

FCA planning to ‘update and improve’ UK asset management regime

The Financial Conduct Authority (FCA) has released a new discussion paper called ‘Updating and improving the UK regime for asset management’, or DP23/2 as it’s also known. [Linda Morsia](#) and *Melanie Herbert* have cast their eye over the document and, in this article, consider how this could impact private markets going forward.

Under the Future Regulatory Framework (FRF), the UK government has recommended making the FCA responsible for defining the UK’s new position outside the EU, ensuring the UK’s regulatory framework for financial services continues to be coherent, agile and internationally focused. Through DP23/2, the FCA will shape their future vision, collecting a range of views about the current regime for regulating UK funds and asset managers, which is essential to the continued success of an industry with £11 trillion worth of assets currently under management for investors globally.

The FCA hopes this discussion paper will help improve outcomes for UK markets and consumers, supporting the UK’s position as a world-leading centre for asset management, while also taking account of developments in technology and innovation. Indeed, the FCA has stated that any changes implemented as a result of DP23/2 would need to complement the requirements that firms are subject to in other jurisdictions.

‘We do not want to create unnecessary complexity for firms operating their businesses internationally.’

- The FCA, DP23/2, February 2023.

What might affect us in private markets?

There are several discussion points referenced in the paper which will be of interest, including:

A consolidated rulebook for asset managers

DP23/2 talks about creating a single, consolidated rulebook for all asset managers, irrespective of firm type (i.e. AFM, AIFM, MiFID portfolio manager). Whilst the change could see regulation simplified, and reduce the compliance burden for new firms entering the market, the FCA acknowledges that these changes could result in significant cost and disruption. This would particularly impact MiFID portfolio managers who are not currently subject to the same rules as other fund managers, especially when it comes to due diligence and liquidity management. These changes could be implemented slowly, therefore, and over the long-term.

Changing the size threshold for full-scope UK AIFMs

A change to the size threshold at which firms must apply the full-scope UK AIFM regime is also mentioned - a change which could reflect the growth in alternative markets since the threshold was originally set. The FCA could also allow firms which meet criteria other than size to use the small authorised UK AIFM exemptions, such as the type of strategies the AIF manages, or the types of clients they have. Irrespective of whether this change is implemented, the FCA is also considering making their expectations on small authorised AIFMs clearer, which may then require high-level rules setting minimum standards on core fund areas such as valuation, liquidity management and investor disclosure. This would be less prescriptive than the full scope regime, but would require the high levels of financial stability and market integrity currently in place, to be maintained.

Clarifying rules for depositaries

The FCA acknowledges that their own expectations of what a depositary's role should entail, differs somewhat from what depositaries themselves believe their responsibilities should be. The FCA sees benefit, therefore, in making their rules for depositaries clearer when it comes to what a depositary should do in respect of fund managers, and better defining the areas where the contribution of depositaries is particularly valuable to investors.

Clearer investment due diligence requirements

The FCA sees a gap in the requirements for MiFID portfolio managers when it comes to providing investment due diligence for illiquid and complex securities.

The FCA isn't planning to introduce complex restrictions in this area but feels there could be clearer standards that apply to all asset managers.

Improving technology in fund operations

Fund tokenisation is understood by the FCA to mean the issuance of a fund's rights of participation (units or shares) to investors as digital tokens, simplifying the way units of funds are bought and sold. The FCA is keen to understand what interest there is from investors to use this technology, and for further discussions to take place in terms of what rules or guidance would be necessary or useful. This could be of particular interest to managers of QIS and LTAFs, for example, in the context of holding tokens representing fractional interests in real estate or infrastructure projects.

What does this mean for me?

It's important to remember that this is a discussion paper; these are ideas for improving and updating the asset management industry in the UK, and it's unlikely that all the ideas considered in DP23/2 will be taken forward, or indeed implemented. Equally, the intention outlined in the FCA's paper is to reform only where there is a clear benefit from doing so. The FCA is looking for input from industry, and we would expect the Investment Management Association, the Depositary and Trustee Association among other industry bodies, to respond to this discussion paper in due course. In the meantime, we will be in discussion with our peers and industry bodies in this regard.

What's next?

The FCA has requested contributions from the UK asset management industry by 22 May 2023 and aims to provide feedback later this year. The discussion paper can be accessed in full [here](#).

If you have any questions or concerns on the FCA's new discussion paper, please contact [Linda Morsia](#) or [Melanie Herbert](#) now.