

EU and UK Regulatory Update for Fund Sponsors

23 October 2025

In this *Alert*, we summarise key European regulatory developments that will affect how private fund advisers and managers (referred to as “sponsors” in this *Alert*) operate or raise capital in the European private markets.

Key Takeaways

- [Fundraising in Europe](#)
 - From April 2026, the EU’s AIFMD II legislation will amend the existing Alternative Investment Fund Managers Directive (AIFMD), which provides the legal framework for alternative investment funds managed or marketed in Europe. This will have a particular impact on sponsors whose funds are managed by EU managers, e.g., Luxembourg and Irish managers, which originate loans and/or are open-ended. Meanwhile, enhanced disclosure and reporting requirements will affect a wider range of funds, including funds registered under national private placement regimes across the EU.
 - In parallel, the UK is currently consulting on a limited set of changes to its own post-Brexit AIFMD legislation. However, more extensive changes may be coming down the line for sponsors with operations in the UK, as the UK is planning to review rules on leverage, remuneration, regulatory capital and reporting, as well as carrying out market-wide surveys on valuation and conflicts of interest associated with private assets.
- [Governance](#)
 - The UK announced the Leeds Reforms in July 2025 – a package of measures intended to reduce unnecessary regulation and encourage growth in the financial services industry. As part of the reforms, the UK is finally consulting on changes to the Senior Managers and Certification Regime (SMCR). First announced in 2022,

these changes are expected to include the replacement of the certification regime (which requires firms to assess whether certain individuals are “fit and proper” for their roles) and separately may also lead to a reduction in the number of senior managers who must be approved by the FCA before they can discharge their roles.

- **Retailisation**

- The EU plans to update its framework for closing retail capital. This could involve revising the assessment criteria for “opting up” retail investors to professional investor status, which would potentially make it easier for non-EU funds to raise capital from individuals in the EU. On the downside, the EU has also considered requirements for EU managers to “benchmark” their costs for retail funds against industry or peer comparisons.
- Separately, the UK has announced plans to consult on updating its “opt-up” assessment criteria from retail to professional investor status. The UK hopes to “unlock more opportunities for wealthy investors and support capital markets” and “rebalance risk to support growth and competitiveness.”

- **Supervision and Enforcement**

- A new UK corporate offence of failure to prevent fraud will make it easier for relevant organisations to be criminally liable for fraud committed by employees, subsidiaries, and others performing services for them or on their behalf.
- The FCA’s Conduct Rules will extend to cover non-financial misconduct (e.g., violence, bullying and harassment) in 2026. Alongside this, the FCA is consulting on new, detailed guidance in this area, which UK firms will need to consider when assessing whether individuals are “fit and proper” or whether they have breached the FCA’s Code of Conduct.

- **Regulatory Priorities**

- EU, UK and international regulators are increasingly focused on perceived risks arising in private markets. Key themes include liquidity mismatches (e.g., open-ended funds with illiquid assets), excessive leverage and the impact of non-bank financing. Likely policy responses include additional reporting and disclosure obligations and greater use of stress testing.
- Regulators are considering the impact of technological innovation in the sector, including the use of tokenisation.

Fundraising in Europe

A. EU to implement AIFMD II from April 2026

Who is in Scope?

- Any EU manager (and therefore indirectly a non-EU sponsor with a fund structure, which includes an EU manager, whether proprietary or third-party)
- Any non-EU sponsor that has or will market a fund to EU investors under a national private placement regime in the EU

AIFMD II will only apply a subset of requirements to non-EU sponsors, although an individual member state might in principle choose to “goldplate” other AIFMD II requirements by applying them to non-EU sponsors.

What is changing?

The EU has issued a new legislative package to update AIFMD, known as “AIFMD II.”

Key changes in AIFMD II will include:

- **New requirements for loan origination.** AIFMD II will allow EU funds managed by an EU manager to originate loans in any EU member state (the so-called “lending passport”), but it is not yet clear how this will work in practice, and it may be subject to local restrictions. To the extent that it transpires in practice, the “lending passport” would be a change to the current lending regime, where some countries in the EU apply additional/local licensing requirements to loan origination.

AIFMD II will impose new restrictions and requirements on funds managed by EU managers which originate loans (including where the origination of loans may not be the primary strategy of the relevant fund and merely incidental or infrequent in nature).

- Funds will generally not be allowed to lend to their manager, depositary, delegates or manager group entities. There has been some concern this requirement would prevent captive credit funds, and other funds which lend to companies owned by funds managed by the same sponsor, from carrying on business in the same manner as they have been doing to date, although more pragmatic views are starting to prevail.
- Funds will be banned from originating loans with the sole purpose of transferring those loans to third parties (that is, an “originate-to-distribute” strategy) and will be subject to a related requirement to retain 5% of the notional value of loans they have originated and subsequently transferred to third parties.
- Funds will not be permitted to originate loans to any single borrower which is a financial institution (e.g., an investment firm) that exceeds 20% of the fund’s

capital.

- **Leverage limits.** Loan-originating funds (broadly, funds with an investment strategy focussed on loan origination) will become subject to leverage limits, with a lower limit for open-ended funds (175% of the fund's net asset value (NAV)) and a higher limit for closed-ended funds (300% of the fund's NAV).
- **New requirements for open-ended funds.** Open-ended funds will be required to apply at least two mandatory "liquidity management tools" (e.g., redemption gates and redemption fees). It is recommended that funds apply at least one "quantitative" liquidity management tool and one anti-dilution tool. This may require some open-ended funds to re-open existing fund documents in order to incorporate these liquidity management tools into the fund's constitution, although the extent to which this will be required is still subject to regulatory clarification.
- **Increased focus on reporting, investor disclosure and delegation arrangements.** Sponsors will be subject to increased reporting and disclosure requirements. Some of this reporting will apply only to EU managers. However, other aspects of the reporting requirements will apply directly to non-EU sponsors that have marketed or will have market funds in the EU or indirectly where the sponsor has funds managed by an EU manager, which will then "pass on" some of its regulatory disclosure and reporting obligations (e.g., via changes to the delegated portfolio manager agreement or associated operating memorandum). Meanwhile, AIFMD rules on delegation (e.g., where an EU manager delegates function to a U.S. Registered Investment Advisor (RIA)) have to date only applied to the delegation of risk and portfolio management. In the future, AIFMD requirements on delegation will apply to all of a manager's functions, including fund administration and loan origination. This will increase the compliance burden where an EU manager delegates these functions.
- **Marketing ban linked to EU anti-money laundering/tax blacklists.** Non-EU sponsors and non-EU funds will be banned from marketing in the EU if they are established in:
 - a country on the EU list of high-risk third countries for anti-money laundering purposes;
 - a non-EU country that does not have an agreement in place for the exchange of tax information with the EU member state where the marketing will take place; or
 - a country on the EU list of non-cooperative countries for tax purposes.

This will extend the existing marketing ban (North Korea, Iran and Myanmar) to sponsors and funds from a wider list of countries outside the EU (e.g., the EU anti-money laundering blacklist included the Cayman Islands until February 2024).

What is next?

AIFMD II will be implemented by EU member states from 16 April 2026. Regulatory reporting requirements will become effective a year later, from 16 April 2027. Transitional provisions apply in respect of funds that originate loans and their application is complex.

The impact of AIFMD II will vary depending on the sponsor concerned.

- EU managers will need to consider their existing funds and current set-ups to identify where uplifts are needed. Updates may be needed to internal policies, procedures and processes, investor disclosures, reporting processes and/or fund documentation.
- For non-EU sponsors, the impact of AIFMD II is likely to be reduced compared to their EU counterparts, with the focus on enhanced investor disclosures and reporting. However, non-EU sponsors should be conscious of obligations “passed through” to them if they sponsor a fund with a European manager, as well as potential direct impacts on funds managed by the European manager. If sponsors or their funds are established in jurisdictions on the EU anti-money laundering or tax blacklists, consideration will need to be given to alternative arrangements if they are to market in the EU.
- Sponsors (including non-European sponsors) using third-party EU managers should engage with the third-party manager to understand their proposed approach to AIFMD II implementation.

B. UK proposes reform of regime for asset managers

Who is in scope?

- Any UK manager

What is changing?

The UK is continuing its post-Brexit overhaul of financial services legislation, which includes plans to revise and/or replace legacy EU law. In April 2025, the FCA and the UK Treasury announced proposals to update the UK’s version of AIFMD.

- **New categorisation of managers.** At present, UK managers are broadly categorised as full scope or small managers, with small managers only subject to a subset of

requirements. The FCA proposes to group managers into three new categories based on their size.

- Large managers (more than £5 billion net asset value), which will be subject to a regime similar to the current rules for full-scope UK managers.
- Mid-sized managers (more than £100 million and up to £5 billion net asset value), which will be subject to rules covering the key aspects of fund management, but fewer detailed procedural requirements.
- Small managers (up to £100 million net asset value), which will be subject only to baseline standards to ensure consumer protection and market integrity.
- **Recasting of the FCA rules.** To make the rules clearer, the FCA plans to group them into thematic categories:
 - structure and operation;
 - pre-investment phase;
 - ongoing obligations; and
 - product changes and event-driven disclosures.
- **Other points.** The FCA is considering whether the existing rules requiring notifications of certain private company transactions (e.g., when a fund acquires material voting rights in a non-listed company) are useful for the FCA in practice or whether these notifications may be better directed elsewhere. In addition, the FCA is considering whether existing restrictions that prevent fund managers from conducting activities not related to fund management from within the same legal entity add unnecessary costs and inefficiencies.

What is next?

The FCA will aim to consult on detailed rules in the first half of 2026. In addition, the FCA is planning to issue proposals in relation to further areas of critical concern for fund managers, including leverage, remuneration, regulatory capital, business restrictions and regulatory reporting.

C. UK review of valuations in private markets

Who is in scope?

- Any UK manager
- Any UK adviser-arranger

What is changing?

In March 2025, the FCA published the results of its review of valuation practices in private markets. Overall, the FCA found generally good practice in relation to:

- how firms report to investors;
- how they document valuation processes;
- firms' use of third-party valuation advisers; and
- how firms apply valuation methodologies.

However, the FCA identified areas for improvement, including:

- **Governance.** Firms should consider whether their governance arrangements ensure that there is clear accountability for, and robust oversight of, the valuation process, especially in terms of record-keeping on how valuation decisions are reached.
- **Conflicts of interest.** While the FCA found that all firms in the review identified conflicts in relation to fees and remuneration, some firms failed to identify and document other conflicts (some of which are described in more detail in the section on "UK focus on conflicts of interest in private assets" below).
- **Independence.** Ensuring valuation functions and valuation committees are sufficiently independent to have effective control and expert challenge.
- **Ad hoc valuations.** Many firms reviewed did not have clear processes or a consistent approach towards ad hoc valuations, which may be necessary to revalue assets during market or asset-specific events. The FCA said firms should consider the potential events and quantitative thresholds that would trigger ad hoc valuations and have documented processes for carrying out these valuations.

What is next?

Sponsors should review and, where necessary, update practices relating to valuations, particularly in respect of governance, conflicts of interest, the independence of the valuation process and the process for ad hoc valuations. The FCA is continuing to engage with sponsors and industry bodies and is following up with outlier firms identified during the review.

D. UK focus on conflicts of interest in private assets

Who is in scope?

- Any UK manager
- The scope of the review has not been formally announced and may also include UK adviser-arrangers

What is changing?

In February 2025, the FCA announced plans for a review of conflicts of interest in firms managing private assets. This review follows the FCA's review on valuations in private markets (see above) and will look to build on its findings in respect of conflicts of interest.

The FCA is looking at the controls that firms have in place to identify and manage conflicts of interests within private credit, private equity and real estate. The review is considering three key areas:

- business models for private market strategies, how they are run and the interaction between different strategies within the same group structure;
- product design and asset allocation policies; and
- remuneration issues.

Ahead of any formal publications on the results of the review, firms should consider (and where necessary update) their procedures in respect of identifying, managing, mitigating and disclosing conflicts of interest.

As a starting point, firms should take into account the following conflicts highlighted in FCA's valuations review as part of this preparation.

- **Investor fees.** The nature of potential conflicts in relation to fees varies across different product types. Closed-ended funds typically charge management fees based on committed capital, which may help limit conflicts related to fees, e.g., in respect of redemptions and subscriptions. In contrast, open-ended funds typically link NAV to the fees paid by investors, which may pose a greater risk of conflicts of interest. Firms should ensure that they factor in the differences across product types when documenting valuation conflicts in relation to fees.
- **Asset transfers.** The transfer of assets, e.g., in a fund-to-fund context, may give rise to a conflict of interest, such as where the valuation determines the transfer price, and the manager thus receives carried interest based on this valuation.
- **Investor marketing.** Where firms use the unrealised performance of existing funds as part of marketing for new vehicles, they may have an incentive to use overly favourable valuations. The FCA has stated that it is good practice to document this conflict and clearly separate realised and unrealised performance in marketing materials.
- **Secured borrowing.** Firms may borrow using a fund's portfolio of assets as security, e.g., by way of NAV financing. Conflicts may include an incentive to increase

valuations to attract more initial borrowing or avoid breaching a loan-to-value covenant.

- **Uplifts and volatility.** Investors may prefer funds displaying a certain return profile, e.g., stable returns with an uplift on exit. This may lead to a potential conflict in the valuation process in that firms may adjust valuations (or valuation case studies) to give a less volatile profile and/or a better opportunity for uplift and thereby make their funds more attractive to potential investors.
- **Employee remuneration.** Firms should consider potential conflicts arising where employee remuneration is linked to valuation, e.g., where remuneration is linked to a change in NAV over time.

What is next?

The FCA is sending information requests to in-scope firms and will then use that data to focus on a smaller number of firms.

The FCA expects to publish the outcome of the review in H1 2026, which will include examples of good practice and areas for improvement.

E. Recent trends in UK private equity deals

Who is in scope?

- Any sponsor intending to acquire or increase control in a UK licensed firm

What is changing?

Increased scrutiny of PE deals. Acquiring or increasing control in a UK licensed financial services firm, such as a bank, insurance company, wealth manager or investment advisory firm, must be notified to, and approved by, the FCA and/or the UK Prudential Regulation Authority (the PRA) prior to completion.

We are seeing the FCA process applications significantly faster, particularly non-complex intra-group transactions, compared with previous turnaround times (especially during the COVID-19 pandemic). However, over recent months, the FCA has intensified its scrutiny of some private equity deals, focusing on:

- acquisitions that will result in a group with one or more other UK-licensed investment firms without a common UK parent;
- groups that are rapidly growing through the acquisition of UK licensed firms; and

- transactions involving significant debt financing (including seeking to understand the potential impact of that debt financing on the targets).

Updated UK guidance on change in control. In November 2024, the FCA and PRA issued new guidance on how they assess buyers of UK licensed firms. The new guidance took immediate effect and replaced the previous EU guidelines. The headline points for sponsors include those set out below.

- For transactions that are transformative (i.e., that give rise to a material change in the UK licensed firm's business plan, governance or capital/liquidity position) or are particularly complex, the FCA recommends that sponsors engage with them in advance of filing a change in control application. For reference, pre-application engagement has been a regular occurrence in transactions where the approval of the PRA is required.
- Sponsors are likely to experience increased information requests from the regulators during the change in control process in key areas such as how the transaction is being funded, future plans for the UK licensed firm(s) and the sponsor's track record of investing in licensed businesses.

Taken together, this may affect the timing for deals and so should be anticipated early in the process. However, the guidance also included some welcome clarifications from the FCA as to its position on the identification of "controllers", and how to measure whether a person has "significant influence" or is "acting in concert" and thus may need regulatory approval even where they *prima facie* are not crossing an ownership band requiring regulatory approval.

Criminal background checks. From January 2025, the FCA has required controllers and beneficial owners of UK licensed firms to obtain criminal background checks (dated within the last six months) prior to acquiring their interest in the firm. This requirement applies when submitting an application for licensing or registration, or a change in control notification, to the FCA.

Governance

A. UK plans to overhaul regime for senior managers

Who is in scope?

- Any UK licensed firm, including UK managers and UK adviser-arrangers

What is changing?

The SMCR was introduced after the 2008/9 financial crisis to make individuals more accountable for their conduct and competence. The SMCR requires that:

- senior managers are approved by the FCA or PRA before beginning their role;
- individuals whose actions can have a significant impact on funds, investors or their firm must be certified by the firm; and
- most staff will need to comply with conduct rules setting a minimum standard of behaviour.

In July 2025, the Treasury, FCA and PRA consulted on reforms to the SMCR. The FCA and PRA proposals are intended to apply an initial “Phase 1” of the reforms.

- **Criminal record checks.** The FCA will increase the validity period of criminal record checks submitted for senior manager applications from three to six months.
- **Twelve-week rule.** In unforeseen circumstances, firms can currently appoint an individual to cover for an absent senior manager for up to 12 weeks without that individual being approved by the FCA or PRA. The FCA and PRA plan to give firms more time and flexibility to submit applications for these individuals.
- **Enhanced SMCR firms.** Some large firms are currently subject to additional SMCR requirements as “enhanced” SMCR firms. Taking inflation into account, the FCA plans to increase the size thresholds for being an enhanced SMCR firm by 30%, which will remove some of these firms from scope.
- **Additional guidance.** New guidance will be added to clarify how some of the senior management functions will apply, the certification regime and the prescribed responsibilities of senior managers. The FCA is also consulting on draft guidance to clarify requirements in respect of the reporting of Conduct Rule breaches and the impact of breaches on fitness and propriety assessments and regulatory references.

A “Phase 2” consultation will follow setting out proposals in respect of the reforms below, although the timing of the consultation is yet to be determined.

- **Removal of the Certification Regime.** The certification regime will be entirely removed from legislation and replaced by a “more flexible” regime, although what that will look like in practice remains to be determined.
- **Fewer senior managers, reduced need for pre-approval.** A reduction in the number of “senior manager functions” or “SMFs” and removing the need for

regulatory pre-approval in respect of a person looking to discharge some of these roles.

- **Potential removal of Conduct Rule requirements.** Some burdensome requirements relating to Conduct Rules, e.g., in relation to training on the Conduct Rules and reporting of Conduct Rule breaches, may be removed.

In addition, as part of the Leeds Reforms, the UK has announced plans to speed up the approval process for senior manager applications. The UK intends to:

- implement a voluntary target that at least half of all applications will be closed within 35 days; and
- reduce the existing statutory deadline from three months to two months.

What is next?

The consultations closed for comments on 7 October 2025. The FCA and PRA expect to implement changes in relation to Phase 1 of the SMCR reforms in mid-2026. The timing of further reforms, including the Phase 2 consultations, has not yet been confirmed. The new deadlines for senior manager applications will apply from January 2026.

B. FCA to clarify operational incident and outsourcing reporting

Who is in scope?

- Any UK licensed firm, including UK managers and UK adviser-arrangers

What is changing?

In December 2024, the FCA published a consultation on operational incident and third-party reporting. UK licensed firms currently report operational incidents based on the high-level FCA principle that requires a firm to deal with its regulators “in an open and cooperative way” and “disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice”. However, the FCA acknowledges that it may be unclear to firms when and what they should report.

The FCA has proposed that UK-licensed firms should submit standardised reports when an operational incident meets one or more of the following thresholds:

- **Consumer harm.** The incident could cause or has caused intolerable levels of harm to consumers, and they cannot easily recover as a result.

- **Market integrity.** The incident could pose or has posed a risk to market stability, market integrity or confidence in the UK financial system.
- **Safety and soundness.** The incident could pose or has posed a risk to the safety and soundness of the firm and/or other market participants.

The FCA also intends to introduce new reporting requirements on outsourcing for certain categories of larger or higher-risk firms, including banks, large investment firms and “enhanced scope SMCR firms” (i.e., very broadly the largest UK private fund managers).

What is next?

The consultation closed for comments in March 2025 and the FCA intends to publish its feedback and issue new rules later in 2025.

C. Licence approvals in the UK

Who is in scope?

- Any person seeking a licence for a UK financial services firm, including a manager or an adviser
- Any UK licensed firm seeking to vary the terms of its licence

What is changing?

As part of the Leeds Reforms, the UK Government announced plans to speed up the process for licensing new UK financial services firms (such as managers or advisers) by reducing statutory timelines and introducing new voluntary targets.

- The statutory deadline for approving licences of new firms and variations of existing licences will be reduced from six to four months for “complete” applications, and from 12 to 10 months for “incomplete” applications.
- The deadline for variations of existing licenses that closely align to a firm’s existing business model will be reduced further to three months for complete applications and six months for incomplete applications.

What is next?

The new deadlines and targets will apply from January 2026.

Retailisation

A. UK to replace Key Information Document (“KID”) for retail investors

Who is in scope?

- Any sponsor marketing a fund to retail investors in the UK

What is changing?

In December 2024, the FCA consulted on the UK’s future retail disclosure framework, which will replace the UK Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. At present, under PRIIPs, like in the EU, firms must provide a KID before an investment in a fund is made available to retail investors. The KID is a standardised document of up to three A4 pages with mandatory content, including the key features of the investment. The KID is often regarded by the private funds industry as overly prescriptive, burdensome to produce and potentially misleading.

The UK intends to replace the requirement for a KID with a new retail disclosure regime. The new regime will apply to consumer composite investments (CCIs), the scope of which is intended to cover all products in scope of the current PRIIPs disclosure regime; this will include investments in funds (whether closed-ended or open-ended). The FCA proposes that a concise “Product summary”, which sets out the essential characteristics of the CCI, will replace the KID.

What is next?

The FCA has stated that it intends to publish final rules on CCIs in the course of 2025.

B. EU proposes to overhaul retail investment framework

Who is in scope?

- Any EU manager (and therefore indirectly a non-EU sponsor with a fund structure that includes an EU manager, whether proprietary or third party)
- Any sponsor marketing a fund to retail investors in the EU

What is changing?

In May 2023, the EU published initial proposals for its retail investment strategy to ensure that retail investors have greater confidence and understanding of investments. The key features of the proposed strategy include:

- **Access to a potentially wider pool of high-net-worth individuals (HNWIs).** The existing criteria for “opting up” a retail investor to professional status will be updated, with potentially lower thresholds and more flexibility. This would make it easier for sponsors (particularly non-EU sponsors of non-EU funds) to market their funds to HNWIs in the EU.
- **Investments will be expected to provide value for money.** EU and member state financial regulators are increasingly scrutinising costs, with a strong focus on ensuring that all fees and charges are appropriately disclosed and justified. Consequently, the proposal seeks to ensure that no “undue costs” will be charged to retail investors, potentially by requiring EU managers to assess the costs of retail funds against benchmarks. (It is also possible that individual member states could choose to “goldplate” this obligation to apply it to non-EU sponsors marketing funds to investors in the EU).
- **Paying and accepting inducements will be more restricted.** Further restrictions will be imposed on inducements in relation to receiving and transmitting orders and the execution of orders relating to retail investments. This may not be directly relevant to sponsors but could affect intermediaries such as private banks who distribute investments to retail investors.
- **The KID will be updated.** Further amendments will be made to the standardised disclosure document for investments made available to retail investors in the EU.

What is next?

The retail investment strategy is currently being negotiated at the EU level and will be subject to challenge and revision, so further changes are expected. The most recent proposals put forward by the European Parliament and Council indicate that the final position may be more industry-friendly, but negotiations are still underway.

It is possible that the legislation will be finalised by the end of 2025, with a potential implementation date of 2026/7.

C. Potential revision of UK opt-up to professional investor status

Who is in scope?

- Any sponsor marketing a fund to retail investors in the UK

What is changing?

In July 2025, the FCA announced that it plans to review its client categorisation rules “to unlock more opportunities for wealthy investors and support capital markets” and “rebalance risk to support growth and competitiveness”. Specifically, the FCA plans to consult on the rules that allow firms to opt up retail clients to professional client status. Given investors categorised as professional clients can invest in a broader range of private funds, this is a potentially significant development for private fund sponsors.

No further details have been released at this stage, but the proposals would be in line with similar moves by the EU as part of its retail investment strategy.

What is next?

The FCA will launch a consultation later in 2025.

Supervision and Enforcement

A. Failure to prevent fraud offence

Who is in scope?

- Any large company or partnership, potentially including sponsors or portfolio companies, with a nexus to the UK

What is changing?

Since 1 September 2025, large organisations have been criminally liable if a person associated with the organisation (e.g., an employee, agent or subsidiary) commits fraud under UK law with the intention of benefitting the organisation or any person to whom the associated person provides services on the organisation’s behalf (e.g., a customer).

A “large organisation” is a company or partnership (located in the UK or overseas) meeting two of the following in the financial year preceding the fraud offence (calculated on a global, group-wide basis in the aggregate): (i) over £36m turnover; (ii) over £18m total assets; or (iii) over 250 employees.

A large organisation or its subsidiary may be liable where an employee of the subsidiary commits fraud intending to benefit the organisation or subsidiary, even if that subsidiary is not a large organisation. An organisation can be liable even where executives or senior managers did not know about or suspect the fraud.

The offence can apply to UK or non-UK persons. However, it only applies where (i) at least part of the fraud takes place in the UK or (ii) a gain or loss occurs in the UK (such as a UK-based victim).

There is a complete defence where the large organisation can prove it had “reasonable” procedures in place to prevent the fraud at the time or that it was not reasonable to expect such procedures to be in place.

What is next?

In-scope large organisations, which may include sponsors and portfolio companies, have been assessing UK touchpoints, conducting a fraud risk assessment, and ensuring fraud prevention procedures are proportionate and tailored to relevant risks.

B. UK focus on non-financial misconduct

Who is in scope?

- Any UK licensed firm
- Any individual (including those working for appointed representatives) who is subject to the conduct rules

What is changing?

The FCA has changed the scope of its Conduct Rules (effective from 1 September 2026) to capture serious non-financial misconduct, i.e., broadly, bullying, harassment and violence, to be a Conduct Rule breach and therefore reportable by firms to the FCA. The FCA is also consulting on additional guidance to aid firms’ interpretation of the revised scope of the Conduct Rules as well to assist firms when assessing an individual’s fitness and propriety.

- The proposed guidance is intended to provide clarity on how closely conduct has to be connected to the workplace to give rise to a Conduct Rule breach, but as drafted will preserve the distinction that matters arising in an individual’s personal or private

life may be relevant to an assessment of fitness and propriety but fall outside the scope of the Conduct Rules.

- The proposed changes have been long anticipated, having been the subject of regulatory discussion and consultation papers since 2021, and are representative of increased supervisory and enforcement focus in this area. They are also complementary to broader legislative changes, such as the employer duty to prevent sexual harassment which came into force in October 2024.

What is next?

Firms will need to be aware of the new rules (and accompanying guidance if that is adopted in its current form) so that internal disciplinary, reporting and regulatory reference processes take it into account. The new rules will not apply retrospectively, i.e., conduct arising prior to 1 September 2026 will need to be assessed by reference to the current rules/the rules in force at the date of the conduct in question.

C. FCA updates guidance on publicity for enforcement

Who is in scope?

- Any firm or individual within scope of the FCA's enforcement powers (e.g., FCA licensed firms and those working for them)

What is changing?

- A well-publicised and controversial consultation in February 2024 proposed fundamentally shifting the FCA's approach to naming those subject to enforcement action (commonly known as the "name and shame" proposals). However, significant concerns were raised about the proposals. As such, the changes to be made to the FCA's Enforcement Guide are now limited.
 - The new guidance retains the same threshold as previously (i.e., that those subject to FCA enforcement action can be identified in exceptional circumstances) but introduces three new circumstances in which announcements may be made, including where publicity is desirable to warn consumers/investors or to assist the investigation.
- The updated FCA Enforcement Guide additionally codifies and reflects updates in FCA practice, as observed in recent years. This includes clarifications around the use of legally privileged materials and that private warnings are no longer issued.

What is next?

In general terms, we do not expect the relatively limited changes to the FCA's Enforcement Guide to materially alter how enforcement processes proceed in practice. However, any firm or individual that finds itself subject to a regulatory investigation or enforcement proceedings should seek advice on their specific facts.

Regulatory Priorities

A. Regulatory focus on non-bank financial institutions (NBFIs)

Who is in scope?

- Any sponsor active in European private markets

What is changing?

European regulators have increasingly focused on the potential risks posed to financial stability by private markets and in particular NBFIs.

There is no prescribed definition of NBFIs, but the European Commission has described the term as including regulated entities such as asset management companies and investment funds, non-bank investment firms, pension funds, insurance companies, and unregulated entities, such as family offices and supply chain finance companies.

Key themes of concern identified include:

- liquidity mismatches, e.g., the mismatch between illiquid assets and daily redemptions in open-ended funds;
- the potential risks posed by excessive leverage; and
- non-bank financing, including in particular the exposure of banks to non-bank lenders.

Recent developments have included:

- **Disclosure and reporting on leverage.** In February 2025, an FCA official discussed the potential risks arising from the use of leverage by NBFIs, stating that the FCA is considering enhanced (aggregated) public disclosure and additional reporting requirements associated with leverage and liquidity. This has been reinforced by the FCA's monitoring of the collapse of First Brands Group, which the FCA has dubbed a

“case study” in terms of assessing non-bank lending and leverage and concentration risk in the non-bank sector.

- **International engagement on NBFIs.** In March 2025, the European Commission released a feedback statement (in response to a consultation reviewing the EU’s policy in relation to NBFIs issued in May 2024). The feedback generally suggested that while NBFIs excessive leverage is not yet widespread, it could escalate quickly and therefore could pose a systemic risk. The national and EU public authorities agreed in their responses that the buildup of excessive leverage, unmitigated liquidity mismatches and the exposure of banks to NBFIs, pose risks. The feedback highlighted the importance of considering the collective actions of NBFIs rather than monitoring institutions individually for systemic risk detection.
- In July 2025, the Financial Stability Board (FSB) published its policy recommendations to address financial stability risks created by leverage in NBFIs. The recommendations concerned promoting risk identification and monitoring, counterparty credit risk management, ensuring consistent regulatory treatment and the need for cross-border cooperation. The report emphasised the need for national authorities to establish domestic frameworks to monitor and identify NBFIs leverage risks. Though these proposals are not binding in law, the Bank of England has expressed support for the report.
- In October 2025, the International Monetary Fund (IMF) published its twice-yearly Global Financial Stability Report in which it warned about potential vulnerabilities in the global financial system, including the growing size of NBFIs and closer interconnectedness with banks. The IMF called for more effective regulatory oversight of NBFIs and especially for regulators to improve data collection and analysis.
- **Stress testing for non-banks.** In June 2025, media reports indicated that the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority, and the European Central Bank, as well as the European Commission and the European Systemic Risk Board are planning the first EU-wide stress testing for NBFIs. Notably the feedback to the consultation on NBFIs (see above) indicated a broad consensus in favour of coordinated system-wide stress testing for NBFIs and this will follow a similar exercise by the Bank of England in 2023/4.

What is next?

To date, EU and UK policy initiatives have generally focused on the need for higher-quality and more comprehensive data in relation to NBFIs, especially given their international nature and the diversity of business models and activities. Other than stress testing for non-banks and the loan origination measures in AIFMD II, relatively

few concrete policy proposals have so far been developed, but this remains a key area of focus for European regulators.

B. Tokenisation

Who is in scope?

- Any sponsor or institutional investor considering enabling tokenisation of fund interests or investment in tokenised assets

What is changing?

In October 2025, the FCA launched consultation CP 25/28 on regulatory steps to facilitate the move to fund tokenisation. The consultation follows recent work by the Technology Working Group (the industry group established by HM Treasury's Asset Management Taskforce) and seeks to identify ways in which amendments to regulatory rules can support the adoption and development of tokenised funds and "Direct to Fund" dealing models across the asset management industry.

CP 25/28 addresses a variety of topics, including amendments to existing regulation to facilitate use of registers based on distributed ledger technology, emphasising the FCA's support for "Direct to Fund" dealing models (whereby transactions in the units or shares of the fund do not have to be intermediated via the authorised fund manager) and sets out a roadmap for further use of tokenisation across the sector, including in relation to tokenisation of the underlying financial assets held by the funds.

The FCA's proposed next steps are in line with increased interest from asset managers on how blockchain technology might be deployed to facilitate the transferability of fund interests, increase liquidity of fund assets, and facilitate greater access to a range of asset classes. Whilst CP 25/28 is focussed on authorised funds – many private funds are not authorised funds – these proposals remain relevant to the sponsor community because (i) we expect that the relevant legal and regulatory considerations detailed in the consultation also have some application to unauthorised funds and (ii) the use of authorised funds is a key route to the marketing of funds to UK retail investors, and so this type of structure would be likely to be relevant for sponsors seeking broader participation in any tokenised funds from UK retail investors.

What is next?

The industry is currently digesting CP25/28 and we await further feedback on the definitive actions to be taken by the FCA.

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Related Services

Practices

- Investment Funds

Suggested Reading

- 08 August 2025 Kirkland Alert President Trump Issues Executive Order to Allow for 401(k) Plans to Invest in Private Equity and Other Alternative Assets
- 05 June 2025 Kirkland Alert House Advances Reconciliation Package That Would Impose Retaliatory Taxes on Certain Non-U.S. Investors and Lenders
- 11 June 2024 Kirkland Alert AIFMD II Q&A for Fund Sponsors

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