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FCA Discussion Paper on UK Prudential Regime for Investment Firms

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On 23 June 2020, the UK Financial Conduct Authority ("**FCA**") published a discussion paper ("**DP 20/2**") in relation to a new UK prudential regime for investment firms authorised under the Markets in Financial Instruments Directive 2014/65/EU ("**MiFID**").

Purpose of the proposed new regime

DP20/2 has been published by the FCA following the publication of the Investment Firm Directive[1] and Investment Firm Regulation[2] ("**IFD/IFR**") last year, which is to be implemented across Member States of the European Economic Area ("**EEA**") by 26 June 2021.

The UK proposes to introduce a regime that will achieve similar intended outcomes for the financial services sector as the IFD/IFR, while keeping in mind the specific requirements that apply to the UK market – particularly in light of Brexit.

The UK Government has already stated that the UK will not implement the IFD/IFR, rather it intends to legislate to introduce its own regime for UK investment firms. The Treasury has also published a policy statement: *Prudential Standards in the Financial Services Bill: June update*

Therefore DP20/2 is intended to set out the details of the IFD/IFR and seek feedback from stakeholders on the appropriate rules to be applied in the UK.

Key areas of change and firms expected to be impacted by the proposed new regime

They major areas of change highlighted in DP20/2 relate to the following:

- an update to the initial capital required for authorisation;
- changes to the rules on the definition of capital;
- new own funds requirements, including the introduction of the K factor methodology;

- new rules on prudential consolidation, group risk and concentration risk;
- applying liquidity requirements to all investment firms;
- a new approach for investment firms’ internal risk and prudential assessments, and the supervision of those requirements;
- new requirements relating to remuneration policies; and
- changes to reporting and disclosure obligations.

Types of UK regulated firms that will be impacted by the proposed changes include:

- solo-regulated investment firms currently authorised under MiFID, including “exempt-CAD” firms and firms that would be exempt from MiFID under Article 3 of MiFID but have chosen to “opt-in” to MIFID;
- collective portfolio management investment firms; and
- investment firms authorised by the Prudential Regulation Authority.

What’s next?

The FCA has stated that stakeholders should send any comments and/or responses to the questions on the potential implementation proposals contained in DP20/2 by 25 September 2020.

The FCA intends to subsequently publish a Consultation Paper towards the end of this year.

UK firms within the scope of IFD/IFR should monitor developments in relation to the FCA’s approach to the new regime closely as they will need to comply with the new requirements when they come into force next year.

If you have any questions on the proposals contained in DP20/2 or on the IFR/IFD, please get in touch with our European Financial Services Regulatory team.

[1] Directive 2019/2034/EU

[2] Regulation 2019/2033/EU

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