

GIBSON DUNN

Quarterly UK Financial Services
Regulatory Update

27 April 2021

Webinar - Panelists



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Matthew specialises in financial services regulation and enforcement, investigations and white collar defense having previously been the Head of Conduct Risk for EMEA at a major global bank. Prior to that he was Head of Wholesale Enforcement at the UK Financial Conduct Authority and has also been a case controller at the UK Serious Fraud Office.



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Criminal enforcement activity

FCA criminal enforcement: powers

Criminal enforcement powers

General prohibition	Insider Dealing	Market Abuse	Money Laundering Regs	FSMA Other
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- FCA has powers under ss 401 and 402 of FSMA to prosecute a range of criminal offences
- *The FCA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives* (Enforcement Guide Chapter 12)
- FCA can conduct “dual track” – criminal and regulatory – investigations
- FCA do not have the power of arrest, but will request the assistance of police
- FCA will invite criminal suspects to interview: conducted under caution, subject to PACE safeguards
- FCA can charge suspects (see e.g. cases earlier), issue a formal caution, but cannot offer a Deferred Prosecution Agreement

FCA's use of criminal and regulatory options

Market Abuse

- Fine and prohibition against Mr. Adrian Geoffrey Horn, for market abuse
- Criminal proceedings commenced against Mohammed Zina and Suhail Zina in relation to insider dealing and fraud by false representation

Acting without approval

- Fine and prohibition against Simon Varley for knowingly performing a controlled function without approval and for providing investment advice to retail customers when he knew he was not qualified or approved to do so
- Criminal proceedings commenced against Larry Barreto and Tassib Hussain for fraud and unauthorised business relating to advice provided and arrangements made regarding a series of regulated mortgage contracts

FCA's use of criminal and regulatory options

AML systems and controls

- Fine of £37.8 million imposed on Commerzbank AG's London branch for failure to have effective policies and procedures in place to identify, assess, monitor and manage money laundering risks – June 2020
- Criminal proceedings brought against NatWest under regulation 45 of MLR 2007 for failure to maintain adequate and effective anti-money laundering systems and control

False and Misleading Statements

- Regulatory proceedings against 3 former directors of Carillion alleging market abuse in relation to false statements and failures to take reasonable steps to ensure announcements were not misleading.
- Criminal charges against 3 former directors of Redcentric alleging offences under the Companies Act, Theft Act and Fraud Act connected to allegations of false and misleading statements about the company's finances

Factors determining FCA's approach

Factors about the Offence

- Seriousness of the misconduct
- Impact on victims or the markets
- Scale of profit or loss
- Involving dishonesty or abuse of position or trust

Factors about the Offender

- Previous disciplinary history
- Likelihood of future misconduct
- Post-incident conduct – redress paid, systems improved etc.
- Cooperation

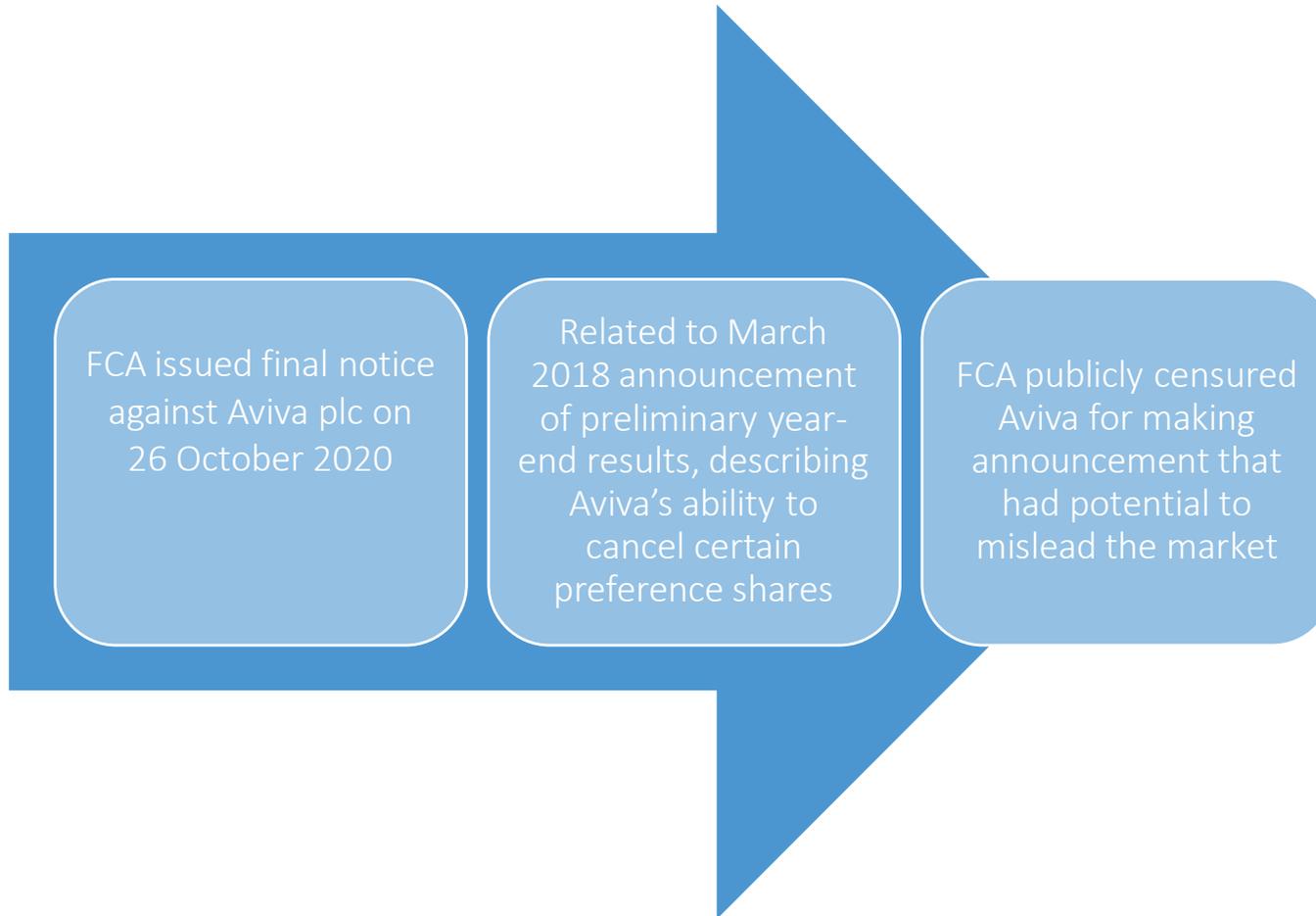
Assisting the FCA in making their decision

1. Balance the need to remediate with recognition that admissions of misconduct can raise issues later
2. Be aware that matters are likely to dual-track for some time
3. Consider which features differentiate your firm / your directors / your senior managers from those where FCA is likely to think criminal proceedings are appropriate
4. Consider at an early stage the impact that a criminal investigation could have on your firm / directors / senior managers (disclosure obligations, reputational, licensing)
5. Engage – post-incident behaviour and cooperation make a real difference and the dialogue can give you insight as to FCA's current thinking and future intentions

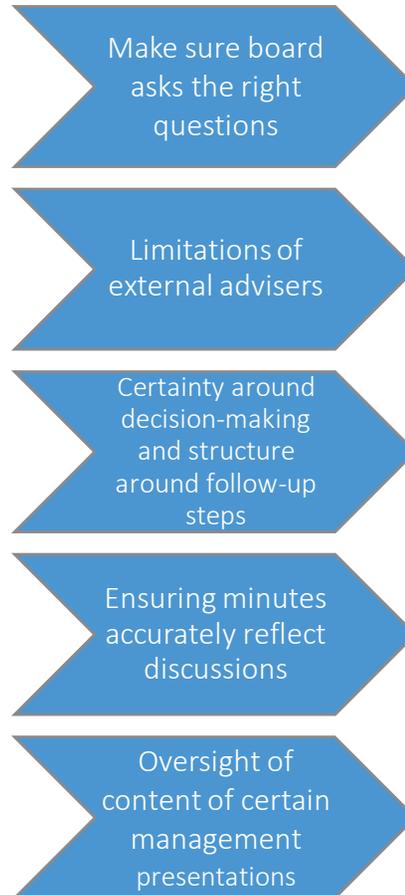
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Board governance – lessons from Aviva

FCA Final Notice (Aviva Plc): Background



FCA Final Notice (Aviva Plc): Lessons learned

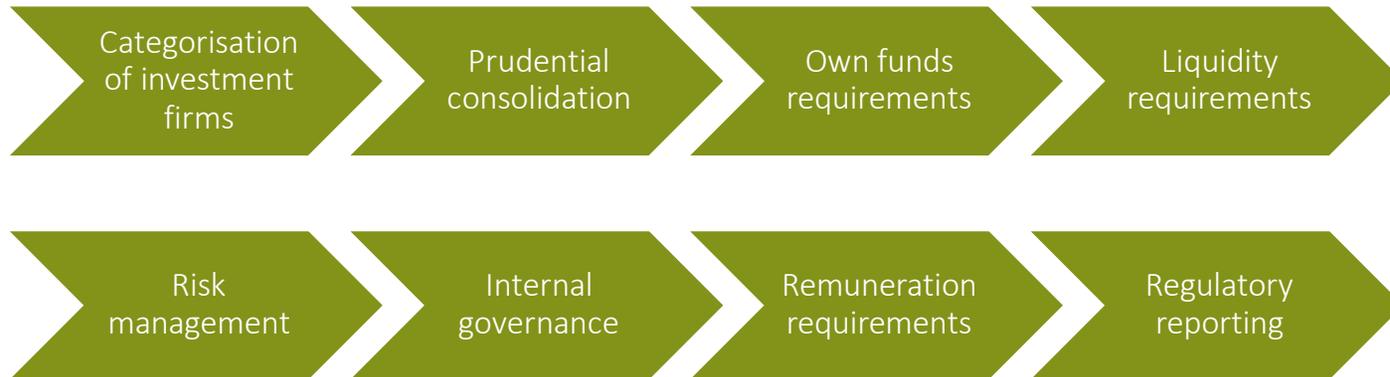


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New Prudential Regime for Investment Firms – CP21/7

New Prudential Regime for Investment Firms Overview

- Aims to streamline and simplify the prudential requirements for solo-regulated investment firms in the UK
- Refocus prudential requirements away from the risks that the firm faces to also consider and look to mitigate the potential for harm the firm can pose to consumers and markets
- Represents a major change for UK investment firms



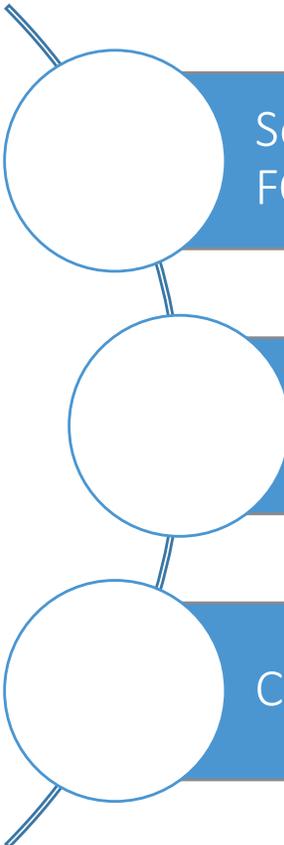
New Prudential Regime for Investment Firms

Consultation timeline, etc.

Consultation	Date of issue	Topics covered	Status	Policy Statement date
CP20/24	December 2020	Categorisation of investment firms, prudential consolidation, own funds requirements, transitional arrangements	Consultation closed	Late spring
CP21/7	April 2021	Remuneration, own funds requirements, liquidity requirements and expectations relating to risk management and governance	Consultation closes 28 May 2021	Summer 2021
?	Q3 2021	Residual matters such as disclosure and consequential amendments to the FCA Handbook	Unknown yet	Following enactment of Financial Services Bill

New Prudential Regime for Investment Firms

CP21/7 – key points



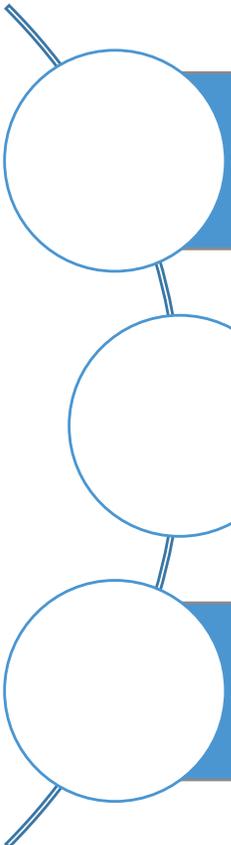
Sets out the FCA's proposals for the new remuneration rules for FCA investment firms

Further covers own funds requirements, liquidity requirements and expectations regarding risk management and governance

Consultation closes on 28 May 2021

New Prudential Regime for Investment Firms

Remuneration overview



Single MIFIDPRU Remuneration Code

Differently sized firms subject to different rules within the Code

FCA taking a different approach to proportionality than EU

New Prudential Regime for Investment Firms

Remuneration - categories of firms, etc.

Category	Threshold for categorisation	Applicable rules
SNIs	<p>To qualify as an SNI, a firm must not:</p> <ul style="list-style-type: none"> • Activities that have the greatest potential to cause harm to its customers or the markets in which it operates (deal on own account); and • Activities on such a scale that it would cause significant harm to customers or to the markets in which it operates (see quantitative criteria for being an SNI on next slide) 	<p><u>Basic remuneration requirements</u> only: clearly documented remuneration policy and basic principles (such as ensuring that fixed and variable remuneration are appropriately balanced)</p>
Smaller non-SNIs	<p>Firms which either deal on own account or exceed the quantitative criteria for being an SNI, but which do not meet the size criteria for being a larger non-SNI firm.</p>	<p>Basic remuneration requirements plus <u>additional remuneration requirements</u>, including: identifying MRTs, setting appropriate ratios between fixed and variable remuneration, applying requirements on performance assessment and risk adjustment, rules on use of guaranteed variable remuneration, retention awards, buyout awards and severance pay for MRTs</p>
Larger non-SNIs	<p>Value of on- and off-balance sheet assets over preceding 4-year period is a rolling average of:</p> <ol style="list-style-type: none"> (1) more than £300m; or (2) £100m (but less than £300m) and trading book business of more than £150m and/or a derivatives business of over £100m. 	<p>Basic remuneration requirements and additional remuneration requirements, plus <u>enhanced remuneration requirements</u>: apply rules on deferral and pay-out of variable remuneration for MRTs and must have a remuneration committee</p>

New Prudential Regime for Investment Firms

Remuneration – quantitative criteria for being an SNI

Measure	Threshold
Assets under management	< £1.2 billion
Client orders handled – cash trades	< £100 million per day
Client orders handled – derivative trades	< £1 billion per day
Assets safeguarded and administered	Zero
Client money held	Zero
On- and off-balance sheet total	< £100 million
Total annual gross revenue from investment services and activities	< £30 million

New Prudential Regime for Investment Firms

Risk management and governance (1)

Opportunity to
reset expectations

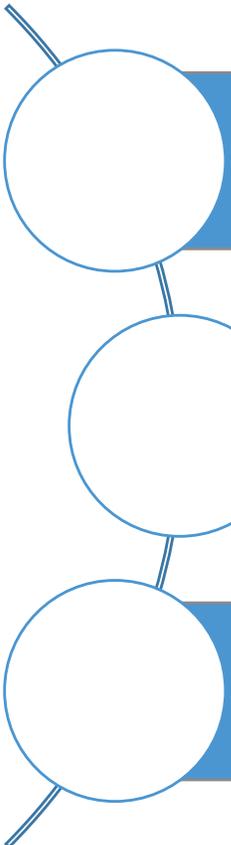
- Internal governance
- Risk management

Key expectation

- Firms to consider the potential harm they could cause to consumers and markets, as well as to their own safety and soundness

New Prudential Regime for Investment firms

Risk management and governance (2)



Internal Capital and Risk Assessment (“ICARA”) for all FCA investment firms

Firms will be expected to meet an Overall Financial Adequacy Rule (“OFAR”) – will be used to determine whether or not a firm has adequate financial resources (and, in turn, whether it continues to meet the threshold conditions)

Firms must use the ICARA process to determine their own funds threshold requirement and liquid assets threshold requirement

New Prudential Regime for Investment Firms

Risk management and governance (3)

Minimum standards of internal governance

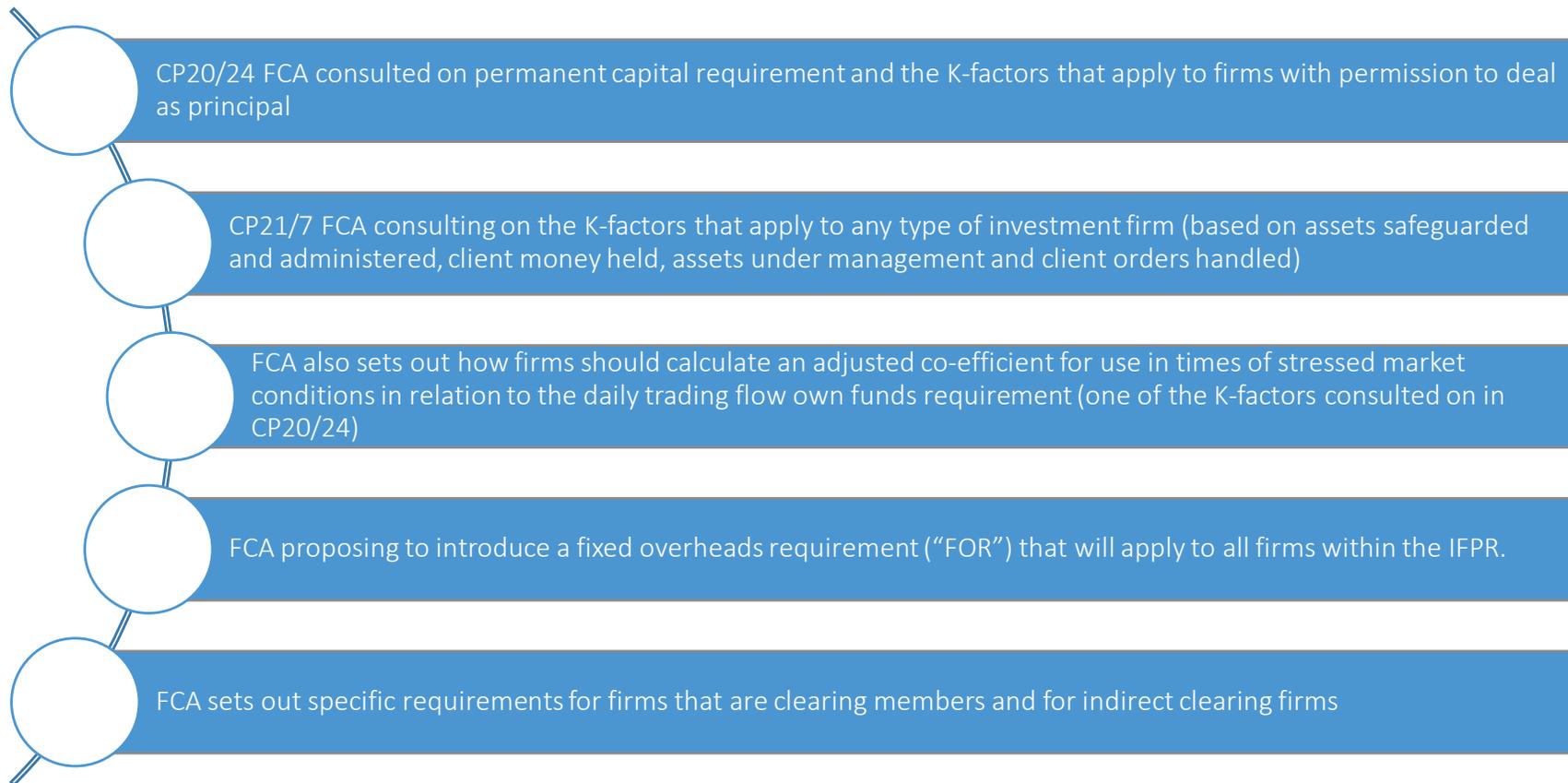
- General high-level requirements
- All firms must have robust governance arrangements in place
- Intended to ensure all firms meet minimum standards of internal governance
- Expectation that firms will then develop and maintain arrangements tailored to their specific business model and operations

Risk, remuneration and nomination committees

- Largest non-SNI firms will be required to have risk, remuneration and nomination committees
- Threshold for these committees will be set lower than is currently the case (currently, only significant IFPRU firms must establish these committees)
- Must be established at entity level, although FCA plans to permit firms to apply for a modification of this rule
- Committees must be made up of at least 50% non-executives and chair must be a non-executive
- No current plans to introduce diversity requirements (contrast to EU position for remuneration committees which must be gender balanced)

New Prudential Regime for Investment Firms

Own funds



New Prudential Regime for Investment Firms

Liquidity requirements

Basic liquid assets requirement

- All firms will have a basic liquid assets requirement
- Based on holding core liquid assets equivalent to at least one third of the amount of their FOR and 1.6% of the total amount of any guarantees provided to clients
- First time that all investment firms have a quantified liquid assets requirement.
- May apply on an individual and consolidated basis

Core liquid assets

- FCA will set out a list of core liquid assets that firms can use
- Core liquid assets must be denominated in pounds sterling
- For overheads or guarantees that are in other currencies, firms will be allowed to use comparable core liquid assets denominated in the relevant currency, in the same proportion as the relevant expenditure or guarantee

New Prudential Regime for Investment Firms

Application to CPMIs and international firms

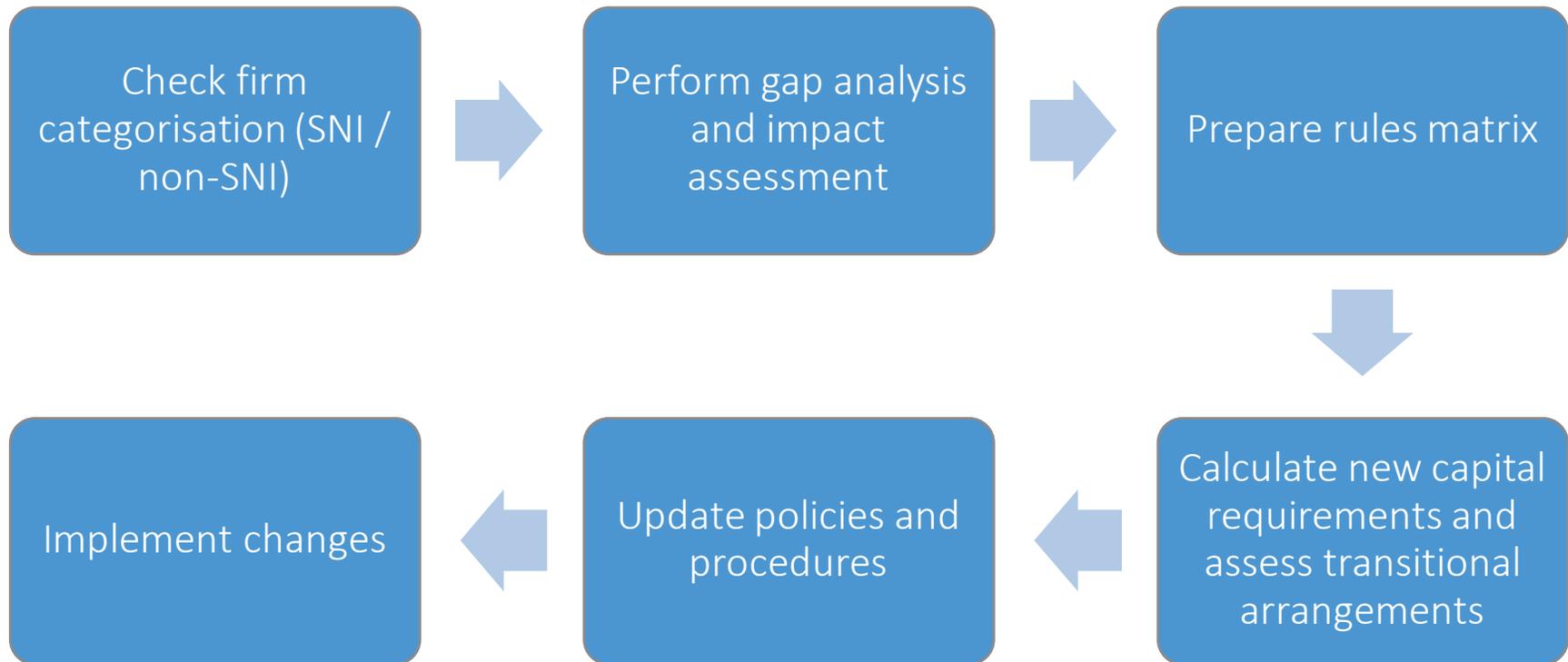
CPMI firms

- These firms will need to apply the IPFR methodology to calculate the FOR on behalf of the whole firm
- Many other IFPR requirements will apply to the MiFID business only, not to the collective investment management business

International firms

- International firms established overseas and seeking UK authorisation (i.e. for a UK branch) will not be subject to IFPR requirements directly
- However, FCA would have to be satisfied that the firm will be subject to broadly equivalent prudential supervision in its home jurisdiction. Otherwise, the firm will be required to establish a UK subsidiary which would fall under IFPR directly

What should firms be doing now?



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Operational resilience

Operational resilience: FCA Policy Statement (PS21/3)

“We expect all firms to have contingency plans to deal with major events and that these plans have been properly tested.”

FCA Policy Statement (PS21/3)
– published 29 March 2021

Joint Bank of England, PRA and FCA consultation paper – December 2019 (closed October 2020)

PS21/3: Scope

Banks

Building societies

Designated investment firms

Insurers

Recognised Investment Exchanges

Enhanced SMCR firms*

Payment services firms

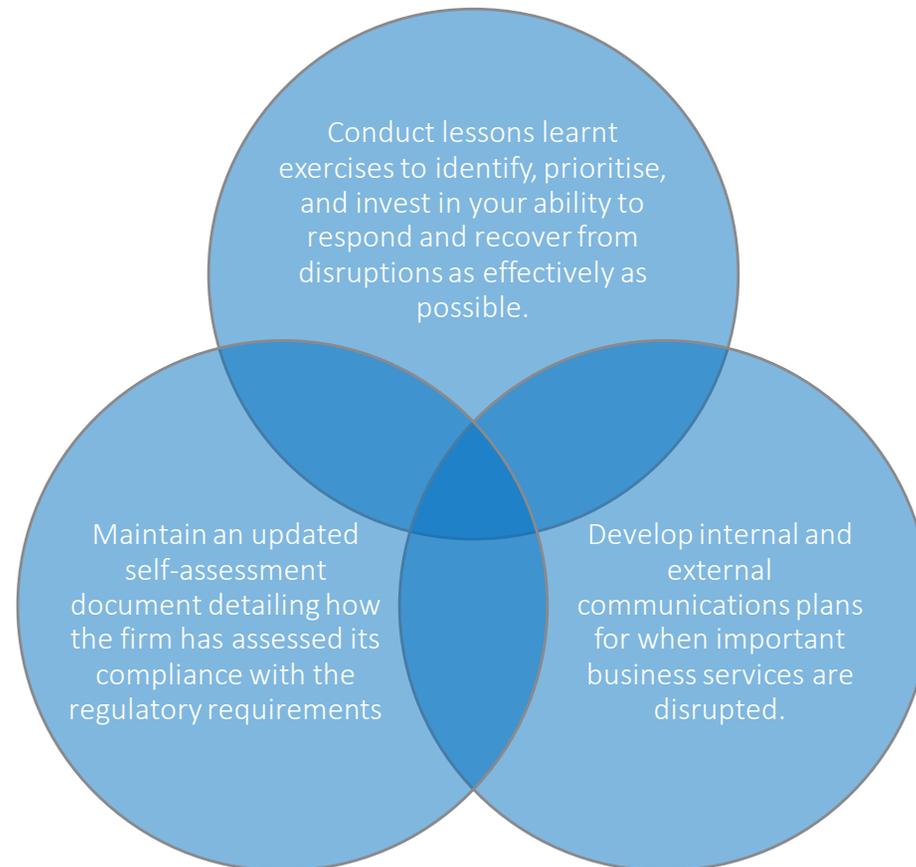
E-money firms

*Note – SMCR “Core” firms may also consider familiarising themselves with the regime.

PS21/3: Requirements (1)



PS21/3: Requirements (2)



PS21/3: Timeline

31 March 2022

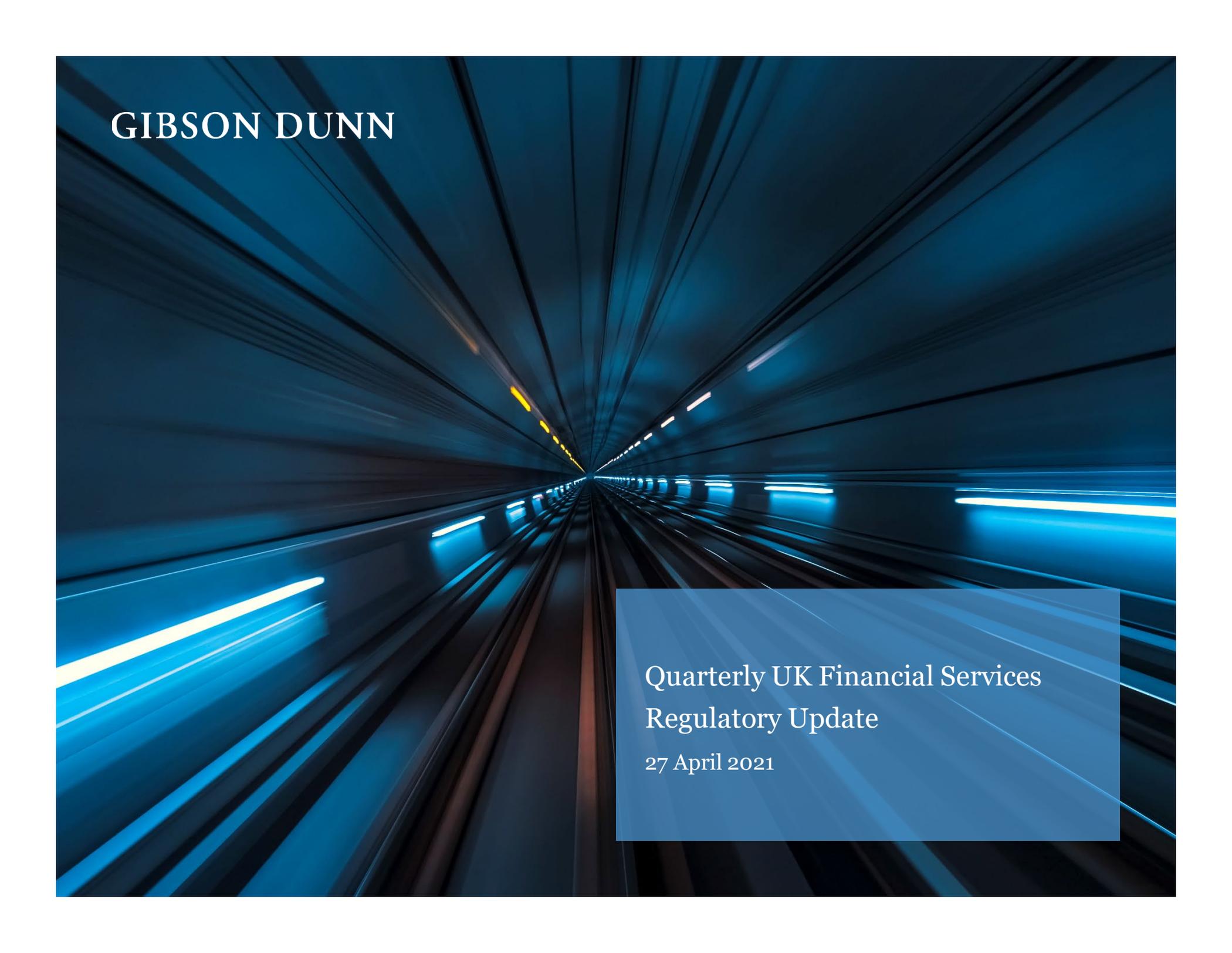
- Identify important business services.
- Set impact tolerances for the maximum tolerable disruption.
- Carry out mapping and testing to a level of sophistication necessary to do so
- Identify any vulnerabilities in operational resilience.

31 March 2022 -
31 March 2025

- Perform mapping and testing so that firm is able to remain within impact tolerances for each important business service.
- Make the necessary investments to enable them to operate consistently within their impact tolerances.

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Crystal ball gazing



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