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UK Applications for Authorisation (EMI / PI)

PREPARING AN APPLICATION – KEY POINTS TO CONSIDER

Areas to be covered

1. The FCA's current approach and approval rates
2. Key areas where applicants fail
3. Is the applicant "Ready, willing and able"?
4. UK presence – Head Office
5. Safeguarding arrangements
6. Consumer Duty
7. Wind Down Planning
8. Approach to completing the application
9. Timing of application preparation

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The FCA's current approach and approval rates

▶ In recent years, the FCA have become significantly more rigorous in assessing applications for authorization.

▶ They place significant emphasis on being *"ready, willing and able"* to provide regulated services at the point of authorization. This infers operationalizing the business – see later slide.

▶ 15% of applications for authorization during 2023 are being approved (85% pushed to withdraw application).

▶ Progress can depend on the experience and attitude of the assigned FCA Case Officer. The FCA appear to be under-resourced which can affect timelines.

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Key areas where applicants fail

- Not "ready", "willing" or "able" – interpret these broadly and covering all aspects of the business. Important to consider and address operational implications of becoming an EMI / PI and launching the business.

- UK presence – insufficient staff resources to support the Head Office assertion given the proposed services and business organisation.

- Failures, or weaknesses, in key areas of focus for the FCA: Safeguarding, Consumer Duty, Wind Down Planning.

- Seeking to change key details of the application during the FCA's assessment (potentially even including in response to the FCA's identification of problematic issues).

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Is the applicant "Ready, willing and able"?

▶ The application must clearly describe the business proposition, resources, arrangements and how regulatory requirements will be met.

▶ Each statement made in the application will have associated operational and timing implications. These will need to be carefully considered.

▶ The application should reflect operational planning activities undertaken to ensure that the business can 'go live' from day one of authorisation.

▶ Consistency in statements made throughout the application with the supporting documents is important. Inconsistencies are very likely to be questioned by the FCA and could quickly lead to problematic issues and a loss in FCA confidence.

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UK presence - Head Office

▶ Maintenance of a UK Head Office is a key requirement. The Head Office is considered to be the location of the <u>management and control</u> of the business, i.e. decision making staff.

▶ Staff numbers will need to be commensurate with the <u>size and complexity</u> of the business – this is a matter of judgement. Key staff (i.e. EMD Individuals) must be identified in the application.

▶ Recruitment of key individuals at the time of submission should be mostly complete, i.e. to be identified in the application.

▶ Individuals should have the required experience and available time to perform their role(s), including the 'oversight' of outsourced business functions. Due diligence should therefore be performed during recruitment.

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Safeguarding arrangements

▶ Safeguarding customer funds is a key regulatory requirement; arrangements will need to be robustly articulated in the application.

▶ Clearly understand what funds are "Relevant Funds" and must be safeguarded, when and how long to safeguard – prepare a clear service description and funds flow diagram.

▶ Controls must be demonstrated: responsibilities, access to safeguarding bank accounts, due diligence of partner banks, and reconciliation method.

▶ Challenges in opening safeguarding bank accounts persist.

▶ The FCA have highlighted deficiencies of existing authorized firms in recent 'Dear CEO' letters – these should be addressed.

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Consumer Duty

▶ Implemented in July 2023 the Consumer Duty (the "Duty") is a key focus for the FCA in relation to consumer protection.

▶ The FCA's assessment of compliance with the Duty suggests further work for authorized firms; the approach should evolve and be integrated throughout the business.

▶ Opportunity for applicant firms to demonstrate their attention to evolving regulatory requirements.

▶ Submit as part of the application the Consumer Duty Implementation Plan and be prepared to answer questions on the overall approach operated by the business to meet the requirements of the Duty and ensure correct 'outcomes'.

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Wind Down Planning

▶ The FCA's concern is that an '<u>orderly</u>' wind down can be effected, if required, at all times. The application will need to demonstrate a robust planning process.

▶ The FCA's assessment will focus on the wind down planning process as much as the final **Wind Down Plan** (WDP) to be submitted as part of the application.

▶ Operational thinking conducted during application preparation must be reflected in the WDP (indeed it should help the preparation of the WDP).

▶ Integration of wind down planning considerations into the operation of the business will also be expected by the FCA, e.g. the financial forecasting process and reporting metrics / wind down triggers provided to the Board.

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Approach to completing the application

▶ An iterative approach is required to prepare the application content, specifically the **Regulatory Business Plan** (RBP). This is the central application document.

▶ The foundation of a successful application is a clear **service description**. Service functionality and regulatory permissions should be clearly articulated.

▶ Operational thinking helps consistency and minimizes potential changes; involvement of operational teams from within the business is therefore important.

▶ Involvement of senior management, in particular the UK team that will ultimately be responsible for the EMI / PI is key. The team will need to demonstrate a deep understanding of the business when interviewed by the FCA.

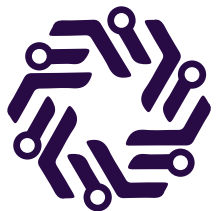payments and crypto network

Timing of application preparation

▶ The FCA have been allocating 'Case Officers' within 3 – 4 weeks, however, overall progress assessing applications remains slow.

▶ Key staff (i.e. EMD / PSD Individuals) are being assessed through "*Knowledge and Experience*" calls. Their involvement in the application process will assist preparation for these calls.

▶ Expect several rounds of questions and requests for policy and operational documents. These supporting documents should be prepared in parallel to the application in order to be provided to the FCA without delay (and to ensure consistency).

▶ Taking time up front to prepare a good quality application, and to consider operational implications, is advisable. Rushing to submit an application is a false economy.

▶ Total timeline for preparing an application and completing the FCA's assessment remains in the region of 10 – 12 months on average.

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