

MiFID: Goodbye to the Org Reg, hello to reform

Top Ten Things you should know

On **27 November 2024**, the FCA published [CP24/24: The MiFID Organisational Regulation](#) (the CP) on proposals to transfer the firm-facing requirements of the MiFID Organisational Regulation (the MiFID Org Reg) into FCA Handbook rules.

The MiFID Org Reg contains firm-facing conduct rules and systems and controls rules to ensure market integrity and investor protection.

With the CP, the Financial Conduct Authority (the FCA) is proposing to replace the UK version of the MiFID Org Reg with requirements in its regulatory rules, i.e. the FCA Handbook. The UK version of the MiFID Org Reg will be **repealed**.

The CP contains most of its substance in Chapters 3 and 4. Broadly, the intention of Chapter 3 is to transfer the requirements of the MiFID Org Reg into the FCA Handbook and repeal the MiFID Org Reg itself, **without making any policy or substantive changes** to the current requirements. There is c.250 pages of accompanying Handbook rule amendments.

Chapter 4 invites discussion on **potential future reform** of the conduct and organisational rules derived from the MiFID Org Reg.

This CP will be of interest to UK MiFID firms, MiFID optional exemption Article 3 firms, third country firms, UCITS ManCos, CIS operators, AIFMs, Occupational Pension Scheme firms and Recognised Investment Exchanges.

This note examines the Top Ten Things that firms should know about the FCA's proposals and what the next steps are.

1. What is the MiFID Org Reg?

The MiFID Org Reg (Delegated Regulation (EU) 2017/565) is a piece of European Level 2 legislation which is part of the MiFID2 (Directive 2014/65/EU) package. The MiFID Org Reg contains firm-facing conduct rules and systems and controls rules to ensure market integrity and investor protection. The MiFID Org Reg applies to MiFID investment firms in the UK including Article 3 MiFID optional exemption firms. The MiFID Org Reg was assimilated into UK law post-Brexit by virtue of the European Union (Withdrawal) Act 2018 which enacted a UK version of the MiFID Org Reg.

2. Why is this CP necessary?

Post-Brexit, there is a UK version of the MiFID Org Reg that applies directly to UK MiFID investment firms. In 2018, when implementing MiFID2, the FCA replicated parts of the MiFID Org Reg into the FCA Handbook for certain sourcebooks so that firms could see all the relevant MiFID requirements relating to a particular topic in one place. There is therefore some duplication across the FCA Handbook and the UK version of the MiFID Org Reg.

The FCA is proposing to replace the UK version of the MiFID Org Reg with requirements in its regulatory rules, i.e. the Handbook. The UK version of the MiFID Org Reg will be repealed and all rules will be within the FCA Handbook. The FCA is not looking to make any substantive changes to the rules but just change where they are located.

The CP questions allow for firms to point out any concerns with the approach, the changes themselves and/or any inconsistencies or unintentional change in scope.

3. What parts of the Handbook are changing?

The MiFID Org Reg contains conduct rules and systems and controls rules to ensure market integrity and investor protection. Accordingly, this entails changes to:

- The Senior Management Arrangements, Systems and Controls sourcebook (**SYSC**);

- The Conduct of Business sourcebook (**COBS**);
- The Market Conduct sourcebook (**MAR**);
- The Recognised Investment Exchanges sourcebook (**RIE**) and Recognised Clearing House sourcebook (**REC**); and
- The Dispute Resolution sourcebook (**DISP**).

SYSC: The FCA has proposed amendments to SYSC to integrate organisational requirements from the MiFID Org Reg which aim to enhance the regulatory framework, while ensuring it remains agile and coherent. The changes involve the assimilation of specific MiFID Org Reg articles into SYSC, adjustments to existing rules, and adaptations to Handbook terms to maintain consistency with the concept of a common platform firm. The FCA's proposal is to preserve the effect of the current framework with no policy changes regarding content or scope.

Conflicts of interest: The FCA has made specific clarifications and corrections to ensure consistency and clarity in the application of conflicts of interest rules.

COBS: The changes to COBS are limited and are intended to achieve simplification and rationalisation. The FCA proposes to consult on requirements relating to the disclosure of costs and charges as part of their consultation on the CCI regime in CP24/30: A new product information framework for Consumer Composite Investments (CP24/30) (see our article on CP24/30 here: [FCA consults on new CCI disclosure rules to replace UK PRIIPs regime | Simmons & Simmons](#)).

MAR: The FCA are proposing to copy out the substance of the relevant articles of the MiFID Org Reg into current/new provisions in MAR.

RIE and REC: Similar amendments have been made to these sourcebooks as to MAR (i.e. a copy out), some provisions have also been deleted that have not been in force since the implementation of MiFID2.

DISP: The FCA is proposing to amend DISP which currently sets out requirements for dealing with complaints, as per Article 26 of the MiFID Org Reg. FCA states that this approach should maintain the same scope as the current MiFID complaints regime.

The Financial Ombudsman Service (FOS): The FOS will mirror the FCA's proposed changes to DISP into its voluntary jurisdiction and will adopt the FCA's proposed changes to the glossary into its compulsory jurisdiction (scheme) rules. These amendments should not make any substantive amendments to the operation of the FOS.

There are also a lot of consequential changes made to other Sourcebooks including:

- The Glossary;
- Client Assets sourcebook (CASS);
- Decision Procedure and Penalties Manual (DEPP);
- Disclosure Guidance and Transparency Rules sourcebook (DTR);
- General Provisions (GEN);
- Professional Firms sourcebook (PROF);
- Supervision Manual (SUP);
- The MiFID 2 Onshoring Guide (M2G); and
- Training and Competence sourcebook (TC).

4. Is there any change of scope?

The FCA's intention is to restate the existing firm-facing requirements from the MiFID Org Reg in the FCA Handbook as rules and guidance with no substantive changes or change to scope, but where possible the FCA have taken the opportunity to clarify the drafting of requirements and align them with equivalent Handbook provisions where necessary. They are not proposing to add or remove any existing requirements in this CP, giving firms continuity.

Simmons says:

Whilst the FCA is not intending to change the substance or scope of any requirements, firms will still need to assess the impact of these changes on their business. We think the impact is likely to be primarily on internal and external documentation which refers directly to the affected rules (e.g. internal compliance docs, or external client-facing documentations) rather than comprehensive changes to business processes or systems.

5. What are the suggested immediate opportunities for rationalisation?

Chapter 4 invites discussion on potential future reform of the conduct and organisational rules derived from the MiFID Org Reg. At the time of transposing EU directive, the FCA sought to apply common standards to firms conducting similar activities, however this got increasingly challenging as time went on, and as the EU increased its use of directly applicable regulations. Therefore, there are several examples of areas of the FCA Handbook that are duplicative with small differences in technical detail or with complex application rules.

The FCA suggests a couple of areas where there are immediate opportunities for a rationalisation of its rules.

Rationalisation of rules: The FCA suggests rationalising duplicative conduct and organisational rules that come from different EU Directives and removing the distinction in rules between types of firms where there is no substantive difference in obligations.

Conflicts of interest: The FCA acknowledged the complexity and duplication resulting from adapting SYSC 10 rules over time to incorporate conflicts of interest rules from various EU Directive (MiFID, UCITS, AIFMD, IDD). The proposed amendments aim to simplify the core rules, particularly for the benefit of firms which are subject to multiple regulatory regimes. The FCA suggests that, whilst they will need to consider where the rules need to continue to differentiate between different activities, they could somewhat rationalise SYSC 10.

The FCA plans to examine the necessity of differentiating rules based on activities and assess the substantive impact of minor language variations. For example, the requirement in SYSC 10.1.11R to specify procedures in a firm's conflicts policy to "manage" conflicts versus the MiFID Org Reg's language to "prevent or manage" conflicts.

Best execution: The FCA suggests rationalising the best execution rules in COBS 11.2, COBS 11.2A and COBS 11.2B (for AIFMs and residual CIS operators, MiFID firms and UCITS ManCos respectively) and the personal account dealing rules in COBS 11.7 and COBS 11.7A (for non MiFID and MiFID business respectively).

6. What are the suggested more complex opportunities for rationalisation?

Various FCA Handbook rules require disclosures to be made to clients or specific information to be provided. The FCA talks about the benefits of rationalising these rules for both firms and consumers, however they do acknowledge that this could be costly for firms. The aim is to simplify the compliance burden for new firms entering the market, accommodating future financial product innovations and to make it easier for the FCA to supervise firms' compliance with these requirements more efficiently.

The FCA notes that many COBS chapters currently require information to be provided to clients at different stages of the investment journey. For example, within COBS:

- COBS 2 requires disclosures to be made both in relation to products (risk warnings) and services (costs and charges) before services are provided, as well as creating ongoing costs disclosure requirements.
- COBS 6 contains a wide range of disclosure and information requirements including general information about the firm and the information on the basis in which advice is given.
- COBS 14 specifies information to be provided to clients in relation to investments offered to the client, including risk warnings
- COBS 16 and 16A specify requirements about reporting to clients in relation to transactions and client assets held on behalf of the client.

Simmons says:

Whilst firms may agree that the information and disclosure requirements in the Rulebook are duplicative, it remains to be seen whether firms have the appetite to potentially review and/or change all of their customer communications.

We note that this request for feedback does not include CCIs, for which the FCA is separately consulting on the new retail disclosure regime (CP24/30 – see above).

7. What are the suggested changes around client categorisation?

Client categorisation is used to calibrate different protections such as suitability and appropriateness and to allow access to certain products/services. The FCA acknowledges that the thresholds and criteria have become out of date, but reiterate that they will only make changes if beneficial to do so.

Per se professionals and ECPs: The FCA notes that these categories overlap so perhaps the boundaries need refining. In particular, the FCA wants to consider whether entities that act on behalf of underlying clients would be better off being categorised as professionals by default, instead of opting down.

Elective professionals: Specific questions that the FCA is asking are:

- i. Does the process allow sufficient flexibility for clients to switch category when appropriate?*
- ii. Are the current rules and guidance sufficiently clear to discourage firms inappropriately opting clients up to avoid consumer protections from which these clients should benefit?*
- iii. Whether the use of elective professional categorisation in relation to financial promotion rules remains appropriate in all circumstances?*

The FCA recognises that, whilst clients needs to be protected, there are positive reasons for opting clients up. The FCA has given some options for alternative approaches but welcomes other suggestions:

1. Updating and / or adding alternative quantitative test criteria.
2. Aligning the rules for MiFID business with the current standard for non-MiFID business (i.e. no quantitative test). This may entail further Handbook guidance on the qualitative factors firms should use and/or having a minimum investment portfolio threshold.
3. Strengthening the process for ensuring consumers understand the implications of requesting to opt up, including with respect to the regulatory protections they would forego e.g. having a cooling off period or regular re-confirmation of the election.

Financial promotions: Financial promotion rules differentiate between promotions to retail and non-retail investors, e.g. the fair, clear and not misleading rules only apply to retail promotions (but will always apply in so far as the communication relates to designated investment business). The FCA wants to know if clients ask to be opted up for the purposes of exemption from certain financial promotion rules only.

Corporate finance contacts: Broadly, firms advising corporates on capital raising can treat potential investors as mere contacts rather than clients. However, the corporate finance firm will still be a client for the purpose of the financial promotion rules, therefore, the categorisation of the investors will still need to be considered for these purposes (as the recipients of the financial promotions). The process of opting a contact up to elective professional status for financial promotions purposes, carries a risk of a contact believing they are being treated as a true client. The FCA is interested in knowing how firms navigate this.

Venture capital contacts: As for corporate finance contacts, the primary requirement of the venture capital contacts regime is that the venture capital firm must not give any indication to the investor that they are treated as a client. The FCA is interested in knowing how firms navigate this.

Simmons says:

Many industry participants requested changes to the elective professional criteria in response to the Consumer Duty Call for Input (here our article on that here: [Consumer Duty View - July 2024 | Simmons & Simmons](#)). We think this is a positive demonstration of the FCA's willingness to listen to firms. Perhaps in light of their new(ish) secondary objective of international competitiveness.

However, firms may wish to consider the practical impact of any changes to the client categorisation thresholds. If they were to change, this would mean a substantial change to firms' embedded client categorisation systems and procedures. Some firms may see this as worth the cost. The FCA has asked if the benefits of changing the client categorisation criteria can be quantified, for example, the additional potential investment in UK capital markets from certain client groups as a result of any proposed change in the opt up rules. The elective professional client status is very important, for example, in practice for marketing alternative funds, and so a change to the thresholds could have an important impact on the ability to market only to professionals.

8. What are the suggested longer term changes?

The FCA suggests some examples of longer term changes that could be made to the Rulebook. These are around differentiating suitability requirements or requirements in general according to the risks of harm presented by the business model, rather than the European Directive that the rules originated from.

Simmons says:

The FCA is clear that it is not making these changes immediately, but it certainly makes sense that they may wish to move away from the historic hangover of Directive-based regulation. Although firms should consider if it is worth the potential upheaval.

9. What is the impact on Article 3 MiFID Optional Exemption firms?

FSMA 2023 revoked various assimilated law, including Part 2 of the MiFI Regulations imposing restrictions on activities of Article 3 firms, subject to commencement. The FCA, alongside the Treasury, is assessing the domestic regulatory framework that will govern Article 3 firms moving forward. This assessment includes exploring the activities these firms might be allowed to undertake outside the single market framework and considering necessary legislative and handbook amendments. Any changes would be sequenced with the introduction of the FCA's replacement rules to ensure there is no unintended impact to the authorisation status of relevant firms.

At present, the FCA is not proposing any changes to the MiFID-derived rules applicable to Article 3 firms. This decision reflects a period of evaluation and feedback collection to ensure any future regulatory adjustments are made with comprehensive understanding and consideration.

The FCA is actively seeking feedback from Article 3 firms to understand how the current framework and rules could be rationalized or improved. The goal is to reduce regulatory complexity and ensure that the requirements for Article 3 firms are both flexible and proportionate to the potential risks their activities pose. Feedback from these firms will play a crucial role in shaping the FCA's approach to future rule-making under the new regulatory framework. The FCA also plans to engage with firms in more detail on the analogous requirements in due course in separate consultations.

10. What happens next?

The consultation period for Chapter 3 ends on **28 February 2025**.

The consultation period for Chapter 4 ends on **28 March 2025**.

A policy statement containing the final rules is expected in **H2 2025**.

The PRA will be publishing an equivalent consultation paper in **Q1 2025** and is aiming to publish a policy statement on the same day as the FCA in **H2 2025**.

The FCA have said that they will review the responses to this CP alongside the responses to the Consumer Duty Call for Input and CP24/30 on the CCI regime. They have said they will only make changes where

there is a clear benefit in doing so and that they are mindful of the benefits of being consistent with international standards so will take account of rules in other jurisdictions.

We are helping several industry groups formulate their responses to this CP. We will be following these developments closely and reporting on any significant publication.

If you want to know more about the MiFID Org Reg CP, speak to your usual contact at Simmons & Simmons or one of our team listed below.

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