

BankBCLP

## **BANKING BITES – SEPTEMBER 21 2022**

Sep 21, 2022

### **SUMMARY**

Welcome to Banking Bites! This is our short summary flagging key developments in the UK that we hope will inform your activities in your market.

This edition covers:

1. UK's Financial Conduct Authority publishes final rules and guidance on the new Consumer Duty
2. Regulator's Dear CEO letters addressing the impact of the Consumer Duty on specific markets
3. FCA confirms new rules to make authorised financial firms more responsible for their appointed representatives
4. Legislation designed to improve diversity and inclusiveness in the US banking sector
5. UK's Supreme Court grants permission to hear appeal against the time limit for lodging PPI Claims
6. AML change in control changes for UK-registered crypto-asset firms
7. New reporting obligations for UK crypto-asset businesses

### **1. UK'S FINANCIAL CONDUCT AUTHORITY PUBLISHES FINAL RULES AND GUIDANCE ON THE NEW CONSUMER DUTY**

The publication on 27 July 2022 of the UK financial services regulator's [finalised rules and guidance](#) bringing in the new Consumer Duty ("Duty") is arguably one of the most significant sets of regulatory rule changes for UK firms and branches in recent times.

The Duty aims to set higher standards of consumer protection across the financial services sector and consists of:

- A new Consumer Principle requiring firms to act to deliver good outcomes for retail customers (new Principle 12 of the FCA's Principles for businesses, which will replace Principles 6 and 7 for retail business);
- Cross-cutting rules providing further detail on the FCA's expectations under the Duty;
- Rules relating to the four outcomes that the FCA wants to see under the Duty (these outcomes relate to products and services, price and value, consumer understanding and consumer support)

It is potentially far-reaching, applying not only to firms dealing directly with UK-based retail customers, but also to all firms within distribution chains that have the ability to determine or materially influence retail customer outcomes (meaning that firms operating in the wholesale markets will be impacted too). UK firms and branches have until 31 July 2023 to implement the new rules for all new and existing products and services that are open to sale or renewal (for closed products or services, the rules come into force on 31 July 2024). By the end of October 2022, boards (or equivalent) should have agreed their implementation plans and be able to demonstrate they have scrutinised plans to ensure they are capable of meeting the new standards. Firms should expect to be asked to share implementation plans, board papers and minutes with supervisors and be challenged on their contents.

For further information or for training on the Duty and its implications, please contact [Polly James](#), [Rhys Corbett](#) or [Joanna Munro](#).

## 2. REGULATOR'S DEAR CEO LETTERS ADDRESSING THE IMPACT OF THE CONSUMER DUTY ON SPECIFIC MARKETS

In line with the publication of the new rules, the FCA addressed the Duty in several letters it wrote to chairs over the summer. The [chairs of remuneration committees](#) were reminded that remuneration and incentive programmes should support environmental social and governance ("ESG") and inclusion and diversity considerations as well as the new Duty. Firms would do well to review their business strategy and remuneration policies to be satisfied they reflect the challenges created for UK consumers and employees by the cost of living crisis and the new rules.

In a letter to CEOs on [19 August 2022](#), firms involved in direct and indirect financial promotion arrangements around unregulated or exempt buy-now-pay-later ("BNPL") agreements were reminded to ensure they meet regulatory requirements. The letter also clarifies the regulator's expectations that all firms involved in retail customer communications, directly or indirectly, should factor the new Duty into their financial promotions arrangements. Boards of authorised firms are expected to approve the action taken in response to this letter and the FCA will be communicating separately with unauthorised lenders and merchants.

Finally, a letter addressed to [benchmark administrators](#) on 8 September 2022 outlines the risks that benchmark administrators who fail to meet regulatory requirements create to the integrity of the market and consumers. Although their activities are not directly within scope of the new Duty, the FCA's view is that a failure by them to support their users creates risks down the line to customers. The letter therefore sets out some of the regulator's expectations for benchmark administrators and authorised firms generally, to mitigate risk and avoid consumer harm.

For further information, please reach out to [Polly James](#).

### 3. FCA CONFIRMS NEW RULES TO MAKE AUTHORISED FINANCIAL FIRMS MORE RESPONSIBLE FOR THEIR APPOINTED REPRESENTATIVES

On 3 August 2022, the [FCA published its final rules](#) for the Appointed Representative ("AR") regime in the form of a policy statement. The new rules will require principal firms to apply enhanced oversight of their ARs and monitor any risk that their ARs pose to consumers and markets. Principals will be required to notify the FCA 30 days before an AR is appointed, after they have completed their own checks. The new regime also imposes new annual review requirements of each AR's suitability, fitness, propriety and financial position. The changes will take effect on 8 December 2022 and firms can expect to receive a data request under s165 of the UK's Financial Services and Markets Act 2000 about their ARs around the same time.

Please contact [Matt Baker](#) or [Rhys Corbett](#) if you would like further training or information on this development.

### 4. LEGISLATION DESIGNED TO IMPROVE DIVERSITY AND INCLUSIVENESS IN THE US BANKING SECTOR

US House of Representatives Committee on Financial Services Chairwoman, Maxine Waters (D-CA), has introduced new legislation designed to "root out discrimination in our modern-day banking system and close the racial wealth and homeownership gaps." It contains a raft of measures requiring positive action to deter bias. The legislation's introduction precedes the upcoming large bank oversight hearings in both chambers of Congress. We should expect this topic to figure prominently in comments made and questions posed to the participating banking institutions at the upcoming hearings.

### 5. UK SUPREME COURT TO HEAR APPEAL AGAINST THE TIME LIMIT FOR LODGING PPI CLAIMS

The UK's Supreme Court has granted permission for time-barred claimants to appeal in a claim involving unfair agreements for payment protection insurance ("PPI"). The Court of Appeal had [originally dismissed](#) the claims based on its analysis that the unfair relationship between the claimant and the bank had ended when the claimant made the last payment under the PPI policy,

more than six years before the claim was commenced. Any decision by the Supreme Court will set the precedent approach for UK courts to dealing with these claims.

For more information, please contact [Andrew Tuson](#) or [Oran Gelb](#).

## 6. AML CHANGE IN CONTROL CHANGES FOR UK-REGISTERED CRYPTO ASSET FIRMS

The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 came into force on 11 August 2022, heralding changes bringing FCA-registered crypto asset firms within the scope of the Change in Control regime. This means that where any legal or natural person decides to acquire 25% or more control in; or less than 25% control but exercises significant influence over the activity of a registered firm, that person must notify the FCA, undergo a suitability assessment and await approval as a beneficial owner before completing the transaction.

The FCA has a [guidance page](#) on this topic.

## 7. NEW REPORTING OBLIGATIONS FOR UK CRYPTO ASSET BUSINESSES

With effect from 30 August 2022, reporting obligations under the UK's sanctions regime apply to crypto asset businesses, bringing many crypto asset exchange providers and custodian wallet providers expressly within the remit of the UK's sanctions regulator for the first time. For UK-based crypto asset businesses and UK nationals operating in businesses registered elsewhere, the expansion of the definition of 'relevant firm' under almost all of the autonomous sanctions regimes created under s1 of the Sanctions and Anti-Money Laundering Act 2018 creates new areas of compliance risk. Breach of the reporting requirement is a criminal offence and could lead to the imposition of civil monetary penalties by OFSI on a strict-liability basis. It is important that affected crypto asset businesses act now to implement processes and procedures and train staff to ensure compliance is possible.

## RELATED PRACTICE AREAS

- Financial Regulation Compliance & Investigations
- Financial Services
- White Collar
- Business & Commercial Disputes

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