

UK Consumer Duty

On 16 January, ICMA [responded](#) to the FCA's [Quarterly Consultation No. 38 \(CP22/26\)](#) regarding a proposed amendment to the scope provisions of the new Consumer Duty (which will apply to new products from the end of July).

ICMA had previously found that the scope of the duty set out in FCA's final [Policy Statement \(PS22/9\)](#) was much improved compared to the initial proposals set out in FCA's prior [Consultation Paper \(CP21/36\)](#) that ICMA had [responded](#) to in January 2022 (as reported in the [Second Quarter 2022 edition](#) of this Quarterly Report) – in terms of clear exclusions for:

- institutional bond activity, pursuant to the “non-retail financial instrument” definition (notably in its paragraph (2) regarding a £50,000 minimum denomination) at pages 3 to 4 of PS22/9's Appendix 1; and
- listed retail bonds, pursuant to an exception to the “retail market business” definition (in its paragraph (3)) at pages 4 to 6 of PS22/9's Appendix 1.

Regarding the latest CP22/26, ICMA noted FCA's wish (at pages 34-35), to clarify the Consumer Duty's application provisions where a firm is “only approving or communicating a financial promotion”. ICMA however noted the proposed guidance and formal rule amendments might be construed to undermine the two existing and clear exclusions noted above. (This also bears in mind the relatively wide nature of what constitutes a “financial promotion”.)

Then, on 30 March, the FCA adopted the [Consumer Duty \(Amendments\) Instrument 2023](#) which amends the FCA's Principles for Businesses sourcebook (PRIN) to read: “3.2.6 R (2)(b) Principle 12 and PRIN 2A do not apply to the communication or approval of a financial promotion to the extent that the financial promotion relates to an activity that is excluded from the definition of retail market business by virtue of limbs (1) to (6) of that definition.” Since the definition of retail market business also includes (at limb (2)) activities carried on in relation to non-retail financial instruments, it seems that the two existing and clear exclusions noted above will not be impacted by the other amendments relating to financial promotions. ICMA will engage with its members to confirm this.



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