

AMI Response to the FCA's Draft Rule Review Framework Survey

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

Yes/No

2. What do you like about the approach?

AMI understands this initiative is driven by a FSMA amendment requiring the FCA to keep its rules under review. It is positive therefore to see the FCA is taking this opportunity to not only make existing rule review processes more transparent, but is also extending the framework and seeking industry feedback on how the framework can be improved.

A key concern for AMI as a trade body is the cumulative impact of regulatory initiatives and the additive nature of regulation, such that the regulatory workload and costs for compliant firms only grow over time.

This is coupled with a sense within industry that underenforcement allows 'rogue' or otherwise non-compliant firms to operate without censure, giving them the freedom to trade without the burden of due process. This concern was reinforced by reports of three recent decisions against the FCA by the Upper Tribunal to overturn enforcement action against regulated individuals/firms previously determined not to be meeting FCA standards.

We appreciate that this survey is focussed on industry views in response to the draft Rule Review Framework, and that our wider concerns around the growing scale and complexity of regulatory obligations (and a perceived lack of enforcement of existing rules) are beyond the remit of the recipients of this survey to address.

However, we are providing this generalised feedback as we feel it adds useful context to our responses, especially since a large part of this survey is about soliciting views on how the FCA can open up new lines of communication with firms in respect of what is and isn't working in the handbook.

Furthermore, the Future Regulatory Framework (FRF) has many moving and interlocking parts (as was so helpfully demonstrated by the FCA at a recent roundtable on the transfer of Retained EU Law [REUL] into the FCA handbook), so it makes sense for us to refer to some of these wider aspects where relevant.

To provide a more direct response to the question at hand, our views on specific aspects we like about the draft Rule Review Framework are detailed below.

We are supportive of the intention to monitor all future rules (once the new framework is live) systematically from outset, unless there is a strong reason not to. This presumably will allow regulated firms and their representative bodies to not only see the intended 'success metrics' and monitoring strategy for a given intervention at consultation stage, but challenge and provide feedback on them before the policy is implemented.

It is also positive to see that a process has been mapped out for when ongoing monitoring suggests an intervention is not working or creating negative unforeseen consequences – up to and including revocation of the rule(s) in question.

As mentioned earlier, the direction of travel in regulatory rulemaking usually tends towards expansion of the handbook and supporting guidance. Even when a rule or policy initiative is found not to be delivering on its intended outcome, the solution is typically to create more rules that supersede the ‘underperforming’ ones (the overlay of Consumer Duty on top of TCF is arguably an example), rather than to reform or replace – or strengthen the enforcement of – rules that underdeliver.

If this approach continues, there is a risk the handbook will eventually become too large and unwieldy for firms to navigate (if this is not the case already) – particularly smaller firms and new entrants to market. Already the FCA handbook is set to expand considerably as work to incorporate and transpose REUL into it is carried out.

Therefore, we would welcome any additional processes that allow for the streamlining and (where appropriate) revocation of rules that are no longer serving their intended purpose. The REUL transfer strategy follows a good set of principles in this regard, with a preference for preserving outcomes over prescriptive processes – we would welcome this approach being extended to the handbook at large.

As the draft Rule Review Framework suggests, now that Consumer Duty is in force, this may also present an opportunity to revisit some of the more prescriptive handbook rules to see if they have been rendered obsolete, and are therefore candidates for revocation.

We support the introduction of Evidence Assessments for interventions not considered large-scale or impactful enough to qualify for a Post-Implementation Review or Impact Assessment. This will help to ensure some of the processes in place for the monitoring of new rules can also be applied to existing ones.

We also believe this should include a review of fees and levies connected to a specific policy intervention. For example, the FCA’s Appointed Representatives (AR) regime work introduced a new levy paid by principal firms for each of their ARs which is used by the FCA to fund its work in this area. We would expect the FCA to review whether, now the AR regime rule changes are embedded, the levy could be reduced to reflect ‘BAU’ FCA activity.

3. What do you think could be improved?

For new rules – whilst we welcome a more systematic approach to data gathering, we would ask that consideration is given to the nature and proportionality of monitoring (which the draft framework itself acknowledges), as various forms of ‘stakeholder feedback’ are high on the list of ‘Data sources for key metrics’ given as examples of the evidence the FCA will rely on for monitoring purposes.

We are mindful of recent reports from firms of ad hoc data requests that require detailed insight that is time-consuming to gather and input. These may assist the FCA in policy development and monitoring, but can place considerable burden on firms already grappling with significant compliance overhead, and we would request they are used sparingly.

Where they are required, we feel there is a need for the FCA to improve its internal communication of such data requests to allow divisions/teams to understand where there is potential overlap in terms of content or timescales. It is important for the FCA to be mindful of human resources within firms; where data requests overlap this can place unreasonable pressure on certain departments or individuals within a firm.

Connected to this, in our response to the Regulatory Initiatives Grid survey we have requested that any upcoming regulatory returns, surveys and data requests are included in the Regulatory Initiatives grid or an addendum (organised by sector) to assist firms with resource planning and ensure the

sequencing of regulatory initiatives is reasonable and proportionate. We would be grateful to see evidence that teams working on the Rule Review Framework and the Regulatory Initiatives Grid are communicating well and their workstreams are well-integrated.

For existing rules – it is understandable that such systematic monitoring cannot be done retrospectively if the required insight hasn't been gathered prior to and post implementation. We would still however appreciate the opportunity to see and feed back on how the success or failure of certain interventions is going to be measured in the future – Consumer Duty being a key example.

The promise of a move to principles-based regulation was that it would allow the FCA to identify and root out harm at an earlier stage, therefore reducing the need for further policy interventions to correct bad practices and ensure markets function well. We therefore feel that one 'success metric' for Consumer Duty should be its impact on the rate of growth of the FCA handbook and accompanying guidance materials (excluding the incorporation of REUL, which already sits in the background so doesn't constitute 'new' policy).

Even better would be a general principle that says the handbook should remain broadly static in size. That is not to say it shouldn't evolve or move with the times, but under this principle there would need to be more robust mechanisms in place for identifying and removing obsolete or ineffective rules to sit alongside the processes already established for introducing new rules.

We are also concerned that the threshold a rule must meet to be considered important enough for Evidence Assessment is too high, as it must be considered as part of a wider policy package to qualify. The Quarterly Consultations provide a useful opportunity for the FCA to 'mop up' and seek stakeholder views on miscellaneous handbook issues, such as a lack of clarity in the wording of a rule, or contradictions between sourcebooks/frameworks that need to be resolved.

But this is rarely used to revoke rules, so currently any underperforming rules that do not belong to a significant policy package – but that still create unnecessary burdens for firms – are liable to remain in the handbook indefinitely, unless new processes are introduced to allow for the scrutiny and removal of such rules.

4. We would like to have effective ways for stakeholders to feedback to us on whether our rules are working as intended.

We already have different ways to collect stakeholder feedback, for example: our engagement with firms, trade associations, consumer groups and our Consumer Network, and our supervisory contact with those we regulate.

Would you use an existing channel to feedback to us on how our rules are working in practice?

Yes/No

4a. If yes, which channel(s) would you use?

AMI has good named points of contact within the FCA for feeding back and escalating issues of relevance to our members. This is an especially effective channel for reporting specific issues and ensuring they are passed onto the relevant teams. Where there could be improvement is in communication across teams, so that known issues do not stay within silos.

For example, a key issue we have worked hard to resolve in the last 12 months is a number of firms erroneously receiving requests to complete the REP-CRIM and FIN074 regulatory returns via RegData. Whilst we were able to escalate the issue via our usual points of contact, the confusion was compounded by conflicting information given by the Supervision Hub, both within the Hub itself and between Hub communications and messages we were receiving from other sources. It now appears the issue is close to being resolved, though it has taken considerable time and resource both for AMI and affected firms to get to this point.

The delays also created a lot of anxiety for affected firms, as if it transpired they were in scope after all (despite the Economic Crime Levy [ECL] consultation indicating otherwise), the ECL that would follow on the back of these returns could have added a liability in the region of £10,000 to £36,000 to firms' invoices. There were also mixed messages around whether firms would incur fines for non-completion by the due date whilst they were waiting for confirmation as to whether they were in scope or not.

Whilst we are hugely grateful to individuals at the FCA who undertook a complex mapping exercise between FSMA and the Money Laundering Regulations (which is what drives the FIN074 and REPCRIM returns), better communication between the Supervision Hub and teams directly involved in the administration of REP-CRIM, FIN074 and the ECL could have smoothed the process for all involved. It is also concerning to see the Supervision Hub issuing inconsistent information to firms instead of agreeing on a unified response with the relevant internal teams when dealing with a recurring/ongoing issue.

More broadly, we agree the FCA panel members should be viewed as an important feedback channel, given many are directly involved in regulated businesses and therefore can provide insight into how rules are working in a live environment.

We also welcome the idea to include feedback options within the handbook itself for individual rules – this would provide us with a more targeted way of raising issues and add a new avenue for us to go down when raising concerns.

However, it remains the case that there are few opportunities to give holistic feedback – typically we are invited to comment on rules, proposed rules and specific issues in isolation. So, if the FCA were to provide more designated spaces for these 'big picture' conversations to occur, this may reduce the need for us to share generalised feedback in policy-specific consultations and surveys.

It would be especially helpful if 'general' feedback channels allowed segmentation by firm type/FCA portfolio, to provide the FCA with insight into the regulatory challenges faced by specific sectors and the firms within them. This insight could help inform the content of Dear CEO letters, and give an end user's perspective on the cumulative impact of regulation on different firms.

5. Would you use the following new options to feed back to us on how our rules are working in practice?

Select all that apply

- A feedback option embedded in our Handbook, so you can feedback on specific rules
- A feedback option on our website for feedback on any rule
- Neither

- Other suggestion – See our response to question 4.

6. Do you have any other comments or feedback on the draft Rule Review Framework?

Our closing comments are not central to the Rule Review Framework but tie in with some of our wider concerns and observations around the FRF/Smarter Regulatory Framework programme and FCA policymaking process in general.

Firstly, we were pleased to learn of the establishment of a new Cost Benefit Analysis (CBA) panel to ensure there is consistency and robustness in this part of the consultation process. We have previously noticed that CBAs are not always included (or at least not always reported) in some consultations – an issue we hope the new panel will be able to challenge and address.

We would also like to see more strategic use of the Regulatory Initiatives Grid in CBAs, so that the impact of an intervention is weighed alongside the other interventions and initiatives firms are concurrently having to implement/respond to.

Finally, given the ongoing work to transfer REUL into the FCA handbook and the number of regulatory initiatives in the pipeline, we would support the implementation of a filtering tool for firms when interacting with the handbook. It would be incredibly helpful if firms were able to select their permissions and view an abridged version of the handbook highlighting only the sourcebooks and rules specifically relevant to them.

We appreciate this would be a complex undertaking, but the idea was raised at the FCA's latest roundtable discussion on the transfer of REUL, and it is one we would strongly support.