
Consultation Response

CP21/27: FCA Quarterly Consultation Paper No. 33

4 October 2021

About Us

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.

UK Finance represents more than 250 of the leading firms providing finance, banking, markets and payments related services in or from the UK. UK Finance was created by combining most of the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association. Our members are large and small, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. Our members' customers are individuals, corporates, charities, clubs, associations and government bodies, served domestically and cross-border. These customers access a wide range of financial and advisory products and services, essential to their day-to-day activities. The interests of our members' customers are at the heart of our work.

On behalf of our members, the Associations are pleased to respond to the FCA's quarterly consultation. Of the proposed changes to various parts of the Handbook in CP21/27, our Members consider the removal of Authorisation forms, of great interest, a crucial issue requiring industry response.

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

Executive Summary

The content of Authorisation forms (which allow firms and individuals to apply to the FCA for regulatory transactions and/or to provide notification) is either prescribed in legislation and set out in specific rules or under a Direction set out in guidance.

A subset of the forms are found in the Handbook and "include all Authorisation forms made by rules and some that are made through Direction."

We understand that historically, the FCA has consulted on changes to all Authorisation forms within the Handbook; and received minimal feedback and that the consultation process can take a significant amount of time and resource. Our members recognise the merit that the removing the referenced forms from the Handbook offers the FCA an opportunity to quickly adapt data, issue guidance and act proactively.

However, our Members propose that the FCA weighs the merits of this approach against the drawbacks. Effecting such changes without consultation in future, leads to a lack of transparency with the industry, as

firms and individuals are not aware of the rationale behind changes which underpin the FCA application process. Furthermore, members very much appreciate being able to access the relevant forms in the Handbook, as a trusted source of the latest applicable version. We appreciate that this objective could be achieved by having a dedicated 'SMCR form' section of the FCA's website but our members are nervous that this would not be promptly updated with the latest applicable version.

Furthermore, these proposed changes will impact a wide range of stakeholders including, applicants seeking:

- to apply to cancel
- to apply for a variation of permission
- to apply for a waiver
- to apply for approved persons
- to apply for a publication, radio broadcast or newspaper certificate

We acknowledge there are some benefits that may arise from the proposed removal, however it may lead to some inefficiency for firms, particularly their confidence in being able to access the most up to date version of individual forms.

We support FCA's core principles of transparency (including providing clear information and guidance), providing firms with simple and straightforward ways to engage with the FCA, accountability and consistency; we are yet to be convinced that the proposal in Chapter 3 of the CP, reinforce these principles.

Our responses to the questions in Chapter 3 of the Consultation paper are summarised below.

Questions

Q3.1: Do you have any comments on the proposal to remove the consultation process for amending forms made by Direction?

Our Members welcome the FCA's aim to simplify and remove the need to consult on consequential, immaterial changes or errors. However, our Members believe that it is vital that the consultation process remains in place for more consequential changes for the following reasons:

- It is important that firms have an opportunity to respond to suggested proposals and suggest alternative solutions which may be more effective from the users' perspective. While some previous consultations on minor changes may have received little feedback, as stated in the CP, it does not follow that future changes, with potentially more significant impact, do not merit consultation.
- Some Members consider the consultation process an awareness raising exercise which offers firms the opportunity to prepare and implement requisite changes in their internal processes.
- Members are concerned about how they will be notified about such changes and how they will be able to keep track with these changes, for example, it will be inappropriate if firms find out about a change only at the time of submitting an application on "Connect."
- Members are also concerned that significant changes may be made without a consultation, even though these could impose significant burdens on firms. For example, DP21/2 discussed using the SMF application process to collect data on the diversity of candidates. Under these proposals, such a data capture exercise could include the updating of forms (e.g. Long Form A, Short Form A, Form E, Form I etc), without consultation; this could impose new burdens on firms and give rise to complex issues of collecting and handling such data.
- While the consultation paper states there is no cost implication of these proposals, they appear to pave the way for future changes which *do* have cost implications and could potentially be made without consultation or cost-benefit analysis.

Q3.2: Do you have any comments on the proposal to move forms made by Direction from the Handbook?

Members find it very useful that the forms are available in the FCA Handbook and in a pdf format. Members are concerned that it could be difficult to locate the correct forms if these are placed outside of the Handbook. Whilst our members understand that some of the forms are available electronically on “Connect,” these are not easily downloadable as one document. This can be particularly challenging as firms use these pdf templates as part of their governance and internal approval processes, for example for information gathering or for a sign off by a relevant Senior Manager. Members are concerned that once these forms are out of the Handbook, there is a risk they will not be maintained and/or it may be difficult to establish and locate the latest version. For example, the current “[Long Form A](#)” template references the need to review a set of Notes when completing the form, but the link to these Notes does not work and it is not clear where on the FCA or PRA website, the latest version of the notes can be obtained. This underscores Members’ concerns that any forms removed from the Handbook may not be effectively maintained or easy to locate.

We would also note here that firms often encounter issues in being able to make the necessary applications in a timely manner through the Connect system. This reinforces the need to have a robust set of forms available to make submissions outside of Connect when required. We consider that this is best achieved by retaining the forms in the Handbook.

Q3.3: Do you have any views on whether Authorisation forms made through rules should not be consulted on in the future and moved from the Handbook?

For the same reasons mentioned under response Q3.1, we believe the consultation process should remain in place. As mentioned above, firms are using the pdf forms as part of their internal processes (preparation of relevant information) and find using these forms useful. Firms are also concerned about the potential for significant and costly changes to the information required in the submission of a form without a consultation or cost benefit analysis.

Firms find it very valuable that these are located in the Handbook as it helps with ease of reference in support of internal governance processes.

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