

FCA Business Plan 2021/22: A new era of assertiveness for the UK regulator



NEW GATE
COMPLIANCE

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The Financial Conduct Authority (FCA) has published its Business Plan for 2021/22, detailing its priorities and focus for the coming year. Traci Pham and Jay Pyne summarise the key points and what firms can do to plan ahead.

The FCA signalled its intention to become more assertive in its role as the UK regulator in its 2021/22 Business Plan, noting its willingness to test the limits of its own powers. In seeking to "make markets work better and to stop and prevent serious misconduct that leads to harm", the FCA plans to modernise its use of data and technology and proactively engage with its partners so they can act where the FCA do not have powers to intervene.

The key points of the Business Plan are summarised below:

AUTHORISATIONS

The FCA plans for a greater focus on regulatory authorisations, with the addition of a more robust gateway for new firms. A tougher but more straightforward application process will be implemented including increased scrutiny of firms' financials and business models.

Plans have also been revealed for a 'regulatory nursery' in which newly authorised firms will be subject to increased oversight to identify potential harm early. There will also be stronger oversight of rapidly growing firms. The FCA note that "a smart compliance culture" in addition to good governance, will improve firms' operational resilience that will allow them to scale sustainably.

IMPACT FOR FIRMS



Firms should include a detailed and scalable business plan document as part of an authorisation application. The business plan should address the firm's governance, operational resilience, and compliance oversight structure, including any external compliance support and training. See how our Authorisations team can assist with your Business Plan.

CONSUMER PRIORITIES

- **Cryptoassets**

The FCA note that cryptoassets have captured the interest of millions of UK consumers, particularly those in 18-30 age category. It views the highly volatile nature of cryptoassets as well their potential use in financial crime as bringing significant risks to both consumers and market integrity.

While cryptoassets are currently unregulated, the FCA states its intention to warn consumers where types of products, like cryptocurrencies, are high risk. Indeed, it has previously stated investors should be prepared to lose all their money.

The FCA would like to see that consumers do not receive unsuitable advice and participate in inappropriately risky investments. The FCA state their preference for those who want to save, to consider long-term investment opportunities.

- **Enabling consumers to make effective financial decisions**

The FCA want to see that consumers understand the risks they are taking when investing as well as the regulatory protections they have. To ensure this is the case, the FCA will be working with the Treasury on fast-tracking the implementation of a regulatory gateway firms must pass through before they are able to approve the financial promotions of unauthorised firms. Any firm wishing to approve the financial promotions of unauthorised firms would first need to obtain the consent of the FCA. A new 'Financial Promotion Requirement' imposed on all authorised persons would prohibit them from approving the financial promotions of unauthorised persons.

The FCA have also implemented new procedures to fast-track their supervisory and enforcement response to breaches and will proactively monitor firms that repeatedly breach financial promotion rules.

- **Vulnerable customers and the new 'Consumer Duty'**

In line with the last year's Business Plan, the FCA reiterated its desire for firms to ensure vulnerable customers are treated fairly. As a result of the pandemic, between March and October 2020 the number of adults with characteristics of vulnerability increased by 3.7 million to 27.7 million. The FCA stated its commitment to intervening as required to ensure vulnerable customers are not unfairly disadvantaged.

The FCA also noted they are consulting on a new 'Consumer Duty' that would set clearer and higher expectations for firms' culture and conduct and require firms to place their customers' interests at the centre of their business. Requirements include:

- Communications should allow consumers to make informed decisions about financial products and services
 - Products and services are specifically designed to meet the needs of the consumer
 - Consumers get a price that represents the fair value of the product
- The FCA are inviting feedback on this proposal by 31 July 2021.

IMPACT FOR FIRMS



- Firms should review the FCA's Vulnerable Clients policy and procedures
- Update your financial promotions, pre-sales documents and terms relating to regulatory protections and risk disclosures
- If your firm trades in, or offers, cryptocurrency, consider reviewing your sales, marketing and financial promotions procedures and policy

WHOLESALE PRIORITIES

- **EU exit and harmonisation of rules**

The Government is adapting the financial services regulation framework, following the exit from the EU. The Future Regulatory Framework will transfer some rulemaking responsibilities to regulators like the FCA. The Government has stated this will strengthen accountability, scrutiny, and transparency.

The FCA would like to see a domestic market access regime that addresses regulatory and supervisory risks from cross-border access and operates effectively post EU-withdrawal. It will be providing technical advice to the Government on the Free Trade Agreement negotiations for a Mutual Recognition Agreement on financial services with Switzerland.

- **Libor**

The FCA aims to ensure UK markets continue to transition away from LIBOR alternative risk-free rates and have stated this will help increase the resilience and transparency of key interest rate markets.

- **Appointed Representatives regime**

The FCA note that in recent years, there have been increased issues from principal firms undertaking poor due diligence and oversight of their Appointed Representatives (AR). Principals and AR firms should be competent, financially stable and ensure fair outcomes for consumers.

The FCA will carry out targeted supervision to reduce significant risks from ARs in wholesale markets, and plan to consult on changes to improve elements of the AR regime later this year. In particular, there are possible amendments to the regime to ensure the FCA receive timely information on Principals and their ARs and to improve Principals' ongoing oversight and due diligence of current and prospective ARs.

IMPACT FOR FIRMS



- If you are a Principal firm, review your onboarding and due diligence procedures. Implement an ongoing monitoring programme which should be risk sensitive and weighted.
- Ensure ongoing oversight of your ARs such as their marketing activities, financial promotions, and client type. Ensure your board meets regularly to assess the above issues.

OTHER PRIORITIES

- **Fraud**

The FCA note that fraud can cause significant harm to consumers and businesses as well as posing a risk to the integrity of the UK financial system. The amount of fraudulent activity in the UK is increasing, as such the FCA is taking action to combat this through its ScamSmart campaign, and by information sharing and cooperation with its partners.

The FCA is focused on:

- Keeping fraudsters out of financial services at the gateway;
- Ensuring FCA regulated firms do not facilitate fraud;
- Identifying and pursuing potential improperly unauthorised or unapproved fraudsters;
- Informing and empowering the public so that they can protect themselves.

The FCA will be conducting proactive surveillance and monitoring, identifying counter-fraud partners as appropriate where they are better placed to act, and removing FCA-supervised fraudsters from the financial system.

- **ESG**

The UK's target for a net zero economy by the year 2050 will require a different approach to markets and investment products. The FCA has stated its desire to achieve:

- Climate and sustainability related disclosures to support accurate market pricing, enabling consumers to choose sustainable investments and drive fair value
- Innovation in sustainable finance by harnessing technology
- Consumers are protected from misleading marketing and disclosures around ESG related products

The FCA will continue its work in this area, including implementing disclosure rules in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The FCA will prioritise greenwashing concerns and further expectations will be clarified through the supervisory and authorisations processes. The FCA affirmed its commitment to continue to work with the Government and international partners to promote a standardisation of ESG related disclosures by listed companies and regulated firms.

• Diversity

There is a big focus on diversity in this year's Business Plan, particularly around diverse representation at all levels of management in regulated firms and listed companies. Firms are encouraged to foster inclusive cultures so that all staff are able and willing to share their diverse experiences and backgrounds.

The FCA noted firms that represent society more accurately are more likely to design financial services and products that improve consumer outcomes. Further, inclusive cultures allow concerns to be raised and ensure decisions are challenged effectively.

IMPACT FOR FIRMS



- Review your fraud, cybersecurity and data security policies and procedures to ensure your firm is not used to facilitate fraud.
- Assess your ESG policies and procedures. Consider updating your ESG related disclosures.
- Review your diversity and hiring policies, as appropriate. Ensure a cross-section of staff are involved in the product design and governance process at your firm.

CONTACT US

Please do not hesitate to get in touch to discuss how we can support your authorisation application, implementing a compliance framework if you are a newly authorised firm, or updating your existing policies and procedures in light of the priority areas highlighted in the Business Plan.



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About Ocorian

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