

Rule review framework

UK Finance response to consultation from Financial Conduct Authority

15 September 2023

Introduction and executive summary

1. UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms, we act to enhance competitiveness, support customers and facilitate innovation. We welcome the opportunity to respond to the Financial Conduct Authority's (FCA) consultation on its approach to reviewing its rules.¹
2. We strongly support the requirement under the new Financial Services and Markets Act (FSMA) 2023 for the FCA and PRA to publish statements of policy on how they review their rules. As we argued throughout HM Treasury's future regulatory framework (FRF) review, it is right that the regulators assess whether an intervention has had the impact (including the costs and benefits arising) that they expected it to have at the time that it was introduced, and whether it is contributing to the advancement of their statutory objectives.
3. Such a reappraisal of the evidence provides the opportunity to revise a rule (or a set of rules) if the regulator concludes that it is not having its intended effect. This helps to ensure that regulation achieves its aims – namely protecting consumers and ensuring financial stability – in as efficient a way as possible, minimising unnecessary costs and frictions that could dampen economic growth and the UK's global competitiveness or stifle competition. Moreover, emergent issues and risks can often be addressed by modifying existing rules, rather than the introduction of entirely new regulatory regimes. A proactive approach to reviewing rules should help to promote this mode of thinking. It will also encourage the regulators to ensure that their rules are clear and easily understandable for regulated firms.
4. Overall, we welcome and support the FCA's proposed framework as a serious – if incomplete – approach to rule reviews that will further enhance the UK's international reputation for sound regulation. This response sets out the most important features of a rule review framework for UK Finance and our members, and proposes some changes that we think would make the framework even more effective.
5. We set out below the features we believe are necessary for the rule review framework to deliver the best possible results in the interests of firms, their customers and wider society. We believe these points are valid for both the FCA's and PRA's approaches to rule review, given the similarity of the institutions and their statutory roles in setting binding requirements of firms. Although the two draft frameworks are broadly aligned, there are key differences, such as in the methodologies employed. We would strongly urge both regulators to coordinate closely as they finalise their respective approaches and to harmonise them to the greatest possible extent (recognising operational differences), so

¹ <https://www.fca.org.uk/publications/corporate-documents/our-rule-review-framework>

industry has certainty that both prudential and conduct regulation will be reviewed and updated according to the same approach.

Transparency

6. We think it is vital that every stage of a rule review be conducted transparently. This is necessary for regulatory predictability, as those affected by rules should be kept informed about potential changes to them, and for regulatory accountability, as it would open the regulator's decisions with regard to rule review to healthy challenge, including by Parliament. In particular, we believe transparency is necessary in:
 - a. **Monitoring rules for the potential need to review.** We think the FCA should provide regular updates on rules that they are monitoring closely and considering reviewing. This could take the form of an annual or biannual 'dashboard' list of rules (or a set of rules) that the regulator is monitoring closely for a potential need for review, along with the reasons for doing so (e.g. emerging evidence that they are not functioning as intended). This information would be especially useful to those scrutinising the regulator, such as Parliament's Treasury Select Committee, and to stakeholders that might have evidence to contribute regarding the effectiveness of a rule. When introducing a new rule, the FCA should already set out a timeline for when it will assess the need to review it.
 - b. **Deciding whether to review.** The outcome of a decision to undertake (or not) a review of a rule should be set out publicly, along with the rationale. Once decided on, reviews should be included in the Regulatory Initiatives Grid, along with indicative timelines. The certainty this would provide – including when the decision reached is to *not* undertake a review – would be greatly valued by stakeholders. Where applicable, the regulator should also set out why certain rules have been prioritised for review over others where the rules share similar objectives. Here too, transparency would allow for a fair degree of scrutiny and challenge of consequential decisions.
 - c. **Conducting the review.** Once a decision to undertake a rule review has been initiated, the regulator should set out the issues being considered as part of the review, the methodologies it will employ and the evidence it will examine, as well as the timeline for conducting the review.
 - d. **Communicating the outcomes of the review.** Once a review has been completed, its outcome should always be published. This should include the findings of the review and the rationale for any proposed action (including maintaining the status quo). Here too, making these public will aid scrutiny and regulatory predictability. As the consultation recognises, this would be in addition to – not a substitute for – the normal practice of consulting on any proposed rule changes. The regulator should also provide an annual summary of the number of reviews it has conducted each year, along with the associated outcomes.

An active role for stakeholders

7. We welcome the FCA's recognition of the importance of stakeholder engagement throughout the rule review process. We think stakeholders should have a particularly important role in informing decisions to undertake a review. As those directly subject to rules, regulated firms have particularly valuable insights into their effectiveness, their actual costs and benefits, and any unintended consequences. It should be noted that

stakeholders may not always have quantitative data available to evidence, and we would encourage the regulators to give due weight to qualitative inputs and insights provided by practitioners.

8. We support and agree with the various channels for engaging with stakeholders listed in the consultation, including a dedicated inbox (as proposed by the PRA) and an interactive online rulebook (as proposed by the FCA). However, as we argued throughout the FRF consultations,² we believe there should be a more formal mechanism for making a representation to the regulator about the need for a review of a particular rule (or set of rules), to ensure stakeholders' views are given due weight. We suggest this mechanism should be available to representative bodies (such as trade associations and consumer bodies), which could make representations to the regulator about the need for a rule review, with supporting evidence. The regulator would be required to respond to such representations, setting out its assessment of the case for a review.
9. Similarly, we strongly encourage the FCA to establish industry engagement groups to facilitate quarterly roundtable-style discussions between the regulator and industry participants of rules throughout the policy lifecycle. These groups would:
 - a. add an additional feedback mechanism for the FCA to test and receive feedback on the suitability of prospective rules and policies through the initiation and development phases; and
 - b. support the implementation and evaluation stages of the cycle by providing the FCA with insight into rules that are not delivering the intended outcome, are creating unintended consequences and/or are not being applied consistently across firms. This information could help to inform the regulator's decisions around whether to make changes to the rules or otherwise offer clarification through supervisory statements, guidance or similar instruments. It would also reduce interpretation risk and aid consistent industry implementation.
10. It is essential that the FCA be transparent about the rules that it receives the most representations about through the various available channels, as well as any recurring or frequently raised themes. This information could be included as part of the 'dashboard' of monitored rules proposed above.

Competitiveness and growth

11. We strongly recommend the FCA reviews its rulebook in light of its new secondary growth and competitiveness objective, as assigned by FSMA 2023.
12. We recognise that resource constraints mean that not all rules can be reviewed immediately, and we broadly agree with the criteria for prioritisation proposed in the consultation. However, we believe special priority should be given to reviewing rules that may – in their current form – not be entirely compatible with the new secondary objective. The vast majority of the FCA's rules were set before the regulator was assigned the new objective, and it is likely that some would have been designed differently had the impact

²<https://www.ukfinance.org.uk/system/files/UK%20Finance%20response%20to%20FRF%20consultation%20on%20proposals%20for%20Oreform.pdf>

on growth and competitiveness been more important to their decision making at the time of their introduction.

13. We recognise and entirely agree that regulatory rules exist, above all, to advance the regulator's primary objectives. However, we think it is right to explore opportunities to modify rules or regulatory regimes so that they can better support growth and competitiveness while continuing to advance the FCA's primary objectives. This would be consistent with the commendable approach taken to date in the exercise of replacing retained EU law with rules better adapted to the UK's needs and the specificities of its markets.
14. Similarly, we believe that the FCA should pay particular attention to the compatibility of its rules with its existing secondary objective to promote effective competition, as competitive markets are often the best way to ensure good outcomes for customers. Rules which raise undue barriers to entry or to open competition can cause more harm than the original issue they were introduced to address.
15. As an overall comment, we would caution against being overly focused on a "rule-by-rule" approach to reviewing the suitability of existing regulation. Just as important is the overall coherence of the rules (be they set by the PRA, FCA, Bank of England, or another body) that a firm is subject to, with myriad thresholds. In reviewing its rules, we recommend that the FCA consider this broader context and how the rules under review interact with wider regulatory requirements, with a view to improving the overall coherence of the regulatory framework.
16. If you have any questions relating to this response, please contact Matthew Young, Principal, Strategic Policy, at matthew.young@ukfinance.org.uk.

Consultation questions

Q.1 Do you agree with the approach to monitoring and reviews set out in our draft Rule Review Framework?

17. Notwithstanding the suggestions for improvement set out in the introduction, we broadly agree with the proposed approach to monitoring and reviews set out in the draft Rule Review Framework.

Q.2 What do you like about the approach?

18. We particularly welcome the FCA's commitment to identify lead indicators to understand whether new interventions are achieving their intended outcomes. This will greatly facilitate monitoring rules and provide an evidence base should the need for a review arise. We would urge the FCA to take this approach for all new binding interventions. Nonetheless, fielding requests for information (for instance, to inform this monitoring) can be resource-intensive for firms, so we urge the FCA to be economical in its requests of firms, and to use existing information (whether gleaned from previous RFIs or by a sister regulator) whenever possible.
19. We also support the FCA's plans to make its handbook more interactive, allowing firms to provide feedback on a rule directly in the online portal.

20. We welcome the FCA's commitment to keeping its handbook under review for rules that may, over time, become obsolete following the introduction of the Consumer Duty.

Q.3 What do you think could be improved?

21. As set out in the introduction, we believe the proposed framework would benefit from greater transparency at every stage of the rule review process, a more formal mechanism for stakeholders to make representations about a rule, and a greater focus on opportunities to adapt existing rules to better deliver the FCA's new secondary growth and competitiveness objective while continuing to advance the FCA's primary objectives.

22. We recommend that the FCA expand the scope of its framework to also apply to its guidance. As we have argued previously, FCA guidance is, in practice, often treated as binding by firms. Moreover, with the introduction of the outcomes-based Consumer Duty, the FCA expects to rely increasingly on guidance over detailed rules. We therefore think it is important that guidance be reviewed with the same rigour as formal regulatory rules. Moreover, This would also align the FCA's approach with that proposed with the PRA.

23. In addition, it would be beneficial for the FCA to expand its data sources to include the metrics (where relevant) it will soon begin publishing in relation to its new secondary growth and competitiveness objective, to help detect where rules may be contributing to sub-optimal outcomes in this respect. This should help to foster a proportionate regulatory framework that reduces overall costs and operational burdens.

24. Where possible, the approach to rule reviews and work to repeal and replace retained EU law should be aligned.

25. The PRA and FCA should seek to align their rule review plans in areas of joint/common focus, such as governance.

Q.4 We would like to have effective ways for stakeholders to feedback to us on whether our rules are working as intended. Would you use an existing channel to feedback to us on how our rules are working in practice?

26. We welcome the emphasis on stakeholder feedback in the framework and see this as an essential component of evaluating whether rules are achieving their desired outcomes, and/or giving rise to any unintended consequences that otherwise may be difficult to identify.

27. We see value in the channels for stakeholders to provide feedback identified in the draft framework. However, as stated in our introduction, we believe a more formal mechanism should be established to allow stakeholders to make representations to the FCA about the need for a review.