
AFME response to FCA QCP

Candidates for FCA Code recognition: Global FX and UK Money Markets Codes

6 February 2019

We welcome the opportunity to respond to FCA Quarterly Consultation Paper 23 on the FCA's proposed recognition of the Global FX and UK Money Markets Codes and make the following points:

- AFME and UK Finance responded to Consultation Paper 17/37 last February. Following publication of Policy Statement 18/18 in July, we were encouraged that the FCA has addressed several of our concerns, including the decision not to extend the application of FCA Principle 5 to the unregulated activities of authorised firms at the current time. We also welcomed the FCA's commitment to publicly consult on codes: where they have been submitted by the authors for recognition, have been fully reviewed by the FCA against the recognition criteria and can clearly demonstrate that they set 'proper standards of market conduct' for specific unregulated activities.
- In our response to CP 17/37, we asked the FCA to consider the timing of this work and suggested that, if it proceeds, it is delayed for a year or so. Firms had recently made significant IT and policy procedure changes resulting from recent regulatory change and the proposals as drafted suggest that additional changes may be required. With Brexit now imminent, firms face different and exceptional challenges, but we welcome the timeframe.
- We agree that recognition of codes should only be to address a 'regulatory gap' and that it must be for code authors to submit their codes to the FCA for recognition. We also welcome clarity from the FCA on the process for the FCA to recognise and withdraw recognition of a code including their decision to publish a list of 'derecognised codes'.
- However, we remain concerned that creating a new distinction between recognised and non-recognised codes establishes a 'two-tier' system of industry codes, risking ambiguity and confusion among market participants as to how such codes should be treated.
- We believe that territorial scope issues remain. Some Senior Managers and Certified Persons are resident outside the UK and subject to local laws and it is not clear if regulated firms' overseas entities will need to apply codes. There may be potential conflicts where the standards of a code are materially different from local practice or present a competitive disadvantage. It is not clear what would happen where home/parent regulators have applied a code in a different way, for example, where a firm has agreed with a regulator to apply a code to some business lines but not others.

Q2.1: Do you have any comments on our analysis that the FX Global Code meets the FCA's recognition criteria?

We have reviewed the FCA's analysis and agree that the FX Global Code meets the FCA's recognition criteria in respect of FX markets.

Q2.2: Do you think the FX Global Code should be recognised by the FCA?

We have no objections to the FCA recognising this code and agree that it clearly illustrates examples of good market practice in the FX markets. The standards in the code have been agreed by central banks and market participants in 16 different jurisdictions with clear governance, oversight and collaboration.

A significant number of market participants are signatories to the code and many have successfully embedded it across their businesses. There is a risk that some are further down the track than others, and we suggest the FCA is cognisant of this. There may be practical challenges for firms in respect of its territorial application.

Q2.3: If you do not think the FCA should recognise the FX Global Code please explain why

We do not object to the code being recognised.

Q2.4: Do you have any comments on our analysis that the UK Money Market Code meets the FCA code recognition criteria?

We have reviewed the FCA's analysis and agree that the UK Money Market Code meets the FCA's recognition criteria in respect of the UK money markets.

Q2.5: Do you think the UK Money Markets Code should be recognised by the FCA?

We do not object to the code being recognised.

Q2.6: If you do not think the FCA should recognise the UK Money Markets Code please explain why.

We do not object to the code being recognised.

If you have any further questions or would welcome further discussion on any the points we illustrate in this letter, please do not hesitate to contact me.

Yours sincerely,

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