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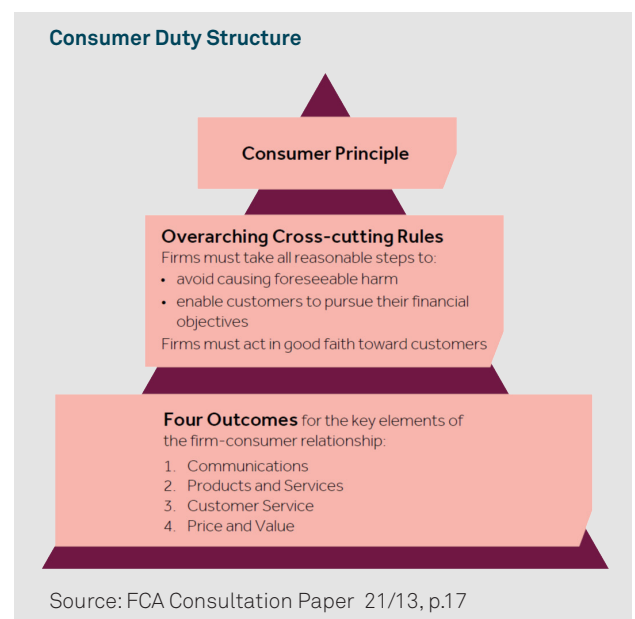
Consumer Duty – New Heights in Retail Consumer Protection

The Financial Conduct Authority’s (FCA) Consumer Duty represents a significant shift in the treatment of retail customers across the Financial Services industry. It introduces a new Consumer Principle, supported by rules and guidance, which requires firms to “act to deliver good outcomes for retail customers”, including identifying and preventing foreseeable harm before it can occur. The FCA rules and guidance on the Consumer Duty were published on 27 July 2022 and will become effective on 31 July 2023 (please see page 2 for detailed timeline).

Below is a summary of the key takeaways from the FCA for market participants to keep in mind:

1. What are the proposed changes?

- The Consumer Principle will be underpinned by a set of cross-cutting rules that include to act in good faith, avoid causing foreseeable harm, and enable and support customers to pursue their financial objectives.
- The Consumer Duty applies to all firms (including wholesale firms) that can determine or have a material influence over retail customer outcomes.
- The rules and guidance further explain how firms should act to deliver good outcomes for retail customers related to:
 - Governance of products and services
 - Price and value
 - Consumer understanding
 - Consumer support



¹ FCA Finalised Guidance 22/5, p. 24

- Firms must notify the FCA if they become aware that another firm in the distribution chain is, or may be, in breach of the Consumer Duty.
- Firms are expected to appoint a “Consumer Duty Champion” at board level (and from the independent non-executive directors, where possible) to help ensure that the Consumer Duty is discussed regularly and raised in all relevant fora. Firms need to be prepared to share with the FCA the content of these discussions.
- The FCA emphasises that Consumer Duty does not create a fiduciary duty (good faith/trust relationship) where one does not already exist. They are proposing an objective element such that its rules and guidance should be interpreted in line with the standard that could reasonably be expected of a prudent firm carrying on the same activity in relation to the same product or service, and with the necessary understanding of the needs and characteristics of its clients.

2. Scope: to whom, and when, does the Consumer Duty apply?

The Consumer Duty applies to UK-authorized firms undertaking activities in the UK that ultimately have a material impact on retail clients. Firms not authorised under the Financial Services and Markets Act 2000 (FSMA) are not subject to the requirements.

The Consumer Duty rules will apply on a forward-looking basis to existing products and services that are either currently being sold or renewed, or that are no longer being sold or renewed but are still used by existing customers. It will not apply retrospectively to products and services which are no longer in use by customers.

3. What are the Consumer Duty key transition milestones?

The FCA set five milestones to help meet higher and clearer standards of consumer protection across financial services:



Source: [FCA website](#)

4. Are firms responsible for both types of relationships with retail customers – direct and indirect?

The Consumer Duty captures firms that provide services to retail customers, even where those firms do not have a direct relationship with the retail client (e.g., there is no contractual relationship with a retail client), if the firm is able to have a material influence over, or determine, a retail customer outcome relating to:

- Products and services
- Price and value
- Consumer understanding, and
- Consumer support

5. How is BNY Mellon preparing for the anticipated implementation of the Consumer Duty?

BNY Mellon has established a Consumer Duty programme with the purpose of assessing the impact of the Consumer Duty rules and guidance on the firm.

Actions for consideration

It is important to note that the Consumer Duty is underpinned by reasonableness and firms are only required to do what can be reasonably expected of a prudent firm carrying on the same activity in relation to the same product or service. The FCA has further expressed that it will apply its rules in a proportionate manner.

Some of the Consumer Duty considerations we are taking into account as part of our programme include²:

- **Effective prioritisation:**
Focus on reducing the risk of poor consumer outcomes and assessing where firms are likely to be furthest away from the requirements of the Consumer Duty.
- **Embedding the substantive requirements:**
Carefully consider the substantive requirements of the Consumer Duty, as set out in the FCA's final rules and guidance. Ensure the review of communications and customer journeys are part of the products and services review needed to meet the new standards, where applicable.
- **Risk-based approach:**
Deploying a risk-based approach in areas where meeting deadlines is likely to be most challenging and ensuring that decision-makers take into consideration the potential for customer harm when prioritising.
- **Working with other firms:**
Work and share information with other firms in the distribution chain, as required.
- **Monitoring and governance:**
Consider ongoing compliance with Consumer Duty post implementation date and engagement with board and senior managers as part of this framework.

² This is not intended to be an exhaustive list.

Further information

[Consumer Duty Rules](#)

[Consumer Duty Guidance](#)

[FCA Consultation Paper](#)

Further queries

If you have further questions regarding the expected Consumer Duty transition, please contact your BNY Mellon representative.

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