ICAEW
REPRESENTATION 34/20

RESPONSE TO CORONAVIRUS AND SAFEGUARDING CUSTOMERS' FUNDS: PROPOSED GUIDANCE FOR PAYMENT FIRMS

Issued 11 June 2020

ICAEW welcomes the proposed guidance for payment firms. We understand the FCA's sense of urgency at this difficult time, the desire to head-off some of the potential risks and safeguard customer funds. However, ICAEW would like to highlight some of the concerns around the lack of specificity and guidance in relation to the new audit requirement. The FCA's proposed guidance is available from this link.

> The guidance to safeguard customer assets and to do this as quickly as possible is a laudable approach. However, we believe that the new audit requirement as currently drafted risks the FCA's objectives not being achieved. For example, in another area where the FCA seeks an audit, client assets (CASS), there is also an FRC assurance standard for CASS auditors to observe. In order to fulfil the audit role consistently and for the audit to achieve its objectives, it is necessary for the scope of the audit and the framework under which this audit is to be performed to be specified.

This response of 11 June 2020 has been prepared by the ICAEW Financial Services Faculty. As a leading centre for thought leadership on financial services, the Faculty brings together different interests and is responsible for representations on behalf of ICAEW on governance, regulation, risk management, auditing and reporting issues facing the financial services sector. The Faculty draws on the expertise of its members and more than 25,000 ICAEW members involved in financial services.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 154,500 chartered accountant members in over 149 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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MAJOR POINTS

1. The change in guidance proposed by the FCA includes a requirement for firms to arrange specific annual audits of their compliance with the safeguarding requirements under the PSRs/EMRs as well as arranging audits of their compliance with safeguarding arrangements whenever there are any changes to their business model which would materially affect their safeguarding arrangements.

2. We agree that an audit would provide value and offer the regulator insight into the compliance of the industry with regulations **but such a requirement will require the development of a framework under which such an audit should be performed (or the identification of an existing framework to be applied), explicit guidance from the regulator over the scope of that audit (including the identification of the specific rules or standards to be audited against) as well as more guidance from the regulator to avoid ambiguity over when an audit is required.**

3. It will also be necessary to understand how the regulator intends to embed this requirement into the existing rules and guidance contained under SUP 3. For auditors, the proposed explicit audit requirement is distinct and of a different nature and scope when compared to their existing responsibility, which requires a statutory auditor to notify the FCA if it has **become aware in its capacity as a statutory auditor** of any breach of requirements imposed by or under the PSRs or EMRs, that is of material significance to the FCA (regulation 25 of the EMRs and regulation 24 of the PSRs 2017).

4. We have included below some specific observations on the guidance as it relates to the audit requirement:
   - Given the breadth of firms in the payment services sector, there are likely to be a large number of audit firms impacted by this change in guidance.
   - The change in guidance has not been accompanied by a change to either of the Electronic Money Regulations 2011 or Payment Services Regulations 2017 therefore we would seek clarity on whether or not the regulator sees this as a mandatory audit for firms. Further clarification is also needed as to whether the onus falls on the audit firm to submit a nil-return (or limited assurance) report in the absence of non-compliance findings and further guidance is also needed as to what constitutes a change to business models that would materially affect safeguarding arrangements.
   - Auditors may be unwilling or unable to accept such an engagement without further clarity on the following:
     - the form of assurance required;
     - the standards/regulations under which the engagement should be performed;
     - the scope of the audit and the specific rules / requirements against which the audit should be performed;
     - the form of reporting required; and
     - what would constitute a material issue (e.g. a numeric threshold, a proportion of money/assets held for clients, numbers of clients accepted).
   - Without further clarity on the points above, this could ultimately lead to the FCA receiving an inconsistent level of assurance from external audit firms.
   - The new requirement expects firms to exercise all due skill, care and diligence in selecting their auditor, including a consideration of the auditor's "expertise in auditing compliance with the safeguarding requirements under the PSRs/EMRs". We note that with this being a new requirement for a specific annual audit, and with no existing standards or guidance being in place, it will be difficult for any entity (or for any auditor) to demonstrate such expertise.
   - Finally, we note that if this is implemented with no transition period or implementation date, there may be an immediate rush to request these audits and the audit industry may struggle to devote the necessary resources to this over the coming months. We

also note that without sufficient time for regulated firms to prepare for such an audit, there is a risk of many adverse opinions across the sector.

5. In this consultation we do not have remarks to make in response the FCA's four specific questions raised.