

29/11/2023

Dear CEO

Today we published a [Consultation Paper](#) (CP) on changes to the prudential regime for Personal Investment Firms (IPRU-INV 13).

While these are matters under consultation, we are writing to you to remind Personal Investment Firms (PIFs) of their existing responsibilities and to explain the approach we will take if we see firms seeking to change their corporate structures in light of our ongoing consultation proposals, or otherwise seeking to avoid potential redress liabilities and complaints responsibilities.

Firms' ongoing responsibilities

As you know, all firms are under a duty to act in good faith when customers have suffered foreseeable harm. This includes an obligation to assess complaints fairly, consistently, and promptly. These expectations continue – firms should also continue to handle complaints in accordance with [DISP](#). We will consider acting if we find that firms are taking steps that might deter their customers from pursuing a complaint or referring a complaint to the Financial Ombudsman Service.

Firms should also continue to assess their financial resources against the risk of harm and complexity of their business. We expect firms to have adequate financial resources to meet any potential redress liabilities.

Firms must not seek to avoid potential redress liabilities. This could include actions such as changing the corporate structure to isolate liabilities and protect assets (including selling or transferring the client bank), overpaying dividends or allowing the firm to run into an insolvent position.

We also expect you to notify the FCA immediately when you become aware, or have information which reasonably suggests, that any of the following has or may have happened, or may happen in the future:

- the firm does not have adequate resources to provide potential redress
- the firm intends to sell or transfer its client bank, and the sale could have an impact on the firm's risk profile, value or resources, and/or
- the firm has potential redress liabilities and wants to offer consumers less redress than they might be due

We provide rules and guidance on when firms need to notify us in [SUP 15](#).

If we identify firms or individuals who have sought to avoid potential redress liabilities, we will consider what further action may be appropriate. This may include using our enforcement and/or supervisory powers against these firms or individuals.

Authorisations and cancellations during the consultation period

During the consultation period we will be carrying out increased monitoring of firms applying to cancel or seeking to apply for new authorisations consistent with our current expectations of PIFs under the Consumer Duty. This is to prevent firms and individuals from attempting to avoid potential redress liabilities or otherwise trying to phoenix. We are:

- carefully scrutinising the rationale for authorisation and cancellation applications
- requesting verifiable evidence that the applicant has discharged, satisfied or resolved all complaints
- checking the applicant has discharged any unsettled or unexpired liabilities
- establishing the applicant has provided a reasonable way to discharge any potential redress the firm anticipates may crystallise in the future, either reactively or proactively for example under PRIN 2A.2.5R
- ensuring the applicant has adequately investigated any matters that could result in potential redress liabilities
- checking the applicant has taken all reasonable steps to manage the risk of any cancellation of permissions adversely affecting customers
- checking applicants for connections to currently authorised firms with redress liabilities for the potential for phoenixing

We will be subjecting applicants to significant additional scrutiny where we perceive this risk. Where we believe firms have not taken the steps needed to fully address these issues, we may ask firms to take further action. Examples of this may include taking out professional indemnity insurance to cover potential future claims, conducting a customer contact exercise, seeking assurance from third parties involved in business transfer scenarios and reviewing high risk business and paying redress where necessary.

We know that some firms and individuals apply to be authorised after they have provided services, such as financial advice, at other firms. Where they are confident in the quality of these services, they will often enter into a deed poll to accept responsibility for them. They may also do this where they are receiving a benefit from, or to avoid a loss associated with, another firm. Under a deed poll, the new firm that receives the transferred business agrees to take responsibility for past services. Ultimately, if an applicant does not take appropriate steps to ensure customers are protected, we may refuse the application.

What we ask you to do:

You should share this letter with your firm's Board or equivalent governing body.

We also welcome your feedback to our ongoing consultation – you can provide your response [here](#).

Yours sincerely

Sarah Pritchard
Executive Director