

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: FG16/5: Guidance for firms outsourcing to the 'cloud' and other third party IT services

Lead regulator: FCA

Date of assessment: 11 November 2016

Commencement date: 7 July 2016

Origin: Domestic/EU

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? All

Brief outline of proposed new or amended regulatory activity

This proposal was guidance on our existing outsourcing rules in respect of outsourcing to the cloud and is not a new or amended regulatory activity. The existing outsourcing rules are derived from the EU (e.g. MIFID/Solvency II) and it's those existing obligations, which firms should already be complying with; we were seeking to help clarify.

Stakeholders, including firms and cloud service providers, told us they were unsure about how we apply our rules relating to outsourcing to the cloud. Through that engagement we produced guidance for firms outsourcing to the 'cloud' and other third party IT services. The guidance sought to address any myths that may have existed in respect of the FCA's view of cloud, including that we see no fundamental reason why cloud services (including public cloud services) cannot be implemented, with appropriate consideration, in a manner that complies with our rules.

The guidance is not binding and is intended to illustrate ways in which firms can comply with the relevant rules. The guidance need not be followed to achieve compliance with the relevant FCA rule or requirement. FCA guidance on rules, the Act or other legislation, represents our view and does not bind the Prudential Regulation Authority (PRA) or the courts.

The finalised guidance has been designed in the context of the existing UK and EU regulatory framework. We will keep this under review, including as a result of any negotiations following the UK's vote to leave the EU.

Which type of business will be affected? How many are estimated to be affected?

The guidance sets out the FCA's view and will be relevant to all regulated firms where firms are using, or are considering using, the cloud and other third-party IT services. The PRA has different statutory objectives, and so firms that are subject to PRA regulation should confirm their approach with the PRA.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	July 2016	10	0	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

Our rules on outsourcing are specific to the firm's business model and the activities or services performed by the firm. A decision to outsource, and what to outsource, is a voluntary decision for firms and is not mandated by the regulator. In this context we consider that the costs and benefits are quite intangible, would be disproportionately difficult to quantify, and would be over burdensome for a retrospective exercise.

We consider the main reasons why we can expect the guidance to have an impact close to zero i.e. less than £250,000/year are:

- there are actual benefits to the firms from acting in accordance with our guidance because it clarifies what is expected from the firms and thus increases regulatory certainty. Specifically, we would anticipate that compliance costs are likely to go down.
- If firms alter their approach to engaging or overseeing outsourced services in response to our proposed guidance the benefits and costs associated with outsourcing will be impacted, but these are not additional costs that the guidance imposes, either directly/explicitly or tacitly, in the sense of changing behaviour. Legislation, much of which is derived from EU law, not the FCA guidance, is changing the "behaviour" with respect to dealing with operational risks in connection with outsourcing of cloud-based services. The purpose of the guidance is to propose a form of behavioural change that is clear and uniform which incidentally is explicitly desired by many of the stakeholders affected.
- The guidance is not binding and is intended to illustrate ways in which firms can comply with the relevant FCA rule or requirement. The guidance need not be followed to achieve compliance with the relevant FCA rule or requirement.

As the use of outsourcing to the 'cloud' and other third party IT services is dynamic and uncertain we consider that it will be important to monitor how the guidance is being used by firms and other stakeholders so as to assess its potential impact on the market and its development.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

N/A