overseas jurisdiction's financial system and relevant equivalence provisions and promotes the implementation of international standards. This framework also recognises that equivalence should reconcile the need for financial stability and consumer protection and be an evidence-based and cooperative process.*"

Key principles include (as paragraph 1.2 states): "*a commitment to open, safe, and resilient financial markets; a commitment to robust and high-quality regulation, guided by international standards; a desire to facilitate international financial services business by reducing barriers and frictions where possible; a desire to reduce global market fragmentation; and a desire for friendly and effective collaboration with international partners.*"

The Government's initiatives comprise the following:

- **initial onshoring process**

  Applicable EU legislation was converted into UK law, with effect from the end of the transition period on 31 December 2020 under the European Union (Withdrawal) Act 2018. This included 40 equivalence and exemption provisions and the powers to make equivalence determinations for financial services.

  It therefore allows the UK to replicate most of the equivalence determinations in respect of third countries previously made by the EU Commission under these provisions prior to the end of the transition period – covering exemptions for certain central banks and other public bodies from certain requirements under the UK's on-shored framework.

  Under the on-shoring process though, the EU Commission's role in making equivalence determinations for overseas jurisdictions has been "replicated and transferred to" HM Treasury (with support from the PRA and the FCA).

  The UK equivalence decisions were laid before Parliament on 10 November 2020. So existing equivalence determinations continue in UK law with one exception – the Government did not on-shore equivalence decisions for central counterparties (CCPs) that the EU made under Article 25 of EMIR. HM Treasury is undertaking new assessments for overseas jurisdictions in this area.

- **a new equivalence framework promoting common high standards**

  The future model for operating the UK's equivalence framework is to be "*world-leading, promoting common high standards, reflecting the characteristics of different markets, and providing stable access on which business can base their long-term activities.*" HM Treasury indicate there will be a focus on improving transparency and predictability. Various principles are set out in paragraph 2.13 of their November 2020 paper.

  – **assessment of "outcomes"**

    Again, there is a focus on assessment of outcomes – underpinned by compliance with internationally agreed standards and through different combinations of rules and supervisory practices, if these practices provide an equivalent outcome to the corresponding UK legal framework.

    The UK's equivalence framework will therefore be flexible enough to allow for both jurisdictions to change and adapt their rules and for the UK to still consider the overseas jurisdiction equivalent, provided the cumulative effect of such changes does not lead to a material divergence that no longer achieves equivalent outcomes.

– **assessment and decision-making process**

Chapter 3 of the paper explains that assessments will be initiated by the UK although overseas jurisdictions can indicate an interest in being assessed if HM Treasury are satisfied that a particular jurisdiction is equivalent on an outcomes basis, which might include adequate prudential legislation, supervision, enforcement and respect for the rule of law (equivalence determinations will be made by secondary legislation – Statutory Instrument) which would be accompanied by an explanatory memorandum that explains what advice HM Treasury considered, including from the financial services regulators, and the basis of its determinations. Parliament will then consider HM Treasury's decision to grant equivalence as part of the UK's normal legislative process on a Statutory Instrument.

Following Parliamentary process and once an equivalence decision has been made, it may also be necessary for overseas firms to register with the relevant UK regulator to provide ongoing reporting or information that is relevant to the equivalence decision, and details of such would be set out in the relevant legislation dealing with each equivalence decision.

Certain equivalence decisions might require relevant Memoranda of Understanding (MoUs) to be established between the financial services regulators and their overseas counterparts.

– **Ongoing monitoring and withdrawal**

Chapter 4 discusses the approach on ongoing monitoring and withdrawal – and the need for continued dialogue and open discussion is acknowledged, with mitigation of any adverse effects on withdrawal on financial stability and market disruption being considered.

Even if HM Treasury were to determine there is a need to withdraw equivalence quickly for reasons such as ensuring financial stability or protection of investors or depositors, HM Treasury would endeavour to provide as much clarity or transparency regarding withdrawal as it would be possible in the circumstances.

## Progress on the UK's new Overseas Fund Regime

The new Overseas Fund Regime is within the legislation brought forward as part of the Financial Services Bill 2020, introduced to Parliament on 21 October 2020. (This is in addition to the already introduced "Temporary Marketing Permissions Regime" – TMPR, which allows EEA UCITS that were passported into the UK to continue to access the UK market for a limited period after the end of the transition period (made under the EU (Withdrawal) Act 2018).)

HM Treasury published in November 2020 a Summary of Responses on its new Overseas Fund Regime. (The proposals on this were published in March – see Fieldfisher's Briefing Paper "The New Overseas Fund Regime: the UK's proposals for funds being sold into the UK" which set out the proposals.)

In responding to responses, the following points are made in HM Treasury's November 2020 document:

- **two new regimes**

  Two new equivalence regimes based on the principle of outcomes based equivalence, one for retail investment funds and one for money market funds, are introduced.

  The retail fund equivalence regime is introduced through a new Section 271A of FSMA. The conditions for grants of equivalence for retail funds remain as in the Consultation – requiring at least equivalent investor protection on an outcomes basis when compared to UK authorised funds and that there are, or will be at the point of recognition, adequate supervisory cooperation arrangements between the FCA and the national competent authority in the other country.

  The MMF equivalence regime is introduced through a new Article 4A of the MMF Regulation – following the originally proposed approach which remains similar to that outlined in the Consultation, the Government continues to believe that it is necessary to consider the factors and regulation relating to MMFs separately to other types of retail funds.

# UK regulation of asset managers: change is coming.....

- **at sub-funds level**

  It is clarified in this Response document that the Financial Services Bill specifies that retail equivalence regime in the new Overseas Fund Regime under Section 271A and Section 272 for recognition will apply to both a collective investment scheme as a whole, and to parts of a scheme, i.e. the sub-funds. Whilst in the past the UK has always maintained the position that it applies to a vehicle which is the legal entity, HM Treasury has acknowledged the need to bring the Overseas Fund Regime up to date with current market practice and make it clear that recognition is to be at the sub-fund level. It is acknowledged that the investment objectives are set at sub-fund level and that it is important to ensure that only those sub-funds meeting the criteria can gain recognition for marketing to UK investors.

  (The legislation creating the Temporary Marketing Permissions Regime for EEA UCITS after the end of the transition period is also done at the sub-fund level.)

- **using an outcomes based approach**

  The Government is pursuing the proposed outcomes-based equivalence approach – as opposed to a line-by -line approach to equivalence which will require the overseas funds to be subject to exactly the same regulation as funds in the UK.

- **with possible additional requirements**

  The Financial Services Bill retains the original proposals which enable HM Treasury to impose additional requirements on overseas funds, as a necessary step in the context of dynamic financial services regulation and a means to future proof the regime. Any such requirements would need to be made in separate Statutory Instruments alongside the equivalence determinations.

  The FCA will also have the power to make or amend their rules to give effect to any additional requirements. A provision though has been added to the Bill which requires HM Treasury to have regard to what is required of comparable UK authorised funds when specifying additional requirements for overseas funds in the light of responses received on proportionality and the additional requirements going above what is required of UK funds. (Paragraph 2.18 refers.)

- **recognition and notification processes**

  For retail funds, the self-certification approach for retail funds is pursued although the two month time limit for the FCA to recognise funds is longer than comparable processes in Switzerland and Singapore which take three to four weeks. The Government still believes a two month time limit is a reasonable time limit to set, as it is statutory maximum to allow the FCA time to consider any particular investor protection issues if necessary (despite the fact that time limits usually become the expectation, such as the one month for changes to UK authorised funds?).

  For MMFs: the consultation proposal is to be progressed with three processes:

  - For an MMF wishing to market to retail and professional clients under the Overseas Fund Regime, there must be an application under Section 271A to be recognised by the FCA and then the MMF marketing to retail clients may be subject to additional requirements, as imposed under the retail equivalence regime.
  - If an MMF falls under the MMF equivalence determination (Article 4A of the MMFR) but does not fall under a retail fund equivalence determination under Section 271A of FSMA, it can still market to retail clients by applying to be individually recognised under Section 272 of FSMA.
  - An MMF which wishes to market only to professional clients must fall under an MMF equivalence determination (Article 4A of MMFR) and then notify the FCA in accordance with National Private Placement Regime requirements.

- **transition from TMPR**

  To achieve a smooth transition for EEA UCITS from the transition of the Temporary Marketing Permissions Regime to the new Overseas Fund Regime, the Government has made changes to the Temporary Marketing Permissions Regime – extending it from three to five years to allow enough time for Government to complete any equivalence assessments and for funds in that Temporary Marketing Permissions Regime to apply for recognition, either through the new Overseas Fund Regime or Section 272 as appropriate.

Also, the FCA can create "landing slots" for funds that are leaving the Temporary Marketing Permissions Regime and applying for permanent recognition under the new Overseas Fund Regime, with a two month time limit for the FCA to consider applications under the new Overseas Fund Regime being disapplied for funds leaving the Temporary Marketing Permissions Regime. The intention is that the FCA can effectively manage the flow of funds leaving the Temporary Marketing Permissions Regime and applying for permanent recognition.

- **modifying or withdrawing equivalence**

  Broadly, the process with remain as proposed and HM Treasury will seek to ensure that any withdrawal of equivalence is undertaken in line with the principles of transparency and appropriate engagement with the overseas jurisdiction concerned. In the Bill, there is a power included to introduce a transitional provision which could be used if HM Treasury has modified or withdrawn equivalence determination resulting in the fund no longer falling under that determination. The HM Treasury could therefore specify a period during which affected schemes must apply for recognition under Section 272, or the FCA may do so in directions. HMT regulations could also modify or disapply the time limits for the FCA to determine a Section 272 application. This could help manage applications to the FCA should a large number of funds from a country or territory no longer falling under an equivalence determination instead seek recognition under Section 272.

- **suspension or revocation of individual funds**

  The Government aims to legislate for a suspension and revocation process which is fair and balances the interests of investors and funds. If suspected, it will lose recognised status for a specified period, until the occurrence of a specified event or until specified conditions have been met. The FCA will be required to give written notice setting out various matters about the suspension.

  In relation to a revocation, it will be permanent. Before revoking recognition, the FCA will be required to first issue a warning notice and then a decision notice to the fund operator and trustee and depositary, if any, setting out the recipient's right to take the matter to the Upper Tribunal.

  In the event of a suspension or revocation, the fund's operator will be required to notify the relevant persons – and the Government has now introduced a power of public censure for the FCA under the new Overseas Fund Regime set out in Section 271R of the Bill, which would allow the FCA to inform investors of any wrongdoing by operators of overseas funds which are recognised under the new Overseas Fund Regime. These new powers are also added to Section 272 of FSMA to ensure consistency between the Overseas Fund Regime and other regimes.

- **relevance of FOS and FCSC**

  The policy option 2 of relying on alternative dispute resolution (ADR) facilities in the overseas country is preferred to the one of expanding the Financial Ombudsman Scheme to cover funds recognised under the new Overseas Fund Regime. Nor is there to be extension of the jurisdiction of the FSCS to operators or depositaries of overseas fund under the Overseas Fund Regime.

- **disclosures**

  Changes re to made to the PRIIPs Regulation which are included in the Financial Services Bill alongside the Overseas Fund Regime which will include the power to extend the exemption for UK and EEA UCITS from PRIIPs Key Information Document (KID) disclosures. The HM Treasury November 2020 paper indicates that HM Treasury will consider the most appropriate timing for transition of UCITS funds into the PRIIPs regime, or any domestic successor that may result from the planned review of the UK framework for investment product disclosure, and will bring forward a Statutory Instrument to amend the exemption date in the PRIIPs Regulation as necessary.

  The most interesting aspect of this is that there is a planned review of the UK framework for investment product disclosure which probably means that PRIIPs, both for UCITS and other investment products, are to be subject to more widespread review and amendment going forwards at some point.

- **financial promotions**

  As proposed, operators of funds recognised under the OFR will not be deemed authorised persons (in the same way as applies for funds recognised under Section 272). Consequently, financial promotions for

# UK regulation of asset managers: change is coming…..

funds recognised under the Overseas Fund Regime need to be approved either by a UK authorised person or fall within an exemption to the Financial Promotions Order.

- **amendments to Section 272 of FSMA**

  Section 272 survives and will continue – covering individual funds that do not fall within the scope of an equivalence determination under the new Overseas Fund Regime but still wish to market to retail investors in the UK.

  The simplifications to the Section 272 regime proposed are to be progressed – although the Government has resisted responses which had asked for a shortening of time periods under Section 272.

  To ensure consistency, the Financial Services Bill has few changes, amending Section 272 so that the funds which are capable of being recognised under Section 271A cannot be recognised under Section 272 of FSMA; creating a new Section 282A of FSMA which sets out the obligations on the fund operator to notify the relevant persons, such as investors in the scheme, as directed by the FCA, if recognition is revoked or suspended; and creating a new Section 282B relating to public censure, which gives the FCA the power to publish a statement, if it believes that certain rules and requirements have been contravened by the operator of a fund so that investors are informed of any wrongdoing by operators of overseas funds.

## ESG and the UK TCFD Taskforce

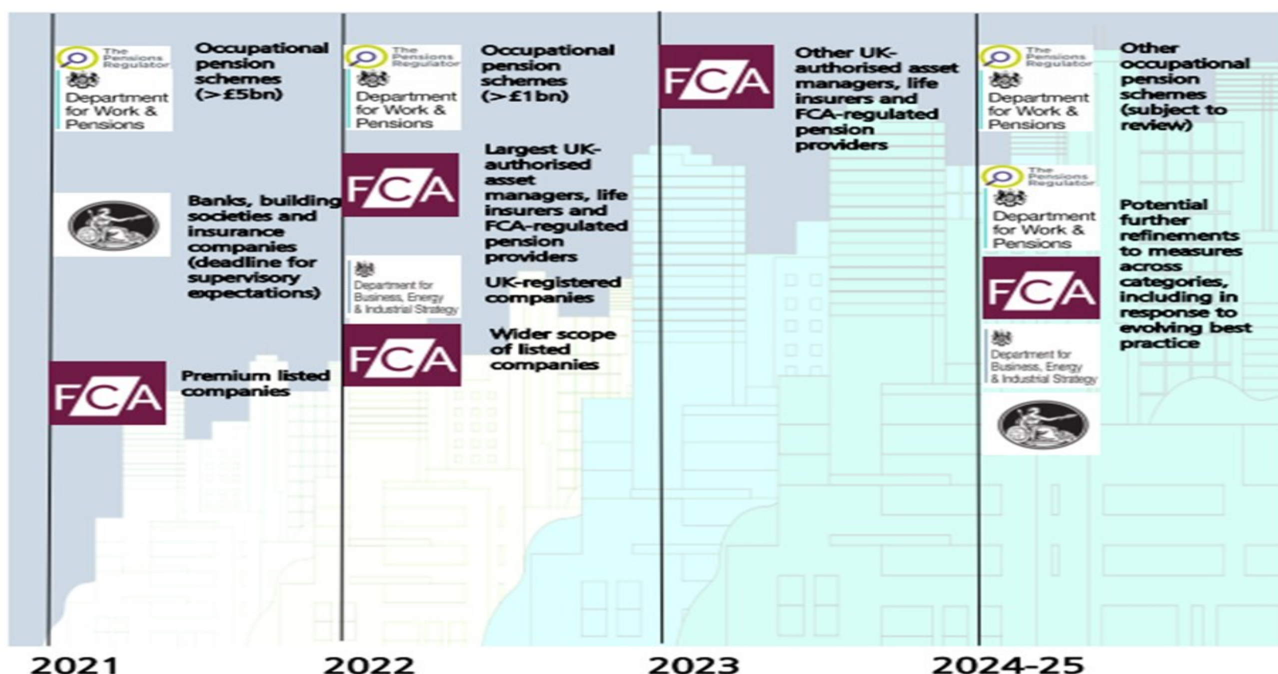
The Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD) published a set of Recommendations in 2017 and the UK Government was one of the first to endorse these recommendations. This UK Taskforce was established to consider how the expectation in the Green Finance Strategy could be met.

In November 2020, HM Treasury published its Interim Report of the UK's Joint Government-Regulator TCFD Taskforce – the Taskforce for Climate Related Financial Disclosures. It is a publication by the Department for Business Energy and Industrial Strategy, the FCA, the DWP and the Pensions Regulator.

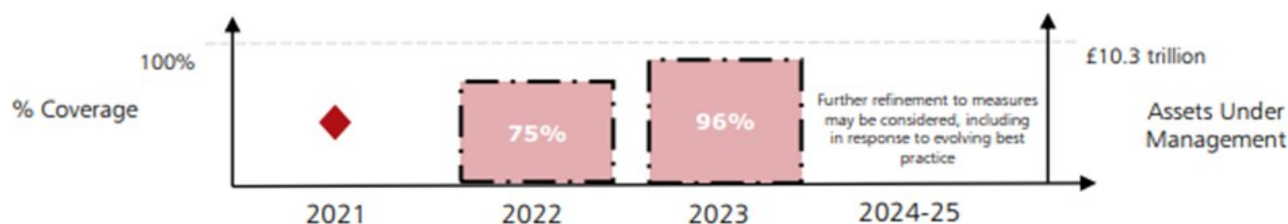
**The Interim Report concerns the UK Government's initiatives to introduce fully mandatory climate-related financial disclosure requirements across the UK economy by 2025, with a significant proportion of these requirements in place by 2023.**

*Timeline of planned or potential regulatory actions or legislative measures:*

Source: Figures1 and 2: Roadmap towards mandatory TCFD-aligned disclosures, page 14 of HM Treasury's Interim Report of the UK's Joint Government-Regulator TCFD Taskforce, November 2020



# UK regulation of asset managers: change is coming…..




Note: This category of organisation comprises UK-authorised asset managers, defined as (i) Markets in Financial Instruments Directive (MiFID) investment firms who provide portfolio management services; (ii) alternative investment fund managers (AIFMs), including small authorised AIFMs that have managing permissions; (iii) UCITS management companies; and UCITS funds without an external management company. Note that the required disclosures would be directed towards clients and end-investors, rather than shareholders. The maximum potential coverage in the figure represents, for illustrative purposes, these firms' total assets under management (based on most recent illustrative regulatory returns data). The bars represent the indicative percentage of the total assets under management of this category that could be covered by disclosure requirements at each point in the timeline, subject to the outcome of future policy development, consultation and other regulatory processes. Note that implementation of TCFD-aligned disclosure requirements for listed open- and closed-ended investment companies will be considered in parallel. Source: FCA-regulated firms' regulatory returns; UK Taskforce calculations.

Chapter 2 sets out the Roadmap towards mandatory climate-related disclosures – an indicative path for the introduction of regulatory rules and legislative requirements over the next five years, with most action occurring over the first three years. (A separate document entitled "A Roadmap towards mandatory climate-related disclosures" was also published by HM Treasury in November 2020, which would appear to be a version of Chapter 2 of the Interim Report.)

An indication of the likely approach for asset managers is included on page 16 of the Interim Report, as set out above.

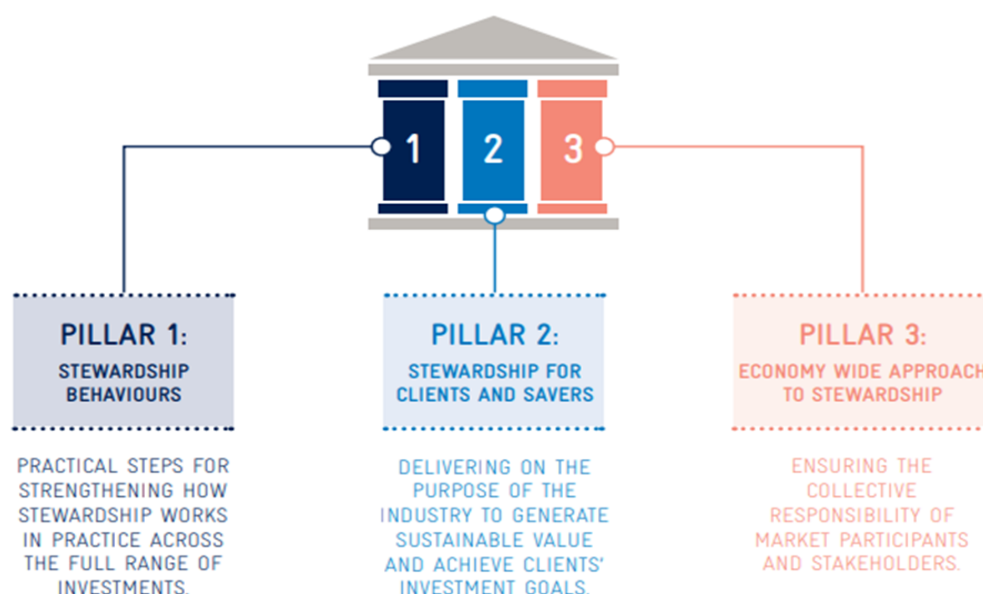
**You can see that this includes the largest UK authorised asset managers being within the actions targeted for 2022 and other UK authorised asset managers within 2023.**

Points to note arising from the Interim Report include the following:

- Pursuant to the June 2020 Report, the joint FCA/PRA Client Financial Risk Forum will refine and build upon the Recommendations in its Guide to try and refine and build upon the Recommendations in it and to undertake a thematic piece of work on metrics, data and methodologies.
- At paragraph 4.8, the possibility of enhancements – gold-plating – is raised? The UK Taskforce expects that it may be necessary in due course to consider setting more detailed expectations for disclosure to supplement TCFD Recommendations. This would enhance consistency and comparability across UK organisations. But, given the interlinkages between UK organisations and the global economy, it is not enough for disclosures to be comparable across UK organisations, it is important to be able to compare UK organisations with those in other jurisdictions.
- The interplay with the EU approach is not expressly referenced. It is though mentioned that the FCA is co-chairing a work stream on company sustainability disclosures launched in the Summer by the Taskforce on sustainable finance by IOSCO following the publication of a Report on securities regulators roles in sustainable finance. Alignment to the FSB/IOSCO initiatives might be more to be expected in future?
- Certainly paragraph 4.10 indicates that a high level of comparability across jurisdictions does require consistent disclosures and to this end the UK Taskforce is strongly recommending the International Financial Reporting Standards (IFRS) Foundation's proposal to create a new global Sustainability Standards Board, as well as complementary work underway on harmonisation by an alliance of voluntary standard-setting organisations.

# UK regulation of asset managers: change is coming…..

## Initiatives on stewardship




Pursuant to the Asset Management Taskforce initiative, the Economic Secretary to the Treasury, John Glen MP, commissioned working groups to deliver a Report: a Stewardship Working Group and a Stakeholder Working Group were set up to make proposals for how stewardship and responsible investment could be strengthened in the UK.

Recommendations are made in a Report published in November 2020 "Investing with Purpose: placing stewardship at the heart of sustainable growth ".

It outlines three key pillars, as shown above (Source: Asset Management Taskforce: placing stewardship at the heart of sustainable growth – Chapter 3 Recommendations for strengthening stewardship in the UK (November 2020)

There are a number of Recommendations made in the "Investing with Purpose" publication which are set out in the Annex to this Briefing Paper. The Investment Association is to take forward a number of these Recommendations working with its membership and other key stakeholders.

## Likely development of bilateral initiatives

The UK may seek deeper bilateral relations with financial centres across the world, based on common high standards and cooperation.

Note the expressed intention mentioned in the Chancellor's speech on 9 November to deepen financial services relationships with countries outside of the EU – progressing partnerships with Switzerland, India and Japan on a bilateral basis, to take three current examples.

The openness to cooperation, whether it requires work through IOSCO and/or bilateral arrangements, will clearly be an area of focus for the Government and the FCA. The FCA refer to the UK/Swiss joint intention to agree a future Mutual Recognition Agreement, the UK/Japan economic partnership announced in September: strengthening relationships with key counterparts, for example regulatory dialogues with the US and Singapore and economic and financial dialogue with India.

# UK regulation of asset managers: change is coming…..

To take one key initiative – UK-US initiatives: On 22 October 2020, the Government published a joint statement on the UK/US Financial Regulatory Working Group meeting pursuant to a third meeting on 20 October 2020. Whilst formed back in 2018, this meeting was the first since the UK had left the EU and looked at five themes:

- the economic response to, and potential financial stability impacts of, the Covid-19 crisis;
- international cooperation and 2021 priorities;
- cross-border rules and overseas recognition/ equivalence/substituted compliance regimes. Note there has been a signing of a Memorandum of Understanding between the Bank of England and CFTC regarding supervisory cooperation in relation to UK and US counterparties that operate on a cross-border basis;
- sustainable finance; and
- financial innovation. The success of the Summer's UK/US Financial Innovation Partnership meeting is noted and a desire to take further actions to deepen the US and UK ties in financial innovation – the respective approach is to digital payments and cross-border data issues.

The fact that there will be a new phase entered now the Brexit transition period has ended is noted and participants are expected to continue to engage bilaterally on all topics mentioned, as well as other topics of mutual interest, ahead of the next Working Group meeting which is expected to be in the first half of 2021.

These and further bilateral initiatives will clearly be important.

## New FCA approach to international firms

The FCA have issued their Consultation Paper 20/20 which seeks to set out and obtain views on specific challenges in meeting the minimum standards that are more relevant to international firms – without wishing to change those standards (such as the Threshold Conditions under FSMA). The aim is to ensure that international firms understand how they can satisfy the relevant minimum standards.

The FCA indeed anticipates seeing an increase in the number of international firms looking to be authorised in the UK such as the EEA firms which no longer will be able to use passports.

Some of the points it makes are quite obvious but what is useful is setting out in one document the overall expectations, including the obvious, so, for example, setting out that a firm should have an active place of business in the UK but, in addition, there will need to be assurance that the personnel including management in decision making structures and systems and controls taking into account the offshore or outsourcing dependencies are adequate for the firm's UK activities to be effectively supervised.

- The degree of cooperation between the FCA and the Home State supervisor will be assessed in the context of a firm's wider operations.
- SM&CR will apply proportionately to international firms that have a UK branch. Generally, Senior Managers will be expected to spend an adequate and proportionate amount of time in the UK to ensure those activities are suitably controlled.
- Obviously there need to be adequate systems and controls – non-financial resources. If an international firm's UK operation is dependent on services from other locations of the firm, the FCA will consider whether those arrangements would impair the FCA's ability to supervise the firm.
- The whole international firm must meet the minimum standards – including its overseas offices, as the whole firm, including its overseas offices, benefit from the permissions granted so if a firm intends to provide some services to UK customers from overseas, the FCA will wish to ensure that it can supervise services provided in this way – for example by considering if they can have effective assurance from the FCA's supervisory relationship with the firm's UK establishment – the extent to which the UK branch has oversight of activities provided to UK customers from overseas. Limitations could be imposed on a firm's permission if thought necessary.

# UK regulation of asset managers: change is coming…..

## Reorientation towards a more global perspective

A key development to note is the likely reorientation for the UK, away from the need to comply with prescriptive EU approaches to regulation and a desire to participate, probably lead, initiatives on an international basis for appropriate regulatory standards.

Already as part of the reorientation post Brexit, and as noted in the Guidance Document on the UK's Equivalence Framework for Financial Services, there is a general commitment to play an active role in multilateral forums such as the G20, the Financial Stability Board (FSB) and the International Organisation of Securities Commissions ("IOSCO") in developing international regulatory standards and supporting supervisory cooperation.

It is inevitable that the UK will not only develop its own regime but also look, instead of within the EU environment, to the wider global regulatory environment and in particular participate within IOSCO.

The FCA is already referring to being strong proponents of high quality international standards, and active members of standard setting bodies such as the FSB, IOSCO and the International Association of Insurance Supervisors ("IAIS"). They indicate this is hugely important.

With withdrawal from the EU, the FCA is already looking towards new cross-border initiatives. For example, on 29 October it published details of its participation in Global Financial Innovation Network ("GFINs") cross-border testing of financial products and services, which involves 23 regulators across five continents in a cross-border testing initiative. With the FCA currently Chairing GFIN's Co-ordination Group which sets the overall direction, strategy and annual work programme of GFIN, this is one organisation through which the FCA can look to influence and learn from initiatives in other jurisdictions. The FCA is inviting firms to take part in the cross-border testing by submitting an application via the GFIN website by 31 December 2020 deadline.

International standards and strong cooperation can enable cross-border activity without compromising on regulatory outcomes, and ultimately reduce compliance costs of businesses serving different markets – leading to a better and healthier global financial system.

## Change is coming …..

Whilst therefore there has been considerable, perhaps too much, focus on onshoring of EU legislation in the immediate post Brexit environment, there are now clear signs of the direction of travel for the UK post Brexit which are much more exciting – or potentially so.

Thankfully, initial indications in these recent publications mentioned above indicate considerable ambitions for the UK as a location for financial services businesses going forwards.

Of course the devil will be in the detail and much of that is yet to emerge. Yet the initial indications of the direction of travel outlined above are encouraging. The UK is now in charge of determining its own UK regulatory framework for the future – including any waivers it may decide to grant to it (a useful development after years of there being no possibility of waivers of any EU driven provisions).

In answer to questions in the House of Commons on 9 November 2020, Rishi Sunak said

"*We may be world beating today, but we want to remain the most competitive place to do business. The initiatives that we have launched today, for example the listing reform, [which was mentioned,] the investment funds regime reform, or Solvency II, will provide opportunities for us to tweak and flex our regulation going forward, and attract capital and business so that the industry can continue to grow and go from strength to strength.*"

# Annex: Recommendations made in the Report "Investing with Purpose: placing stewardship at the heart of sustainable growth", November 2020

- **Recommendation 1:** The Working Groups endorse the UK Stewardship Code as the best in class marker of stewardship. We expect that investment managers will become signatories to the Code. The IA should work with its members to identify and support non-signatories to sign up.
- **Recommendation 2:** There needs to be a step change in investment managers' approach to the culture, governance and incentivisation of stewardship. The IA should work with the industry to achieve this change through the development of guidance and sharing of best practice.
- **Recommendation 3:** Bondholders should make full use of the rights available to them, living up to their responsibilities as stewards. The IA should work with industry to develop guidance on how stewardship in fixed income can be improved – to support the industry to set expectations of bond issuers and hold them to account, and to overcome any barriers to engagement with issuers.
- **Recommendation 4:** More emphasis is needed on stewardship in private markets. Asset owners and investment managers should identify common criteria for best practice stewardship in private asset classes. The IA should consider the quality of UK Stewardship Code disclosures in relation to private markets and identify how to progress best practice stewardship in this asset class.
- **Recommendation 5:** Shareholders should use requisitioned resolutions more proactively as an escalation tool and develop model resolutions to escalate a range of critical concerns with investee companies, including on climate change. The industry should develop guidance to overcome existing barriers to requisitioning resolutions.
- **Recommendation 6:** Following the findings of the Law Commission review, Government should review the provisions on requisitioning shareholder resolutions in the Companies Act, examining whether the requirement for 100 shareholders who hold on average £100 of paid up capital, or the 5% threshold places an excessive barrier in practice on the use of this stewardship tool.
- **Recommendation 7:** Investors should set out clear expectations of companies in post-Covid-19 recovery, particularly those that are seeking additional capital from investors. Investors should commit to using their stewardship responsibilities to ensure that companies are meeting these expectations.
- **Recommendation 8:** We endorse the FRC's recent review of AGMs and support continuing work by the FRC into the requirements on companies in respect of shareholder meetings, particularly AGMs. The work should prioritise ways to ensure greater access to and participation in AGMs (including through the use of available technology) by diverse shareholders whilst retaining the accountability of directors to shareholders.
- **Recommendation 9:** Regulators and investors should continue to support ongoing international efforts to enhance and harmonise corporate reporting standards for sustainability, including those at IOSCO, IFRS and an alliance of the leading standard setters. Pending an international standard, industry and regulators should consider steps to promote further voluntary adoption of existing widely accepted frameworks and standards such as TCFD, SASB and GRI. The UK asset management industry supports the early adoption of TCFD by investee companies and the use of other reporting standards, such as SASB, as a stepping stone until an international reporting standard is developed
- **Recommendation 10:** Large private companies should ensure that they are meeting investor, government and stakeholder expectations to demonstrate their governance arrangements and impact on stakeholders through improving their disclosures against the Wates Principles and s172 Directors' Duties reporting requirements.
- **Recommendation 11:** The UK Government should amend company law to require all large UK incorporated companies (public and private) to report in line with TCFD. Companies should also have regard to industry endorsed disclosure frameworks and investors should reinforce this expectation through their stewardship activity.

# UK regulation of asset managers: change is coming…..

- **Recommendation 12:** Companies, asset managers and their advisors need to take responsibility for reinforcing the Corporate Governance Code's Comply or Explain regime and ensuring that the quality of explanations improves. Investors should set out their support for the Comply or Explain regime and reinforce this with their engagement and voting approach. Investors should set out the attributes of a high-quality explanation.
- **Recommendation 13:** The FRC, in collaboration with key stakeholders, should develop free-to-use resources for company directors to deepen their understanding of stewardship and the UK Stewardship Codes. This programme should focus on the shift in expectations arising from the more expansive definition of stewardship embedded in the new Stewardship Code and the need for constructive engagement between investors and investee companies.
- **Recommendation 14:** The Working Groups support the IA's and PLSA's commitment to establish a new steering group to explore how to embed a focus on long-term factors including stewardship in the relationships between asset owners and investment managers.
- **Recommendation 15:** UK pension schemes should be required to explain how their stewardship policies and activities are in scheme members' best interests. TPR should issue related guidance on how trustees might evidence that their stewardship policies and activities are in members' best interests.
- **Recommendation 16:** A dedicated council of UK pension schemes should be established to promote and facilitate high standards of stewardship of pension assets. Members of the council should either be signatories of the UK Stewardship Code or have publicly committed to signing the Code within two years of joining the council.
- **Recommendation 17:** Continuing the success of the working level collaboration that already exists, the cross regulatory forum on stewardship should be maintained and formalised as a standing forum on Stewardship for the FRC, FCA, TPR and the PRA and their sponsoring departments (BEIS, Treasury and DWP). This should be complemented with senior level industry, government and regulator engagement on stewardship. The Asset Management Taskforce and other multi-stakeholder groups should be used as a senior level sounding board for this strategic direction of stewardship and its regulation and as a means to develop a response to specific corporate or market-based issues.
- **Recommendation 18:** Funded public service schemes (including Local Authority Pension Schemes and investment pools), other relevant asset owners in government and UK Government Investments (who advise the government on the management of certain assets) should embed stewardship in their own investment processes and become signatories to the UK Stewardship Code.
- **Recommendation 19:** All service providers in the stewardship investment chain, including proxy advisors, index providers, data providers and credit rating agencies should demonstrate how they support effective stewardship. We encourage them to do so by becoming signatories to the service provider principles of the UK Stewardship Code. The FRC should explore how the service provider principles can be applied to a wider range of market participants – both those who act in an advisory capacity and those who provide wider market services.
- **Recommendation 20:** Investment consultants should demonstrate how they support effective stewardship through becoming signatories to the Code. We urge consulting firms to provide more active support to clients in raising the standard of their stewardship activities, including client oversight of asset managers, client engagement with managers on stewardship performance, and client engagement with beneficiaries regarding stewardship priorities. This should include consideration of alignment of stewardship approach of asset managers to the client's stewardship needs as a factor in the selection and recommendation of asset managers.

fieldfisher

**Kirstene Baillie**
**Partner, Asset Management and Funds — London**
+44 (0)20 7861 4289
kirstene.baillie@fieldfisher.com