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## Consultation Response

### FCA CP24/24 The MiFID Organisational Regulation – Chapter 3

28 February 2025

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **FCA CP 24/24: The MiFID Organisational Regulation**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

#### Executive Summary

Broadly, AFME members are supportive of the intention of the FCA in Chapter 3 of the Consultation Paper to restate the firm-facing obligations from the MiFID Org Reg into the Handbook with no policy changes. We have noticed a few inconsistencies in some of the changes to the Handbook which we have listed in the appropriate question below. In general, we would ask the FCA to consider that, whilst a full Cost Benefit Analysis may not be necessary, complying with these changes will still entail costs for firms, for example in re-writing policies, processes and procedure documents and potentially implementing systems changes. Firms would also appreciate clarity around the timing of the amendments and whether there will be a transitional period for firms to make any necessary changes to documentation, systems etc.

#### Questions

**Question 1: Do you agree with our approach to restating obligations from the MiFID Org Reg into our Handbook? [Agree, neutral, disagree] Please explain your answer**

Yes, broadly AFME agree with the approach taken to restating the obligations from the MiFID Org Reg into the Handbook, subject to our comments in the specific questions below.

**Question 2: Do you agree with our approach to maintain recitals as guidance, and remove references to the MiFID Org Reg where we have replicated the recital in full previously? [Agree, neutral, disagree] Please explain your answer**

Yes, AFME believe it is helpful to retain recitals as guidance, they often give useful context and are beneficial for questions of interpretation.

**Question 3: Do you agree with our proposed changes to SYSC? [Agree, neutral, disagree] Please explain your answer**

The amendments to Table B in SYSC reflect the application of SYSC 10.1.6AAR and SYSC 10.1.11AAR as guidance to third country firms in relation to all their business, rather than only to insurance distribution activities. In our members' view this is an expansion of scope, previously these rules were only applied as rules

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in relation to insurance distribution activities and were seen as “not applicable” for all other activities; now they must be considered as guidance for all other activities. Firms tend to apply guidance as if it were rules. We do believe that this is a significant change in the application of these provisions for third country firms. We would appreciate some clarity as to how this is intended to apply to third country firms.

**Question 4: Do you agree with our proposed changes to COBS? [Agree, neutral, disagree] Please explain your answer**

There are a few technical points in relation to the proposed changes to COBS that we would like to draw to the FCA’s attention:

- In COBS 9A.2.4UK (1) it is not clear why “investment advice or portfolio management services” has been replaced with “service” in this paragraph, to us this suggests a wider application of the rule or could lead to inconsistent interpretation by firms.
- In COBS 9A.4.2AR – we cannot see an existing obligation in the MiFID Org Reg, SYSC or COBS to keep a record of the information required by paragraph (3) of that rule. This is from an ESMA Q&A<sup>1</sup> so it is information that is already reported, but it has now been given rule status, so the practical impact is probably minimal. However, we believe that this is more appropriately dealt with under Chapter 4 (see paragraph 4.6 of Chapter 4 that refers to potential areas for rationalisation including “rationalising the body of level 3 and other materials firms may rely on to interpret [the] rules”).
- In COBS 12.2.18AR and 12.2.19R(1), the reference to SYSC 10.1.12DR (2) seems to be incorrect as this rule reference does not exist, we believe this should be to SYSC 10.1.12G.

**Question 5: Do you agree with our proposed changes to MAR? [Agree, neutral, disagree] Please explain your answer**

Yes, agree, but there appear to be a few errors in the way the FCA has transposed Article 77-79. The thresholds included in sub-sections (b)(i) and (ii) of the Glossary definition of SME contain discrepancies, we believe they should instead read as follows, to match the existing UK MiFID Org Reg:

- (i) the last closing share price of the first ~~year~~ day of trading, if its shares have been admitted to trading for less than 1 year;
- (ii) the last closing share price of the first ~~share~~ year of trading, if its shares have been admitted to trading for more than 1 year but less than 2 years;

**Question 6: Do you agree with our proposed changes to REC? [Agree, neutral, disagree] Please explain your answer**

Yes, agree.

**Question 7: Do you agree with our proposals to change DISP? [Agree, neutral, disagree] Please explain your answer**

Yes, agree.

**Question 8: Do you agree with the Financial Ombudsman’s proposal to mirror the FCA’s proposed changes to DISP into its voluntary jurisdiction? [Agree, neutral, disagree] Please explain your answer**

Yes, agree.

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma35-43-349\\_mifid\\_ii\\_qas\\_on\\_investor\\_protection\\_topics.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf)

**Question 9: Do you agree with the Financial Ombudsman’s proposal to adopt the FCA’s proposed changes to the Glossary into its scheme rules where those Glossary definitions are used in the FOS scheme rules? [Agree, neutral disagree] Please explain your answer**

Yes, agree.

**Question 10: Are there any inconsistencies in the derivations table that might affect your compliance or understanding of the changes? Yes/No Please explain your answer**

Yes. There appears to be an error at page 60-61 where Article 22(3)(d) and (e) and Article 22(4) have been incorrectly noted as Article 23. We note no other inconsistencies.

**Question 11: Do you agree with our proposed approach to the future of each provision of the MiFID Org Reg as outlined in the derivations table in Annex 4? [agree, neutral, disagree] Please explain your answer**

Yes, agree.

**Question 12: Are there any provisions not currently proposed for restatement in the Handbook that you think should be included? [Yes, no, if yes please specify which provision] Please explain your answer**

No.

**Question 13: Do any of our proposed changes amount to a change in the scope or application of a provision? [Yes, no, if yes please specify which provision]**

Yes, please see our response to Q3.

**Question 14: Are the provisions in the legal instrument clearly aligned with the policy objectives outlined in this consultation paper? Please highlight any areas requiring clarification. Yes/No Please explain your answer**

AFME is not responding to this question.

**Question 15: Do you agree with our decision not to include a CBA in this consultation paper? [agree, neutral, disagree] Please explain your answer**

Yes, but firms would appreciate further guidance on what the FCA sees as “minimal” costs. Members would like to be clear that there will still be costs incurred in connection with this restatement of the obligations. This will entail a re-write of policies, processes and procedure documents (e.g. compliance manuals) and systems changes, which will all incur a cost. This will include staff time and (potentially) external legal spend. Budgets will need to be set aside for this, and resource diverted from other projects. Even if the changes are “minimal”, these changes could have a disproportionate impact on firms, including smaller firms and firms within a group. The impact will also be felt across several business lines. The nature of these changes being a restatement of existing rules, means that there will be little to no benefits arising out of this implementation process.

**Question 16: Do you agree with our proposed approach to the application of rights of action under section 138D of FSMA? [Agree, neutral, disagree] Please explain your answer**

AFME is not responding to this question.

**Question 17: Please provide any other feedback on this Consultation Paper**

Whilst the substance of the rules may not be changing, and firms will continue to be in compliance with the spirit of the rules, firms will still need to make updates to policies and procedures, among other

documentation. Members are keen to understand the timing of these changes, and whether there will be a transitional period or long stop date for firms to make any necessary changes to their documentation, for example. Members believe that a proportionate approach to supervision should be taken for a period of time.

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