

FCA Quarterly Consultation Paper 44: summary of proposed changes

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Financial Institutions 360 - Q2 2024: Enforcement and litigation update

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FCA Quarterly Consultation Paper

In July the FCA published its [Quarterly Consultation Paper 44](#), covering topics including:

- Criminal background checks on owners and controllers at the Authorisations gateway. Currently, the FCA only conducts criminal background checks on a risk-based approach, but further to a recommendation from the Financial Action Task Force, they are proposing to require all controllers and beneficial owners to obtain DBS checks (or an equivalent for those based abroad).
- Proposed amendments to SUP to replace the "3L3" guidelines (which relate to the prudential assessment of acquisitions and increases in control) with non-handbook guidance ("the Change in Control Guidelines"), further to proposals it consulted on last year. Separately, the PRA will introduce an equivalent supervisory statement. The new Change in Control guidelines broadly replicate the 3L3 guidelines with some rephrasing, simplification and changes to align with the UK approach and include the new FSMA 2023 power to impose conditions. The new guidance will come into force in Q4 2024.
- Changes to retail conduct rules further to amendments made by the Treasury to the MiFID Org Reg. These are:
 - Removing the requirement to report a 10 per cent drop in portfolio value to a retail client from COBS so that the requirement does not apply as a rule to optional exempt firms. This has been the position in practice for some time, but this will now be formalised in the Handbook.
 - Changing the definition of "durable medium" in the Glossary to reflect the changes to the MiFID Org Reg which made electronic communications the default mode of communication with retail clients. This will come into force three months after publication of the final rules.

- A change to the application of the UCITS concentration rules. Further to the FCA's proposals for updating and improving the UK regime for asset management, the FCA is now proposing to apply the UCITS concentration rules to umbrella UCITS schemes at the sub-fund level rather than the umbrella level, and to clarify the level of a CIS to which COLL 5.2.29R(3) applies. This currently states that a UK UCITS scheme must not acquire more than 25 per cent of the units in a CIS.

Further to industry feedback that this can limit how a fund of funds can operate, the FCA is proposing modifying the concentration rules, so that the 25 per cent maximum limit applies to each individual sub-fund in an umbrella. This is intended to allow AFMs greater flexibility when managing a UK UCITS. The FCA is also proposing to clarify what is meant by a CIS as it relates to the target fund so that the 25 per cent limit applies to the CIS sub-fund, rather than umbrella.

All references to LTIFs and the LTIF Regulation will be removed from the Handbook as no LTIFs were ever established in the UK, so it is redundant.

Speech by Nikhil Rathi on investment management

On 5 June, at the Investment Association annual conference, Nikhil Rathi gave a [speech](#) on "international regulatory developments affecting investment management". He covered topics including:

- Liquidity risk management has been an area of focus, particularly for open ended funds:
 - Last year IOSCO finalised its guidance on anti-dilution liquidity management tools.
 - The FSB has been working on the design and use of stress tests for open ended funds.
 - The FCA has been liaising with the Financial Policy Committee on its system-wide exploratory scenario, which is looking at non-bank financial institutions for the first time.
- The FCA is chairing a working group with the ECB looking at leverage in non-bank financial institutions.
- The FCA is leading work on updating principles for the valuation of CISs, alongside the work it is doing on valuation practices in private markets where it is considering issues including those relating to governance and conflicts of interest.
- As well as its domestic work on the digital securities sandbox and project work on fund tokenisation, it is also partnering with the Monetary Authority of Singapore, Japan's FSA and the Swiss FINMA on a project looking at asset and fund tokenisation. Nikhil also spoke about the challenges and opportunities of AI and Big Tech.
- In partnership with the IA, the FCA developed the regulatory regime for the Long Term Asset Fund (LTAF) and has authorised 4 LTAFs so far.

This article is part of our Q2 update for Financial Institutions.

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- [Regulatory update](#)
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