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The FCA Discusses the Future Framework of Asset Management Regulation



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Under the Future Regulatory Framework (the legislative structure for a post-Brexit UK regulatory system proposed under the Financial Services and Markets Bill currently before Parliament) the UK's Financial Conduct Authority ("FCA") is going to become responsible for retained European laws that set requirements for firms. In a Discussion Paper on "*Updating and improving the UK regime for asset management*" ("DP23/2") it is taking the opportunity to discuss and eventually consult on modernisations and revisions to the regulatory framework around the asset management industry, in particular those that are necessary to recognise the substantial and rapid changes technology has brought.

DP23/2 covers a number of topics, including:

- 1. Overlapping and duplicative rules create unnecessary complexity:* within the asset management sector, differing rules apply to authorised funds, managers and depositories of authorised funds and non-authorised funds and portfolio managers and derive from a number of pieces of legislation. In areas covered by core conduct rules, including organisational requirements, conflicts and outsourcing, this has led to duplication and differences of both substance and those that are technical in nature. While pulling back from suggesting a single rule book for all asset management, DP23/2 asks for opinions on the merit of a common framework of rules that sets standards for all types of asset manager.
- 2. Improving the regulatory regime to deliver good outcomes for retail and professional investors:* ideas here include strengthening rules around dilution adjustments and other anti-dilution mechanisms, and making sure liquidity risk is effectively managed. Investment due diligence, including credit assessment, is a priority, and current practice is reported as inconsistent. DP23/2, therefore, asks whether the FCA should set out regulatory

expectations around due diligence for all types of asset management activity and give clearer standards to back up those expectations.

3. *Clarifying rules for depositaries*: particularly around intervention on and challenge to managers and achieving effective outcomes when discharging oversight obligations.
4. *Technology and innovation*: proposals include working towards rule changes to establish the Investment Association's "Direct2Fund" product that enables investors to transact directly with a fund when buying and selling units. Also under discussion is fund tokenisation, which the FCA understands as meaning the ability to issue participations in funds to investors as digital tokens.

This is a broad, structure-focused discussion paper, but it does tally with the post-Brexit regulatory drivers of rationalisation, simplification and keeping pace with market and technological innovations.

Comments are due by 22 May 2023.
