

Consumer Investments Advice Policy
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp24-24@fca.org.uk

28 February 2025

Dear Consumer Investments Advice Policy,

RE: CP24/24 The MiFID Organisation Regulation – Chapter 3

The British Private Equity and Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. We represent the vast majority of all UK-based private capital firms, as well as their professional advisers and a large base of UK and global investors. In 2023, a total of £59.6bn was raised by UK-managed funds to be invested globally, with £20.1bn having been invested by private capital into UK businesses in sectors across the UK economy. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Approximately 58% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We welcome the opportunity to provide feedback on this consultation paper.

We note the stated intention to restate the firm-facing obligations in the MiFID Org Reg into the FCA Handbook with no policy changes and to maintain the current scope of application of the MiFID rules.

We will respond separately to the discussion questions in Chapter 4 with our recommendations to reform UK MiFID to better suit the range of UK authorised firms and clients they provide services to, and to enhance proportionality, the international competitiveness of the regulatory regime for UK financial services and promote growth.

We have only responded to the questions on which BVCA members have specific views.

Question 1: Do you agree with our approach to restating obligations from the MiFID Org Reg into our Handbook?

Agree. We support the FCA's proposal to restate the MiFID Org Reg in the Handbook without policy changes while maintaining the current scope. This approach ensures continuity and clarity for firms, minimising disruption caused by this transition.

However, the CP24/24 derivation and changes table in Annex 4 does not address several articles, including but not limited to Articles 18 to 20. To ensure comprehensive coverage and prevent any regulatory gaps, the FCA should confirm that the outstanding articles will be appropriately addressed by HM Treasury through the statutory instrument.

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.

Question 3: Do you agree with our proposed changes to SYSC?

We agree with the overall aim to preserve the effect of the current framework with no changes to policy or scope as part of this transposition exercise. However, we would like to draw your attention to the following issues that we have identified in the draft Handbook text:

FCA rule	Issue	Comments
Glossary Definition of 'Remuneration'	The amendment to the existing Glossary definition references SYSC 19F.1.4AR, which does not exist and is not being added as part of this transposition exercise.	This reference should be reviewed and corrected to ensure accuracy.
SYSC 7.1.7R	The restatement of Article 23(2) (second paragraph) in the Handbook states that firms must have risk management policies and procedures in place that satisfy specified rule requirements and “are consistently effective.”	The phrase “are consistently effective” should be reviewed for clarity and alignment with the stated intent to make no changes to policy or scope as part of this exercise.
SYSC 8.1.6-AR	The restatement of Article 31(1) includes additional wording that extends the scope to “any relevant services and activities.”	Clarification is needed on whether this expansion aligns with the stated intent to make no changes to policy or scope as part of this exercise.
SYSC 8.1.8R(9)	The requirement for access to the premises of the service provider does not include the phrase “where necessary for the purpose of effective oversight in accordance with this article,” as stated in MiFID Org Reg Article 31(2)(i).	Consider reinstating the original wording to maintain alignment with MiFID Org Reg requirements.
SYSC 8.1.10R	Incorrect cross-reference to SYSC 8.1.11-AR – should be to SYSC 8.1.11-CR.	Correction needed to ensure accurate cross-referencing.
SYSC 9.1.1BR(1)	Reference made to SYSC 10.1.6-AR, which does not exist and is not included in this transposition exercise.	Review and amend reference to align with the applicable rules.
SYSC 9.1.2-AR(4)	Incorrect transposition of MiFID Org Reg Article 72(1)(d); the text should read "IT systems or any other efficient technology exploitation."	Amend wording to ensure correct transposition.
SYSC 10.1.-2G(2)	Application table references SYSC 10.1.-4R and SYSC 10.1.-3R, which apply to insurance distribution; should reference SYSC 10.1.-2R.	Update references for accuracy.

SYSC 10.1.11R(2)(b)	For common platform firms, procedures and measures must include listed items "where appropriate" rather than "where necessary," per MiFID Org Reg Article 34(3).	Review whether this change alters the regulatory expectations.
MIFIDPRU 7.1.3	Table refers to changes in SYSC. SYSC 7.1.6R has changed the reference to "investment services and activities" in the MiFID Org Regulation Article 23(2) to "designated investment business", which is wider.	Clarification is needed on whether this expansion aligns with the stated intent to make no changes to policy or scope as part of this exercise.

Question 4: Do you agree with our proposed changes to COBS?

We agree with the overall aim to preserve the effect of the current framework with no changes to policy or scope as part of this transposition exercise. However, we would like to draw your attention to the following issues that we have identified in the draft Handbook text:

FCA rule	Issue	Comments
GEN 1.2.4	Previous guidance has become a rule and firms "must comply with COBS 4.5A.6R" rather than "have regard to the requirement in article 44(8) of the MiFID Org Regulation which is reproduced at COBS 4.5A.16UK"	In practice, firms would have had to comply with the MiFID Org Regulation requirement even though GEN 1.2.4 framed it as guidance.
COBS 6 Annex 7 UK	Reference to "product suppliers" (which is not defined) will be changed to "product providers". The term "product providers" has a specific meaning in the FCA Handbook that is narrower than the term "product suppliers", as follows: "a firm which is (i) a long-term insurer; (ii) a friendly society, (iii) the operator of a regulated collective investment scheme or an investment trust savings scheme; or (iv) the operator of a personal pension scheme or stakeholder pension scheme".	We suggest either that the term "product suppliers" is reinstated, or that the term "product providers" is replaced with "issuers or providers of the financial instrument".
COBS 6.2B.9R(2)(a)	Typo – "their" has been replaced by "its" but has not been struck out.	Minor drafting correction.
COBS 11A.1.7(1)	The specific UK MiFID inducement rules have been replaced with a broad reference to "the relevant applicable requirements in COBS 2.3A and COBS 6.2B.11."	To avoid uncertainty, existing references to specific UK MiFID inducement rules should be retained throughout COBS.

COBS 16A.3.1(6)(m)	The requirement applies where the firm "acted as principal in executing the transaction" instead of "dealing on own account."	This alters the scope; consider reinstating the original terminology for clarity. Alternatively, the FCA should confirm that "HSD changes only" do not impact the scope / application of the relevant rule.
COBS 16A.4.1(1)	The requirement in Article 60(1) has been slightly amended at COBS 16A.4.1 so that a firm providing a portfolio management service [...] must provide the client with a "periodic statement of the activities carried out on behalf of that client".	The requirement for a periodic statement should specify that it covers "portfolio management activities carried out on behalf of the client." Clarification needed to avoid potential misinterpretation.
New definitions	It is unclear from the mark-up if additional defined terms will be introduced that are not listed in Annex A – for example, see references to "issuer client" in COBS 11A.1.8(2).	For good order, the FCA should confirm the only new defined terms are those set out Appendix 1, Annex A of CP24/24.

Question 5: Do you agree with our proposed changes to MAR?

We agree with the overall aim to preserve the effect of the current framework with no changes to policy or scope as part of this transposition exercise. However, we would like to draw your attention to the following issues that we have identified in the draft Handbook text:

FCA Rule	Issue	Comments
MAR 5.6.1R and MAR 5A.8.1R	The definition of 'related financial instrument' has been imported from Article 37(2) of MiFID Org Reg but was not previously referenced in key FCA Handbook sourcebooks.	Ensure appropriate references are made or consider including a new glossary definition.
MAR 5.6.4G and MAR 5A.8.2G	These provisions derive from Recitals 6 and 10 of Commission Delegated Regulation (EU) 2016/522 rather than MiFID Org Reg.	Review whether this aligns with the FCA's stated intent to make no changes to policy or scope as part of this exercise.
MAR 1 Annex 3R	The table update refers to MAR 5.3A and MAR 5.5A instead of MiFID Org Reg provisions, which relate to different regulatory concepts.	This could be a material issue for affected firms; so, we suggest this is reviewed for alignment.

Question 6: Do you agree with our proposed changes to REC?

We agree with the overall aim to preserve the effect of the current framework with no changes to policy or scope as part of this transposition exercise. However, we would like to draw your attention to the following issues that we have identified in the draft Handbook text:

FCA rule	Issue	Comments
REC sourcebook amendments	Articles 80-82 of MiFID Org Reg are proposed to be restated under the REC sourcebook. This may expand the application of these provisions to a wider range of market operators.	We suggest the FCA assess potential impact of this change on all types of market operators under the REC.

Question 7: Do you agree with our proposals to change DISP?

We agree with the overall aim to preserve the effect of the current framework with no changes to policy or scope as part of this transposition exercise. However, we would like to draw your attention to the following issues that we have identified in the draft Handbook text:

FCA rule	Issue	Comments
DISP 1.1A.19G	Reference to Recital 38 removed without restating them in the amendments.	While not necessarily problematic, flagging for completeness.
DISP 2.3.1BG	Reference to Recital 15 removed without restating them in the amendments.	While not necessarily problematic, flagging for completeness.

Questions 10 to 14

Please see our responses to Questions 1 to 7.

Question 15: Do you agree with our decision not to include a CBA in this consultation paper?

Agree, providing the FCA addresses the issues identified above. These should be reviewed for clarity and to ensure alignment with the stated policy intent to make no changes to policy or scope as part of this transposition exercise.

Yours faithfully,



Tim Lewis
Chair, BVCA Regulatory Committee