

# **Brexit: Proposed changes to the Handbook and Binding Technical Standards – second consultation**

**Consultation Paper**

CP18/36\*\*\*

November 2018

## How to respond

We are asking for comments on this Consultation Paper (CP) by 21 December 2018.

You can send them to us using the form on our website at: [www.fca.org.uk/cp18-36-response-form](http://www.fca.org.uk/cp18-36-response-form)

### Or in writing to:

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### How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

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# 1 Summary

- 1.1** On 10 October 2018, we published CP18/28, our first consultation paper (CP) on proposed changes to our Handbook and to Binding Technical Standards (BTS) to take account of Brexit.<sup>1</sup>
- 1.2** The October CP explained that we were consulting on changes to our Handbook because it implements and refers to European Union (EU) legislation, and to UK legislation which relates to or refers to the EU. We must also amend certain BTS to ensure they operate appropriately when the UK has left the EU. The paper set out the first set of amendments proposed.
- 1.3** It also explained our proposed approach to non-legislative material produced by the European Supervisory Authorities (ESAs) or their predecessors, such as ESA Guidelines and Recommendations. This included us setting out draft non-Handbook guidance on our approach to such material.
- 1.4** Since then, the Government has continued to publish information regarding its approach to financial services legislation for Brexit, including draft Statutory Instruments (SIs) and policy notes. As a result, we are now able to consult on further Handbook and BTS amendments, related to those SIs and policy notes<sup>2</sup>. A list of those can be found in Annexes 3 and 4.
- 1.5** Our first CP set out the baseline approach for reviewing our Handbook and the BTS. The Treasury stated<sup>3</sup> it will work on the basis that, if there is no withdrawal agreement, the UK cannot rely on any new specific arrangements being in place between the UK and the EU. The Treasury therefore would, in general, treat the EU and its member states in the same way as it treats non-EU or third countries after exit day (the baseline approach).
- 1.6** However, the Treasury also made clear that there are instances where it will diverge from this approach where it is necessary. This is to ensure that there is a functioning regime in place on exit day to enable firms and regulators to be ready for exit, to protect the existing rights of UK consumers or to ensure financial stability. To ensure consistency across the wider legislative framework we are taking the same approach. Where relevant, this baseline approach also applies to the EEA and its members.
- 1.7** As with our first CP, departures from the baseline approach approach have been considered where:
- we judge it is needed to ensure a sound, functional regulatory regime on exit day
  - we wish to avoid significant disruption to firms, investors and/or consumers
- 1.8** Where we propose to depart from the baseline approach, we have set out our reasons. We also ask for feedback on whether there are cases where we should consider

1 [www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation](http://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation)

2 some of these SIs and policy notes may be published shortly after publication of this CP

3 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720298/HM\\_Treasury\\_s\\_approach\\_to\\_financial\\_services\\_legislation\\_under\\_the\\_European\\_Union\\_Withdrawal\\_Act.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720298/HM_Treasury_s_approach_to_financial_services_legislation_under_the_European_Union_Withdrawal_Act.pdf)



departing from the baseline approach, either on the basis set out above, or for other reasons.

**1.9** A Statutory Instrument (SI) made under the European Union (Withdrawal) Act 2018 (EUWA) is now in force<sup>4</sup> giving us, the Prudential Regulation Authority (PRA), the Bank of England and the Payment Systems Regulator (PSR) responsibility for amending EU-derived provisions in our Handbook and existing EU Binding Technical Standards (BTS) which will be incorporated into UK law by the EUWA, so that they function effectively after exit day.

**1.10** In general, we intend to use powers under this legislation to make our proposed amendments to the Handbook and BTS amendments. All changes proposed under the delegated power will be subject to approval by the Treasury before the relevant instruments are made by our Board.

**1.11** There are some exceptions within the content of this CP where we do not intend to use the power in the SI:

- The amendments proposed by the Financial Ombudsman Service that are included in our Handbook (within chapters 2, 3 and 4 of the Dispute Resolution: Complaints sourcebook, (DISP) and chapter 5 of the Fees manual). Here, the Financial Ombudsman Service will use its powers under the Financial Services and Markets Act 2000 (FSMA). This is because the Financial Ombudsman Service has not been delegated the powers mentioned in paragraph 1.9. Paragraphs 4.26 to 4.30 set out the Financial Ombudsman Service's amendments in more detail.
- The proposed provisions associated with our Temporary Permissions Regime (TPR), set out in Chapter 4. These build on the proposals set out in the dedicated TPR CP that we published on 10 October 2018. We intend to use our powers under FSMA to make these proposed provisions.
- The proposed provisions relating to the Senior Managers & Certification Regime (SM&CR) and the Approved Persons Regime (APR) in the draft instrument dealing with the SM&CR.
- In amending our Handbook guidance and issuing non-Handbook guidance, we are using our general power in section 139A FSMA (power of the FCA to give guidance).
- In making the Credit Rating Agencies (Guidance) Instrument 2018, the powers of direction, guidance and related provisions in or under the provisions of the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018 are relevant.

### **Implementation challenges**

**1.12** In our first CP,<sup>5</sup> we dealt with the implementation challenges if the UK leaves the EU without an agreement. We also explained that the Treasury had confirmed it would bring forward legislation to allow regulators to phase in changes to firms' regulatory requirements. As with our first CP, we are keen to get feedback on whether compliance with these changes to regulatory requirements at exit day would be a challenge for firms.

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4 [www.legislation.gov.uk/uksi/2018/1115/pdfs/ukxi\\_20181115\\_en.pdf](http://www.legislation.gov.uk/uksi/2018/1115/pdfs/ukxi_20181115_en.pdf)

5 Paragraphs 2.24 to 2.29

- Q1: Do you think any of the changes in this CP we propose to make, or in relevant SIs, represent a significant risk to compliance for you in time for exit day? If yes, please specify which and explain why this is the case, including projected time needed to comply with requirements were they to come into effect on exit day.**

## What we cover in this CP

**1.13** This CP is structured as follows:

- **Chapter 2** discusses a range of cross-cutting issues which span our Handbook and BTS and our proposed approach to these. This includes further issues identified since publication of the first CP.
- **Chapter 3** explains the Handbook proposals covered in this CP (except those related to the introduction of the TPR and the new credit rating and trade repository regimes). This includes an explanation of the more significant changes we are proposing. An overview of the contents of Chapter 3 can be found in table 1 below.

**Table 1**  
**Overview of Chapter 3 content**

Section	Summary
<b>3.1 Introduction</b>	An overview of all sourcebooks/chapters included in this CP
<b>3.2 High-level standards</b>	Proposals relating to the SM&CR.
<b>3.3 Prudential standards</b>	Proposals relating to contractual recognition of bail-in.
<b>3.4 Business standards</b>	Proposals relating to motor vehicle liability insurers, compensation disclosures, appropriateness (MIFID business), product information and insurance linked securities.
<b>3.5 Regulatory processes</b>	Proposals relating to the tied agent regime
<b>3.6 Primary markets</b>	Proposals relating to the Primary markets sector: free float, transparency and corporate governance requirements
<b>3.7 Other sourcebooks</b>	Proposals relating to emissions auctions
<b>3.8 Update to proposals in our first consultation</b>	Proposals covered in our first CP that have subsequently been updated. This is due to changes to our Handbook compared to the version consulted on in this CP, where that has given rise to either a new deficiency or have impacted our proposed approach to addressing a deficiency.

- **Chapter 4** sets out certain proposals about the TPR which were previously described but not consulted on in CP18/29
- **Chapter 5** outlines the changes we propose to make to BTS. An explanation of our approach to BTS was included in the first consultation



- **Chapter 6** summarises our approach to forms and the guidance we propose to issue on this
- **Chapter 7** outlines changes because we will take on regulating credit rating agencies and trade repositories
- **Chapter 8** summarises our proposed approach to non-Handbook guidance issued by us and the guidance we propose to issue on this.

## Who this applies to

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- 1.14** As with our first consultation, we expect this CP to affect all our stakeholders. Table 2 in paragraph 3.5 includes a list of stakeholder groups who might have interest in specific sections of this CP.
- 1.15** In addition, we expect our proposals in Chapter 4 on the TPR to be particularly relevant to:
- EEA firms that are passporting into the UK under FSMA and Treaty firms
  - EEA electronic money and payment institutions and registered account information service providers passporting into the UK (to the extent described in paragraph 4.5)
- 1.16** Finally, we expect our proposals in Chapter 8 to be of interest to credit rating agencies and trade repositories.

## The relevant version of the Handbook and future consultations

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- 1.17** The version of the Handbook we used for our first CP was that in effect on 1 July 2018. For this CP, we have taken into account:
- provisions in effect on 1 October 2018,<sup>6</sup> and
  - provisions in the SM&CR regime for dual regulated insurers, due to come into effect on 10 December 2018<sup>7</sup>
- 1.18** The exceptions to this are:
- proposed provisions for temporary permission firms
  - content relating to core Handbook provisions under the SM&CR.<sup>8</sup> For this content, we also include those provisions for solo-regulated firms, due to come into effect in December 2019<sup>9</sup>

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6 The 1 October version of the Handbook can be found here:  
[www.handbook.fca.org.uk/handbook?date=01-10-2018&timeline=True](http://www.handbook.fca.org.uk/handbook?date=01-10-2018&timeline=True)

7 [www.fca.org.uk/publication/policy/ps18-15.pdf](http://www.fca.org.uk/publication/policy/ps18-15.pdf)

8 APER, FIT, COCON, SUP 10A/C, SYSC 4.4 onwards, SYSC 5.2, SYSC 22- 27.

9 [www.fca.org.uk/publication/policy/ps18-14.pdf](http://www.fca.org.uk/publication/policy/ps18-14.pdf)

- proposed rules for FEES 6 and COMP for the TPR, which use the Handbook as on 1 April 2019. This is because significant changes have already been made to those parts of the Handbook that come into effect on that day

**1.19** In some cases, the amendments in this CP and our first CP may themselves need to be updated before the UK leaves the EU. This may arise where:

- we based our proposals on draft SIs and these are subsequently amended during the legislative process
- our proposals reflect the content of policy notes produced by the Government about SIs that have yet to be published, and the draft SI that is eventually published differs in some respect
- SIs or policy notes are published too late in the process for us to factor them into the changes we propose in our CPs
- amendments unrelated to Brexit are made to our Handbook, existing BTS are amended at EU level, or new BTS come into force at EU level that will be incorporated in UK law by the EUWA, and these themselves need to be amended to ensure they function correctly after 29 March 2019

### Continuity provisions

**1.20** To help ensure a smooth transition, we propose to introduce general continuity provisions for all parts of the Handbook and BTS not covered by a specific transitional arrangement. The draft instrument containing the general continuity provisions is at Appendix 3.

**1.21** The proposed approach provides that references in our Handbook and BTS are generally to be read in a way that preserves the continuity of regulatory requirements which straddle exit day in some way. For example, where a firm breaches a requirement pre-exit and only discovers this post-exit, it would be required to notify us of this pre-exit breach of the substantially similar pre-exit regulatory requirement.

### **Q2: Do you agree with our proposals to introduce general continuity provisions? If not, why?**

#### Next steps

**1.22** We want to know what you think of our proposals. Please send us your comments by 21 December 2018. Use the online response form<sup>10</sup> on our website or write to us at the address on page 2.

**1.23** We will consider feedback before finalising the Handbook, BTS amendments, the guidance on our non-Handbook guidance and on our forms proposed in this CP. We intend to give feedback on this CP and publish our near final instruments in early 2019.

10 [www.fca.org.uk/cp18-36-response-form](http://www.fca.org.uk/cp18-36-response-form).

## 2 How we will resolve cross-cutting issues

### Introduction

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- 2.1** In our first CP, we explained how a no-deal Brexit<sup>11</sup> would give rise to a range of issues, each of which would affect multiple parts of the Handbook and BTS. We also explained what impact they have and how they arise. We termed these 'cross-cutting issues'.
- 2.2** We have identified further cross-cutting issues, and explain these in detail in this chapter. In summary, they relate to:
- The Distance Marketing Directive
  - The E-Commerce Directive
  - References to the official language of the member state or to information being submitted in languages other than English

### The Distance Marketing Directive (DMD)

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#### Affected Handbook sourcebooks

COBS, ICBOS, MCOB, BCOBS, CONC

- 2.3** The DMD protects consumers who enter into both regulated and unregulated financial services contracts at a distance (such as by post, over the phone or online). The DMD covers virtually all retail financial services. However, its requirements are relatively limited and cover only pre-contract information and withdrawal (cancellation) rights during a defined 'cooling off' period.
- 2.4** The DMD is transposed in the UK partly through our Handbook and partly through the Distance Marketing Regulations 2004. The requirements of the DMD apply on a country of origin basis. This means that it is for the home member state of the supplier in a distance contract to implement and enforce the requirements of the DMD.
- 2.5** Our DMD-related Handbook provisions therefore apply to firms marketing from an establishment in the UK to consumers in the UK or in other EEA states. Our rules do not apply to marketing into the UK from an establishment in another EEA state. Our rules on distance marketing also do not generally apply to distance marketing activity with or for a consumer in a non-EEA state.
- 2.6** We have not identified a reason, with respect to distance marketing, to depart from our baseline approach of treating EEA states the same as any other third country.

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<sup>11</sup> i.e. where no long-term relationship is agreed between the UK and the EU, and the planned implementation period from 29 March 2019 to 31 December 2020 does not come into effect.



That means that after exit day, our DMD-related Handbook provisions will generally no longer apply to UK firms' distance marketing activity with respect to consumers in EEA states.

- 2.7** The end of passporting arrangements means that where UK firms conduct cross-border business into the EEA they may need to be authorised in the relevant Member State, and local law requirements implementing the DMD may apply. Our consultations on the Temporary Permission Regime (TPR) set out our proposed approach to applying our Handbook to EEA passporting firms who enter TPR.<sup>12</sup>

## The E-Commerce Directive (ECD)

### Affected Handbook sourcebooks

COBS, ICOBS, MCOB, BCOBS, CONC

- 2.8** The ECD sets consumer protection standards for cross-border electronic commerce activities (ECA). It also requires EEA states to regulate the outward provision of such activities from their territories, and exempts incoming providers from nearly all host state regulation. The ECD can be used for cross-border ECA in all financial services sectors (except with respect to Solvency II insurers), including those that do not have a passporting regime. Consequently, EEA ECA firms can currently sell online-only regulated financial services to UK consumers without having to be regulated by us.
- 2.9** As part of its changes for Brexit, the Government intends to revoke legislation, or parts thereof, relating to the cross-border provision of financial services via the exemption from host state regulation in the ECD. This includes:
- The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002
  - Article 72A of the Regulated Activities Order, regarding information society services
  - Article 20B of the Financial Promotions Order, regarding the financial promotion restriction not applying to an incoming (i.e. cross-border) electronic commerce communication
- 2.10** We propose to make consequential amendments to our Handbook to reflect that. However, our e-commerce rules will apply to EEA based firms which enter the TPR.<sup>13</sup> The consequential amendments will not affect the provisions in the Handbook regarding e-commerce activity entirely within the UK, for example, the consumer protection provisions in COBS 5.2.

<sup>12</sup> See [www.fca.org.uk/publication/consultation/cp18-29.pdf](http://www.fca.org.uk/publication/consultation/cp18-29.pdf) and Chapter 4 of this CP.

<sup>13</sup> See for example GEN 2.2.26R in Appendix 1 to CP18/29.



## References to the official language of the member state or to information being submitted in languages other than English

### Affected Handbook sourcebooks and Binding Technical Standards

COBS, ICOBS, ELTIF BTS Instrument

- 2.11** Our Handbook contains a number of provisions regarding the language in which communications can or must be made.
- 2.12** For example, rules within COBS 6 specify that information must be provided 'in the official language or languages of the EEA state'.
- 2.13** While the precise references to use of language vary according to the rule in question, we consider it appropriate to make a cross-cutting amendment for Brexit, such that the requirements refer to the official language or one of the official languages of the United Kingdom.<sup>14</sup>

## Cross-cutting issues discussed in our first consultation

- 2.14** In addition to the cross-cutting issues discussed above, we highlight below the sections of our Handbook and the BTS addressed in this CP that are affected by the cross-cutting issues discussed in our first CP. A summary of each cross-cutting issue is set out. However, please refer to chapter 3 of the first CP for a more detailed explanation of these cross-cutting issues.

## The position of EU law and how it relates to our Handbook and BTS

### Affected Handbook sourcebooks and Binding Technical Standards

BCOBS, CASS, CONC, CREDS, DEPP, EG, GEN, ICOBS, IPRU-FSOC, IPRU-INV, MCOB, RCB, SUP, SYSC, UNFCOG, all BTS included in this consultation

- 2.15** When the UK leaves the EU, directly-applicable EU Regulations will no longer apply. This will leave a legislative gap. To address this, the EUWA converts existing directly applicable EU law at the point of exit into UK law and gives the Government powers to amend that law so it functions effectively when the UK leaves the EU. We will amend the Handbook to reflect these changes. This means, for example, that provisions in the Handbook which reproduce directly applicable regulations will be updated to reflect amendments proposed by SIs under the EUWA.

<sup>14</sup> Under the Welsh Language (Wales) Measure 2011, the Welsh language has the status of an official language in Wales.

## The loss of passporting rights

### Affected Handbook sourcebooks

CASS, COBS, CONC, DEPP, EG, FEES, ICOBS, IPRU-INS, MCOB, PROD, SUP

- 2.16** As we leave the EU's single market, passporting rights from the EEA into the UK will cease to exist. FSMA is being amended so that EEA firms, Treaty firms, operators and depositaries of Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Fund Managers (AIFM) qualifiers will no longer qualify as authorised persons. Reflecting these changes in the Handbook mainly involves removing the provisions related to passporting.
- 2.17** As part of that, we propose in this CP to amend our approach to fees. Currently, entities operating in the UK under a passport may benefit from a discounted fee to reflect that our regulation of them is limited to that of 'host' regulator. As passporting will no longer be possible, and the concepts of 'home' and 'host' regulator will cease accordingly, discounting of fees will also cease. Our proposed approach to applying fees to firms who enter the TP regime is set out in CP18/29.

## References to EU institutions

### Affected Handbook sourcebooks and Binding Technical Standards

COBS, IFPRU, SUP  
For example, BMR, MAR, PAD and EMIR BTS Instruments

- 2.18** As the UK will no longer be a member of the EU, European institutions such as the European Securities and Markets Authority (ESMA) and the European Commission will not have powers or obligations under UK law. In most instances, the Government will replace a named EU institution with a UK equivalent.

## References to 'other member/EEA states' and 'other competent authorities'

### Affected Handbook sourcebooks

BCOBS, CASS, COBS, CONC, DEPP, EG, IFPRU, IPRU-INV, INSPRU, MCOB, PROD, SUP

- 2.19** As the UK is currently a member state of the EU/EEA, there are references in our Handbook and BTS to 'other member/EEA states', or variants thereof. If we need to keep these references in some form, we propose to amend them to 'EU member states' or 'EEA member states', as appropriate.

## References to information sharing with European Supervisory Authorities or 'other competent authorities'

### Affected Binding Technical Standards



For example, MAR, EMIR BTS Instruments

**2.20** Within the European regulatory framework, we are obliged to share information or data with the European Supervisory Authorities (ESAs) in many situations. After exit day, this obligation will fall away. While we may continue to share information, and seek to cooperate with the ESAs, we will no longer be required to do so. We therefore propose to remove the references to compulsory sharing of information with the ESAs.

**Q3:** **Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise regarding our approach to these cross-cutting issues?**

## 3 Changes to the Handbook

### Section 3.1 Introduction

- 3.1** This chapter gives an overview of the Handbook sourcebooks and chapters that are covered in this CP. They are summarised in the table below, alongside potential interested stakeholders by sourcebook.
- 3.2** Annex 3 provides a list of the draft SIs and policy notes published so far that are relevant to the material covered in this CP.
- 3.3** Most changes we propose are cross-cutting in nature or consequential upon the Treasury's approach to drafting its SIs. An overview of where these types of changes can be found is in Table 2 below, with detailed amendments in the draft instruments.
- 3.4** We also include dedicated sections, with explanations of proposals, where there are different approaches we could have adopted to correcting a deficiency. We have done this where we deviate from the baseline approach explained in paragraph 1.6 or we consider that an explanation is particularly helpful to make clear the amendments that have been made.
- 3.5** Appendix 3 contains the draft instruments setting out our proposed amendments to various sourcebooks and the Glossary. We are consulting on the Glossary on a cumulative basis, so stakeholders can see the totality of changes proposed to it in both this and our first CP. Amendments to terms in the Glossary may impact on proposals set out in our first CP, and stakeholders should also consider the instruments set out in our first CP. Stakeholders should read this appendix to gain a full understanding of all the changes proposed.

**Table 2**  
**Overview of sourcebooks included in this CP**

Sourcebook	Specific chapters	Interested stakeholders
Statements of Principle and Code of Practice for Approved Persons (APER)	All	All authorised persons and firms, consumers
Banking – Conduct of Business (BCOBS)	All	Firms that offer savings and current accounts, consumers
General guidance on Benchmark Submission and Administration (BENCH)	All	Firms that provide or administer benchmarks
Client Assets (CASS)	All	Authorised persons and firms holding client assets
Conduct of Business sourcebook (COBS)	All	Investment firms and other firms undertaking designated investment business and long-term insurance business in relation to life policies, consumers
Code of Conduct (COCON)	All	All authorised persons and firms, consumers

Sourcebook	Specific chapters	Interested stakeholders
<b>Compensation (COMP)</b>	All	All authorised persons and firms, consumers
<b>Collective Investment Schemes sourcebook (COLL)</b>	1, 4	Managers and depositaries of UK-authorised collective investment schemes and/or EEA UCITS schemes
<b>Threshold Conditions (COND)</b>	All	All authorised persons and firms, consumers
<b>Consumer Credit (CONC)</b>	All	Firms that offer credit-related activities, consumers
<b>Credit Unions (CREDS)</b>	All	Credit unions, consumers
<b>Decision Procedure and Penalties Manual (DEPP)</b>	1, 2, 7, Schedule 3	All authorised persons and firms, consumers
<b>Dispute Resolution: Complaints (DISP)</b>	All	All authorised persons and firms, consumers
<b>Disclosure Guidance and Transparency Rules (DTR)</b>	1A, 1B, 1C, 4-8, TP1 and schedules	Issuers and stakeholders involved in the buying, selling and trading of financial instruments, primary information providers
<b>The Enforcement Guide (EG)</b>	1-4, 6-11, 13, 14, 19, 20, Appendix 3	All authorised persons and firms, consumers
<b>Fees Manual (FEES)</b>	1-4, 6, 7, 7A, 8-11, 13, App 1-3	All authorised persons and firms, consumers
<b>The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)</b>	All	All authorised persons and firms, consumers
<b>Investment Funds sourcebook (FUND)</b>	1, 4	Managers and depositaries of alternative investment funds
<b>General Provisions (GEN)</b>	1, 2, 4, 5, 7, TP3	Firms, Lloyds, managing agents, members agents
<b>General Prudential (GENPRU)</b>	3 and Schedules	Investment firms (and groups containing such entities)
<b>Prudential sourcebook for Investment Firms (IFPRU)</b>	11	Investment firms (and groups containing such entities)
<b>Interim Prudential sourcebook for Investment Businesses (IPRU-INV)</b>	14	Investment firms (and groups containing such entities)
<b>Insurance: Conduct of Business (ICOBS)</b>	All	Firms undertaking non-investment general insurance and protection business and distribution, consumers
<b>Listing Rules (LR)</b>	All	Issuers with listed securities or seeking a listing of their securities, their advisors, and other stakeholders involved in the buying, selling and trading of financial instruments
<b>Market Conduct (MAR)</b>	1, 2, 4, 8, TP1.1, TP1.2	Regulated markets, Operators of MTFs, Operators of OTFs, Systematic Internalisers, Algorithmic Traders, Data Reporting Service Providers (DRSPs), stakeholders involved in the buying, selling and trading of financial instruments, persons trading in commodity derivatives

Sourcebook	Specific chapters	Interested stakeholders
<b>Mortgages and Home Finance: Conduct of Business (MCOB)</b>	All	Firms undertaking home finance activities, consumers
<b>Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)</b>	1, 2, 3, 5	Mortgage and home finance firms, insurance intermediaries (and groups containing such entities), insurers
<b>Principles for Businesses (PRIN)</b>	All	All authorised persons and firms, consumers
<b>Prospectus Rules (PR)</b>	All	Issuers and stakeholders involved in the buying, selling and trading of financial instruments
<b>Product Intervention and Product Governance (PROD)</b>	All	All authorised persons and firms, consumers
<b>Professional Firms (PROF)</b>	All	Lawyers, actuaries and accountants who undertake regulated activities
<b>Recognised Investment Exchanges (REC)</b>	All	Recognised investment exchanges and clearing houses
<b>Supervision (SUP)</b>	1A, 2, 7, 9, 10A, 10C, 11, 12, 13, 13A, 14, 15, 15A, 15B, 16, 17A, 18 and APP2, Schedules 1, 4, 5, 6, TP 5-9	All authorised persons and firms, consumers
<b>Senior Management Arrangements, Systems and Controls (SYSC)</b>	2, 3, 4.4, 5.2, 10, 10A, 12, 19F.2, 22, 23, 24, 25, 26, 27, 28, TP5, 7	All authorised persons, employees, consumers
<b>Training and Competence (TC)</b>	All	All authorised persons and firms, consumers
<b>The Unfair Contract Terms and Consumer Notices Regulatory Guide (UNFCOG)</b>	All	All authorised persons and firms, consumers

## Section 3.2 High Level standards

### 3.6

A range of sourcebooks related to our high-level standards are covered by this CP. In particular, the SYSC sourcebook, which sets out rules and guidance for a firm's arrangements, systems and controls, and the SM&CR and APR regime, discussed below. There is one exception where we have proposed changes to SYSC which extend beyond consequential ones. This relates to how the SM&CR should apply within the TPR and is discussed in Chapter 4 (and in CP18/29).<sup>15</sup>

<sup>15</sup> [www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds](http://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds)



## The Senior Managers & Certification Regime (SM&CR) and Approved Persons Regime (APR)

- 3.7** In line with the general approach, in the long-term EEA branches will be treated as third country branches, with no exceptions. This section explains how the SM&CR and, for solo-regulated branches the APR and then SM&CR, will apply to firms that do not have (or no longer have) a temporary permission.
- 3.8** The SM&CR currently applies to all branches of non-UK firms that have permission to accept deposits or deal in investments as principal (where that activity is regulated by the Prudential Regulation Authority (PRA)) in the UK. The SM&CR will be extended so that it applies from 10 December 2018 to all insurers, including branches of non-UK firms, and all other firms authorised under FSMA and regulated by us ('solo-regulated firms') from 9 December 2019.
- 3.9** The SM&CR does not currently apply to EEA pure reinsurers. That exclusion does not apply to third country branches and so will not apply to EEA firms outside the TPR.
- 3.10** As explained in paragraphs 4.94 and 4.98 of CP 18/29, the APR will continue to apply to solo-regulated firms until the SM&CR for solo-regulated firms takes effect on 9 December 2019. This means that:
- the third country branch SM&CR will apply to non-TPR dual-regulated branches from exit day
  - the third country branch APR will apply to non-TPR solo-regulated branches between exit day and 9 December 2019
  - from 9 December 2019, the third country branch SM&CR will apply to non-TPR solo-regulated branches
- 3.11** Firms should refer to SUP 10C of our Handbook for the relevant rules for dual-regulated third country branches. Firms looking for more information on the third country regimes for solo-regulated firms should refer to SUP10A for APR, or PS18/14 and our Guide to the SM&CR for solo-regulated firms.
- 3.12** Chapter 4 explains our approach to APR and SM&CR in the TPR.



### 3.13 SM&CR Senior Manager Functions (SMFs) and APR Controlled Functions

The following tables illustrate the differences in the SMFs applicable to branches in the SM&CR and APR, and other elements of the SM&CR:

**Table 3**  
**SM&CR for dual-regulated branches**

	Dual-regulated EEA branch (continues in the TPR)	Dual-regulated third-country branch
<b>Senior management functions</b>		
SMF21 – EEA branch senior manager	√	
SMF17 – Money laundering reporting officer (MLRO)	√	√
SMF16 – Compliance oversight		√
SMF3 – Executive director		√
SMF15 – Chair of the With Profits Committee		√
SMF22 – Other local responsibility function		√
<b>Prescribed responsibilities</b>		√
<b>Other requirements</b>		
Local responsibility		√
Responsibilities maps	√	√
Handover procedures (banking firms only)		√

**Table 4**  
**APR and SM&CR Functions, and other elements of the SM&CR for solo-regulated branches<sup>16</sup>**

	Solo-regulated EEA branch in TPR	Solo-regulated third-country branch
<b>Controlled Functions</b>		
SMF21 (APR CF29 – Significant Management function) – EEA Branch Senior Manager	√	√ (APR only)
SMF17 (APR CF11) – MLRO	√	√
SMF16 (APR CF10) – Compliance Oversight		√
SMF3 (APR CF1) – Executive Director		√
SMF27 (APR CF4) – Partner		√
SMF19 (APR CF3 – CEO) – Head of Third Country Branch		√
APR CF2 – Non-Executive Director function (does not apply under SM&CR)		√
APR CF28 – Systems and Controls function (does not apply under SM&CR)		√
APR CF 30 customer function (does not apply under SM&CR)	√	√
<b>Prescribed Responsibilities</b>		√

<sup>16</sup> APR refers to the existing regime which will be replaced by the SM&CR on 9 December 2019.

## Section 3.3 Prudential standards

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### Contractual recognition of bail-in

- 3.14** Under IFPRU 11.6.3R, where firms have relevant liabilities governed by the law of a third country, it is a requirement that they include a clause in their contracts to the effect that such liabilities may be liable to bail-in.
- 3.15** Upon exit day, all contracts for relevant liabilities governed by the law of an EEA member state will become subject to the provisions on third country contractual recognition of bail-in. This means that firms will need to include a new term in the relevant contracts for liabilities such that the creditor agrees to the fact that the liability may be written down or converted by the Bank of England. This would apply to any new contracts and to any existing contracts that are materially amended after exit day. We have amended IFPRU 11.6.3R accordingly.

## Section 3.4 Business standards

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### Motor vehicle liability insurers

- 3.16** We have identified two issues in ICOBS which relate to the rules in ICOBS 8.2 for claims representatives and claims handling.
- 3.17** These rules are connected to a wider suite of obligations on insurers and bodies such as the Motor Insurance Bureau (MIB) and the Motor Insurers' Information Centre (MIIC). These requirements derive from the Consolidated Motor Insurance Directive (CMID), the majority of which is implemented in the UK through legislation and is the responsibility of the Department for Transport (DfT).

### Claims representatives

- 3.18** Under our current rules, insurers providing motor insurance must appoint a claims representative in every EEA state. These claims representatives must be authorised by the insurer to deal with claims made by injured parties, and must comply with other detailed requirements (such as being able to deal with claims in the local language).
- 3.19** The purpose of the claims representative requirements is to ensure that claims for compensation by people who suffer a loss caused by the insured driver are dealt with quickly, easily and in a location convenient for the injured party (including in their native language). For example:
- a French resident on holiday in the UK, who is hit and injured by a UK motorist insured by a UK insurer, can return to France and submit their claim against the UK insurer to their French claims representative
  - a UK insurer underwrites policies in another EEA state and policyholders can submit claims to their local claims representative
- 3.20** UK residents currently benefit from the reciprocity of EEA-based insurers being required to appoint claims representatives in the UK. For example, if a UK resident is injured by an EEA-insured vehicle they can pursue their claim with the EEA firm's UK claims representative.

- 3.21** The requirement for claims representatives only applies for EEA states. There are no similar requirements for third countries.
- 3.22** Currently, motor insurers must provide certain information to the MIIC. This includes the details of their claims representatives in each EEA member state.
- 3.23** The options we considered are:
- a.** continue to require UK insurers to appoint claims representatives in other EEA states, or
  - b.** remove the requirement
- 3.24** Having considered both options, we consider option (b) to be appropriate. This will mean that EEA states are treated in the same way as other third countries. We also expect that EEA insurers will no longer need to maintain claims representatives in the UK after Brexit. To keep this requirement on UK firms could create an imbalance of obligations.
- 3.25** The rules we propose to delete are only those which relate to claims representatives appointed in EEA states. ICOBS 8.2 also requires firms that are not based in the UK but which provide motor insurance in the UK, to appoint claims representatives in the UK. We do not propose to delete these rules.

#### ***Requirements on claims handling***

- 3.26** Our rules impose maximum timescales for insurers to respond to claims made by injured parties. The rules derive from the CMID. In summary, the rules require the insurer to respond within three months, either:
- admitting liability and making a reasoned offer of compensation, or
  - disputing liability and giving a reasoned response to the points at issue in the claim
- 3.27** If the insurer does not meet the time limit, they become liable for interest on any compensation which the injured party ultimately receives. These provisions offer protection to injured parties by reducing the likelihood of insurers taking a long time to settle claims.
- 3.28** The rules currently apply to residents of all EEA states, through the definition of the term 'injured party'. The options we considered are to:
- retain the current scope of the rules
  - scale them back so they only apply to claims from injured parties in the UK
- 3.29** On balance, we propose to retain these rules for the benefit of both UK and EEA injured parties. UK motor insurance includes compulsory minimum cover for use of the vehicle in the EEA. We consider that there is value in retaining the claims handling rules as this will ensure that claims made against compulsory motor insurance are handled consistently regardless of whether the injured party is a UK or EEA resident.



**Q4: Do you agree with our proposals to remove the claims representative requirement and retain our claims handling requirements?**

**Compensation disclosures**

- 3.30** COBS 6 sets out obligations on firms to disclose information about UK and EEA compensation schemes. These provisions implement disclosure requirements in the MiFID Regulations and the Investor Compensation Scheme Directive (ICSD).
- 3.31** COBS 6.1ZA.5EU and COBS 6.1.7R currently require firms that hold client money or investments to disclose information about compensation schemes available in respect of UK and EEA activities. COBS 6.1ZA.5EU copies out Article 47 of Commission Delegated Regulation 2017/565/EU (MiFID Org Regulation) which Treasury propose to amend<sup>17</sup> so that MiFID firms must disclose compensation information for UK activities only.<sup>18</sup> This creates a potential inconsistency with the equivalent provision for non-MiFID firms at COBS 6.1.7R and other compensation disclosure rules in COBS 6<sup>19</sup> which reflect the ICSD.
- 3.32** To address this issue, we have considered the following options:
- a.** amend COBS 6.1.7R, 6.1.16R and 6.1ZA.22R to maintain the current status quo so that these continue to require firms to disclose compensation information about UK and EEA compensation schemes
  - b.** amend COBS 6.1.7R, 6.1.16R and 6.1ZA.22R so that these are consistent with the MiFID onshoring changes and therefore require firms carrying out non-MiFID business to disclose information about UK compensation schemes only i.e. the Financial Services Compensation Scheme (FSCS), and
  - c.** amend COBS 6.1.7R, 6.1.16R and 6.1ZA.22R to require firms carrying out non-MiFID business to disclose information relating to *any* compensation scheme of which they are a member (i.e. including non-EEA compensation schemes).
- 3.33** We consider option (b) to be the most appropriate. It would ensure that non-MiFID firms are not subject to greater disclosure obligations than MiFID firms. It would also be consistent with the baseline approach for onshoring EU legislation to treat the EU in the same way as other third countries. Finally, it is not clear that EEA schemes will provide cover for a UK authorised firm's UK activities after exit.
- 3.34** COBS 4.4.1R currently requires a firm to ensure that any reference in advertising to an investor compensation scheme established under the ICSD is limited to a factual reference to the scheme. We propose amending this provision so it applies to worldwide compensation schemes (rather than just the FSCS). This would ensure that firms' advertising will continue to be limited to factual references to EEA compensation schemes, but in a way that treats the EEA compensation schemes the same way as those in third countries. This approach is consistent with the baseline approach.

**Q5: Do you agree with our proposed changes to COBS 4 and COBS 6 in respect of compensation disclosures?**

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17 See Regulation 46(4) in the proposed Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.  
18 See CP 18/28: Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation: [www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation](http://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation)  
19 COBS 6.1.16R and 6.1ZA.22R.

### Glossary definitions and scope of certain COBS rules

- 3.35** COBS 4.7 and COBS 4.12 contain restrictions on the promotion of non-readily realisable securities (NRRS) and non-mainstream pooled investments (NMPI). Both NRRS and NMPI are defined in our Handbook Glossary by reference to various types of investment. The definition of NRRS broadly captures equity and debt securities for which there is no, limited or difficult access to a secondary market and which may be difficult to price. The definition of NMPI captures units in unregulated collective investment schemes and other products which pose similar risks to such schemes.
- 3.36** In certain respects, the definitions of NRRS and NMPI currently differentiate between investments and products with a connection to the EEA and those with no such connection. For example, securities admitted to official listing on an EEA exchange would not be considered as NRRS but securities listed on an exchange outside the EEA could be.
- 3.37** We are proposing to depart from our baseline approach<sup>20</sup> and retain the existing scope of these COBS restrictions (by maintaining the current scope of the definitions of NRRS and NMPI) in the interests of avoiding significant disruption for firms and investors following exit day. Our proposed approach would maintain the level of consumer protection which is currently afforded by these restrictions.
- 3.38** For similar reasons, we also propose to maintain the current scope of the definition of 'packaged product' which is primarily of relevance to the application of certain of the disclosure rules in COBs.

**Q6: Do you agree with our proposal to maintain the current scope of the Glossary definitions of 'non-readily realisable security', 'non-mainstream pooled investment' and 'packaged product' and thereby maintain the application of the rules in COBS to which they relate?**

### Appropriateness (MiFID business)

- 3.39** A firm carrying out MiFID business (other than investment advice or portfolio management) must assess whether a particular service or product is appropriate for a client.
- 3.40** COBS 10A.4.1R specifies that an appropriateness assessment need not be carried out if certain conditions are met. One such condition is that the service relates to certain types of 'non-complex' financial instruments. This provision gives rise to two issues (as set out below) in the context of Brexit, which relate to the definitions of 'regulated market' and 'UCITS'.
- 3.41** The list of 'non-complex' financial instruments is set out in COBS 10A.4.1R (2) includes shares and bonds or other forms of securitised debt admitted to trading on:

- i. a regulated market; or
- ii. an equivalent third country market; or
- iii. an MTF.

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20 See paragraph 1.5 in this CP



- 3.42** The Handbook Glossary terms used in COBS 10A.4.1R (2) are derived from EU legislation. As a consequence of the UK's withdrawal from the EU there will no longer be a harmonised aspect to these terms.
- 3.43** For the purposes of COBS 10A.4.1R (2)(a) and (b), the Handbook definition of regulated market currently encompasses both UK and other EEA markets since it refers to systems authorised and functioning regularly in accordance with Title III of MiFID. In CP18/28 we proposed that the definition of regulated market in the Handbook will be confined to UK recognised investment exchanges.
- 3.44** Therefore, if we do not make a further amendment to COBS 10A.4.1R, shares and bonds admitted to trading on EEA regulated markets will no longer be treated as financial instruments in relation to which an appropriateness assessment need not be undertaken if the other conditions in COBS 10A.4.1R are satisfied.
- 3.45** To maintain continuity of the application of this rule, we are proposing to keep the current scope and consider shares and bonds admitted to trading on UK and EEA regulated markets as essentially non-complex.
- 3.46** This will ensure that we adopt the same approach to appropriateness assessments after we have left the EU in relation to financial instruments that satisfy the conditions in COBS10A.4.1R. This consistency will mitigate the risk of any market disruption that might potentially occur if we changed our existing approach.
- 3.47** In addition, removing these financial instruments from the list in COBS 10A.4.1R (2) could potentially lead to a reduction in their availability to investors in the UK. Firms would be able to continue to offer these instruments to clients in the EEA without necessarily having to undertake an appropriateness assessment.
- 3.48** Our proposed approach will mean that we are treating shares and bonds admitted to trading on EEA regulated markets differently to those on other third country markets. The ability to provide execution services in relation to those financial instruments without undertaking an appropriateness assessment will continue to be subject to the existence of an equivalence decision in respect of the relevant third country markets.
- 3.49** However, we consider these financial instruments, and the risks associated with them, to be such that maintaining the current approach would mitigate market disruption while maintaining an appropriate degree of investor protection.

**Q7: Do you agree with our proposal to amend COBS 10A.4.1R(2)(a) and (b) to include reference to shares and bonds admitted to trading on EEA regulated markets? If not, why?**

***UCITS definition***

- 3.50** We have proposed that the Handbook definition of 'UCITS' post exit point will incorporate both UK and EEA UCITS schemes. This amendment has been proposed in the context of the FCA's consideration of its broader approach to the treatment of EEA UCITS schemes post-exit point.
- 3.51** We propose following the approach of providing consistency of treatment for UK and EEA UCITS and maintain the status quo by continuing to regard UK and EEA UCITS as

essentially non-complex. We are, therefore, proposing to rely on the new Handbook Glossary definition of UCITS and make no further amendment to this rule.

- 3.52** This will mean we are treating EEA UCITS differently to any other third country fund. However, the volume of EEA UCITS impacted would be significant if we were to change the scope to UK UCITS only. Maintaining the status quo would avoid disruption and ensure continuity of application as well as ensure consistency with our treatment of EEA UCITS more broadly.

**Q8: Do you agree with our proposal that we should rely on the new Handbook Glossary term for UCITS post exit and continue to treat UK and EEA UCITS as financial instruments in relation to which an appropriateness assessment is not necessarily required? If not, why?**

### Product information

- 3.53** COBS 13 and 14 contain rules on the preparation of product information and the provision of that information to clients. As part of that, these chapters include rules and guidance relating to the provision of the key investor information document (KIID) under the UCITS Directive.
- 3.54** At present, manufacturers of UCITS funds are exempt from the product information obligations under the PRIIPs Regulation. This is on the basis that these manufacturers are obliged to prepare a KIID under the UCITS Directive. A similar exemption applies to manufacturers of non-UCITS retail schemes (NURS) offered to retail investors where they are subject to similar rules as those that apply in relation to UCITS funds.
- 3.55** In its onshoring legislation, the Treasury is maintaining this exemption post-exit for both UK and EEA UCITS as well as NURS. We have proposed changes to COBS 13 and 14 to reflect this position.

### Insurance-linked securities

- 3.56** COBS 18.6A was introduced in December 2017 as part of the creation of a regime for the issuing of insurance-linked securities (ILS) by Insurance Special Purpose Vehicles (ISPVs). The rules clarify the definition of the term 'client' for firms carrying on activities in relation to ISPVs, and (where the client is not an eligible counterparty) require disclosure that compensation will not be available from the FSCS if the ISPC cannot meet its liabilities.
- 3.57** To come within COBS 18.6A, an ISPV must assume risks from a regulated insurance entity which is authorised under Solvency II. As Solvency II firms are exempted from MiFID II, the MiFID II rules will not apply to these ISPVs.
- 3.58** If the ISPV accepts risks ceded from other insurers, such as those established outside the EU, then they may not be able to rely on the exemptions in MiFID II for Solvency II firms. This could mean that they would be subject to the rules derived from MiFID II, which are potentially more onerous.
- 3.59** However, the exemption for Solvency II firms is not the only exemption in MiFID II that may be relevant to ISPVs. When considering an application for authorisation by an ISPV, we will look at whether the firm can rely on any of the MiFID II exemptions. If they can, then the rules in COBS 18.6A will apply for the firm's activities. If the firm cannot rely on any exemptions then the MiFID II rules will apply instead.



**3.60** The options we have considered for addressing this issue are:

- scaling back the scope of COBS 18.6A so it is only available to ISPVs assuming risks from UK insurers
- continuing to apply COBS 18.6A to risks assumed from EEA insurers

**3.61** Following the baseline approach of treating EEA states as we would any other third country would mean we would adopt the first option. However, if we were to change the rules so that COBS 18.6A only applied to risks assumed from UK insurers, we would by necessity exclude risks assumed from EEA insurers.

**3.62** We do not consider this a sensible outcome as it would:

- frustrate the intention of the ILS regime by creating an unlevel playing field for businesses involving risks ceded from UK and EEA insurers.
- significantly reduce the scope and attractiveness of the ILS regime to firms
- potentially cause some market disruption as firms which assumed risks from non-UK EEA insurers, or planned to do so, would need to revise their strategies.

**3.63** We therefore propose to continue allowing ISPVs that assume risks from EEA insurers to be in scope of COBS 18.6A. If, in the future, the UK and EEA regimes diverge, we could reconsider the approach at that point.

**Q9: Do you agree we should continue to allow ISPVs assuming risks from EEA insurers to do so under COBS 18.6A?**

## Section 3.5 Regulatory processes

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### Tied agent regime

**3.64** When we implemented MiFID in 2007, the UK elected to operate the MiFID tied agent regime alongside the existing, and broadly similar, appointed representative regime. An appointed representative carrying out MiFID business in the UK is also a tied agent. Under MiFID, a firm may also use tied agents when it exercises its right to passport into other EEA States.

**3.65** After exit, the UK's regulatory regime will continue to recognise the distinct, but overlapping, concepts of appointed representatives and tied agents. However, because passporting rights will cease after Brexit, it will no longer be possible for UK firms to exercise such rights to use tied agents to provide services in other EEA States. Likewise, EEA MiFID investment firms will no longer be able to exercise such rights to use tied agents to provide services in the UK.

**3.66** However, we understand that the Treasury intends to retain section 39A of FSMA to apply MiFID's tied agent regime to UK investment firms who appoint tied agents established in the UK but which do not carry on business in the UK. We anticipate that this retention will have very limited practical implications for firms.



**3.67** Our proposed changes to SUP 12 largely reflect these changes to the ability of firms to appoint tied agents to carry on cross-border business. In particular, we propose to remove the definitions of 'EEA tied agent' and 'EEA registered tied agent'. Absent a passport regime, EEA States will not recognise the appointment of an agent by a UK firm as sufficient to satisfy any local licensing requirements. We propose to refer post-exit only to:

- appointed representatives (which includes tied agents of UK MiFID investment firms which carry on regulated activities in the UK)
- FCA registered tied agents (being tied agents of UK MiFID investment firms which are established in the UK but which do not carry on any business in the UK)

### Section 3.6 Primary markets

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**3.68** This section covers the review of the Prospectus Rules (PR), the Listing Rules (LR) and parts of the Disclosure Guidance and Transparency Rules (DTR) sourcebook.<sup>21</sup>

**3.69** The Treasury has proposed in its policy note on Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2018) that the UK's primary markets regime after Brexit should apply to all issuers that:

- have securities admitted to trading on a regulated market in the UK or admitted to listing in the UK, or
- are making a public offer in the UK

**3.70** This applies irrespective of the country in which the issuer was incorporated. Most of the changes we propose to make to the LR, PR and DTR are to ensure consistency with the Treasury's proposed approach.

**3.71** In practice, this means that certain issuers will need to have a prospectus approved by us, where they now rely on a passported document. Similarly, some issuers will have to make disclosures according to our rules where they now do so following the rules of their home competent authority.

**3.72** The government has committed to continue to treat prospectuses that are valid in the UK before exit (including those approved by a competent authority in a different EU member state) as valid for the remainder of the 12 months from their date of approval, including where that includes a period after the UK exits the EU.

#### Listing Rules – Free float requirements

**3.73** Under our current rules, when an issuer applies for admission of shares or depositary receipts over shares to the Official List, it must demonstrate that enough securities of that class are distributed to the public in one or more EEA states. The underlying rationale for this rule is to ensure that there will be enough liquidity in the share class which is to be listed. This is also referred to as the 'free float'.

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21 DTR 1A, 4-6, 1B, 7, 1C, 8 and TP 1, App 1 and Schedules only



- 3.74** A continuing obligation exists on issuers which requires them to maintain the level of shares in public hands within the EEA at 25% or above (or a lower level if we have agreed to this).
- 3.75** In practice liquidity is largely independent of the geographical location of the holders of securities and we regularly grant waivers from the free float requirement to allow inclusion of 'rest of world' investors in the free float calculation.
- 3.76** Further, the current requirements are inconsistent with the baseline approach that EEA states and non-EEA states be treated the same.<sup>22</sup>
- 3.77** However, reframing the free float requirement by changing the reference from EEA to UK would produce an even less appropriate basis for assessing likely liquidity, because of the participation of overseas investors in UK markets.
- 3.78** We therefore propose to remove the reference to EEA holders in the rules. This will mean that holders from any jurisdiction can be counted towards the free float.

**Q10: Do you agree with the proposed amendment, which will lead to shareholders in all jurisdictions being eligible for inclusion in the free float calculation of shares in public hands?**

### **Disclosure Guidance and Transparency Rules (DTR) Transparency requirements**

- 3.79** DTR 1A and 4-6, covered in this section, currently apply only to issuers with securities admitted to trading on a regulated market in the EU and for which we are the home competent authority. We propose amendments to reflect that the home/host state distinction will fall away. After exit, the transparency rules will only apply to issuers with securities admitted to trading on a UK regulated market.
- 3.80** We are proposing to amend the provisions setting out which public-sector issuers can benefit from an exemption from publishing annual and half-yearly financial reports to remove references to the EEA, rather than replace them with UK. This is in line with changes the Government is making to Part VI of FSMA in relation to public sector issuers. Consequently, a wider group of issuers will benefit from the exemption from publishing such reports, notably public international bodies and central banks.
- 3.81** Following the changes the Treasury has proposed to make in the corresponding policy note, these issuers will also be able to issue their securities without producing a prospectus under FSMA.
- 3.82** At present, DTR 4.1.6R requires issuers with securities admitted to trading on an EU regulated market to make use of International Financial Reporting Standards (IFRS), as adopted by the EU, for their consolidated accounts, unless their home jurisdiction's standards are deemed equivalent by the European Commission and for Transparency Directive purposes we have also assessed the standards and granted an exemption for that jurisdiction. We propose to change this requirement so that issuers will be required to use IFRS as adopted by the UK instead.

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<sup>22</sup> See paragraph 1.6 of this CP

- 3.83** The Department for Business, Energy and Industry Strategy (BEIS) will lay an SI that gives the UK the powers to adopt IFRS at and post-exit. As this SI has not yet been laid in parliament (BEIS expects it to be laid early in 2019), and therefore does not constitute existing legislation, the amendments we propose to our rules and the relevant Glossary definitions may need to change to reflect the BEIS SI.
- 3.84** The Government's approach is to provide continuity, where possible, following the UK's exit from the EU. Therefore, in a no-deal scenario, HMT has stated that it intends to issue an equivalence decision, in time for exit day, determining that EU-adopted IFRS can continue to be used to prepare financial statements for Transparency Directive requirements and for the purposes of preparing a prospectus under the Prospectus Directive.
- 3.85** This will allow issuers registered in EEA states with securities admitted to trading on a UK regulated market or making an offer of securities in the UK to continue to use EU-adopted IFRS when preparing consolidated accounts. All issuers will also be able to continue to prepare financial accounts using EU-adopted IFRS for financial years beginning before exit date.
- 3.86** DTR 4.1.7R permits UK traded non-EEA issuers to use an EEA auditor to provide the audit report in respect of their annual financial statements. After exit, auditors based in the EEA will become subject to the requirements currently applicable to third country auditors, including registration with the FRC. This will also apply when they audit UK-traded EEA issuers. We propose to amend DTR 4.1.7R to reflect this change.
- 3.87** Again, for financial years beginning before exit day, we propose that the current provisions allowing the use of an EEA auditor without registration will remain in force. Registration for financial years beginning on or after exit day will be required in time for the auditor to sign the relevant audit report.
- 3.88** DTR 5 imposes notification requirements on issuers and on holders of voting rights in issuers. Such notification requirements do not apply in respect of voting rights provided to or by members of the European System of Central Banks in the context of carrying out their functions as monetary authorities. To be consistent with the approach of treating the EU and its member states in the same way as non-EU or third countries after exit day, we propose to amend this reference so the notification exemption is available to the Bank of England only.
- 3.89** DTR 6 sets out, among other things, the requirements that issuers need to comply with when disseminating regulated information. Currently issuers can choose between using a Primary Information Provider (PIP) or an incoming information society service. After exit, issuers will only be able to use a PIP to disseminate such information.

**Q11:** Do you agree with our proposal to remove the reference to the EEA in the provisions setting out which issuers can benefit from an exemption from producing accounts?

**Q12:** Do you agree with our proposals to amend the requirements in DTR 4.1.6R and DTR 4.1.7R in relation to audited financial statements?



**Q13: Do you agree that we should narrow the exemption from the voting rights notification requirements so that it applies only to the Bank of England?**

**Q14: Do you agree with our proposal to require issuers to use a PIP for disseminating regulated information?**

### **Corporate governance requirements**

**3.90** DTR 1B and 7.1 set out requirements in relation to audit committees. DTR 1B.1.3R provides an exemption from DTR 7.1 for an issuer which is a subsidiary undertaking of a parent undertaking, where the parent undertaking is subject to DTR 7.1 or to requirements implementing article 39 of the Audit Directive in any other EEA State.

**3.91** We propose to amend this exemption so that such an issuer will only be exempt from DTR 7.1 where the parent undertaking is subject to DTR 7.1. However, we propose that the existing exemption will continue to apply in respect of a financial year beginning before exit day.

**Q15: Do you agree with our proposal to change the exemption from DTR 7.1 in respect of subsidiary undertakings?**

## **Section 3.7 Other sourcebooks**

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### **Emission auctions**

**3.92** The Government has previously announced<sup>23</sup> that the UK will be excluded from participating in the EU Emissions Trading System in a 'no deal' scenario. The relevant FSMA SIs will be published in due course but we expect the main consequences for UK financial services firms to include the following:

- The regulated activity of bidding in emission auctions will cease as of exit day and firms' permissions will no longer comprise this activity.
- There will be no UK emission auction platform under the Recognition Auction Platform Regulations 2011.

**3.93** UK firms will still be able to trade in the secondary EU emission allowances market and this RAO investment category will remain a designated investment for the purposes of the Glossary.

**3.94** We propose to make the corresponding changes to PERG 2 and REC 2A to reflect these changes and, in due course, will ensure that the relevant Handbook references relating to 'bidding in emissions auctions' and 'auction regulation bidding' are revisited and deleted, as appropriate.

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<sup>23</sup> [www.gov.uk/government/publications/meeting-climate-change-requirements-if-theres-no-brexit-deal/meeting-climate-change-requirements-if-theres-no-brexit-deal](https://www.gov.uk/government/publications/meeting-climate-change-requirements-if-theres-no-brexit-deal/meeting-climate-change-requirements-if-theres-no-brexit-deal)

## Section 3.8 Update to the first consultation

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**3.95** Our first CP used the version of our Handbook in effect on 1 July 2018. Since then there have been a small number of updates to our Handbook which require us to propose additional amendments, for example changes arising from the implementation of the Insurance Distribution Directive (IDD).

**3.96** The detailed amendments are set out in the draft instruments at Appendix 3.

**Q16:** Are there any proposed changes reflected in the instruments in Appendix 3 that are not cross-cutting in nature (see Chapter 2) or discussed in this chapter where you think we should re-consider our approach? If so, why?

**Q17:** Are there any proposed changes where you think we should not follow the baseline approach of treating the EEA as a third country? If so, why?



## 4 Changes related to the Temporary Permissions Regime (TPR)

### Background

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- 4.1** Under the EU passporting regime,<sup>24</sup> financial services firms specified in the relevant directives<sup>25</sup> in any European Economic Area (EEA) country have access to the single market for financial services.<sup>26</sup> This means that they can set up branches or provide financial services, within the scope of the passporting provisions of the directives, in other EEA countries without the need for further authorisation.
- 4.2** As explained in CP 18/29,<sup>27</sup> if the withdrawal agreement between the UK and the EU does not come into effect, the Government has brought forward legislation to set up the TPR for inbound passported firms and investment funds. The TPR will reduce the risk of harm associated with an abrupt loss of permission by enabling firms that passport into the UK to undertake new business that falls within the scope of their existing permissions, continue to perform their contractual rights and obligations and manage existing business.
- 4.3** Firms within the regulatory perimeter in the UK need authorisation unless they are exempt.<sup>28</sup> To the extent that a firm's passport covers regulated activities, a temporary permission will allow the firm to continue to undertake all those activities after exit day. The TPR requires relevant firms to notify us if they want a temporary permission, which will last for a maximum period of 3 years. This will vary depending on when they are asked to submit their application for full authorisation in the UK.

### The Temporary Permissions Regime and this consultation

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- 4.4** In CP18/29, we set out how, if there is not an implementation period following the UK's withdrawal from the EU, we envisaged the TPR working, and how our rules would apply to those within the regime. In this chapter, we set out proposals about the application of certain of our rules to firms in the TPR (TP firms), which were described in CP18/29, but not consulted on in that CP. These include rules relating to:

- Senior Managers & Certification Regime and the Approved Persons Regime

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24 [www.fca.org.uk/firms/passporting](http://www.fca.org.uk/firms/passporting)

25 These are the Banking Consolidation Directive (BCD), the Capital Requirements Directive (CRD), the Solvency II Directive (S2), the Markets in Financial Instruments Directive (MiFID II), the Insurance Mediation Directive (IMD) and from October 2018 the Insurance Distribution Directive (IDD), the Mortgage Credit Directive (MCD), the Undertakings for Collective Investment in Transferable Securities Directive (UCITS), the Alternative Investment Fund Managers Directive (AIFMD), the Payments Services Directive (PSD2), the Electronic Money Directive (EMD) and the Emission Allowance Auctioning Regulation.

26 In addition, firms not covered by these directives can also have access to the UK financial services market by virtue of rights under the EU treaties if certain conditions are met, as specified in Schedule 4 to the Financial Services and Markets Act 2000. These firms are known as Treaty firms.

27 CP18/29: Temporary permissions regime for inbound firms and funds, FCA, October 2018:  
[www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds](http://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds)

28 [www.fca.org.uk/firms/authorisation/when-required/exemptions-exclusions](http://www.fca.org.uk/firms/authorisation/when-required/exemptions-exclusions)

- Financial Services Compensation Scheme
- Financial Ombudsman Service
- Disclosure of a TP firm's authorisation status (status disclosure)

**4.5** Note that only the proposals in paragraphs 4.26 to 4.29 to include all TP firms (including those that do not have an establishment in the UK) in the compulsory jurisdiction of the Financial Ombudsman Service and our complaints handling rules and guidance are relevant for EEA electronic money institutions, EEA payment institutions and EEA registered account information service providers.

### **Senior Managers and Certification Regime (SM&CR) and the Approved Persons Regime (APR)**

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**4.6** In this section, we describe the changes we propose to make to the SM&CR and APR to deal with TP firms.

**4.7** The changes cover both the position at exit day and, in relation to the SM&CR, as it will apply to TP firms that are regulated by us but not the PRA (solo-regulated TP firms). This means proposing changes to the near-final rules and guidance included in Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules).<sup>29</sup>

**4.8** In CP18/29, we explained how we proposed applying the SM&CR or APR, as applicable, to an EEA firm with a UK branch (EEA branch) during the TPR. We proposed maintaining the current requirements that apply to EEA branches under the SM&CR and APR throughout their time in the TPR. This means that the additional controlled functions and requirements that apply under the third-country regime under SM&CR and APR will apply only once a firm has been fully authorised and has left the TPR.

**4.9** We propose to retain the existing SM&CR and APR EEA branch regimes for firms in the TPR, with a few amendments as set out below.

#### **SM&CR for dual-regulated EEA branches in the TPR**

**4.10** The additional functions and requirements (set out in Chapter 3) that apply to third-country branches, will only apply when the EEA branch has subsequently been fully authorised as a third country branch in the UK.

**4.11** As the SM&CR will already apply to dual-regulated EEA branches (with banking branches subject to the SM&CR since March 2016 and insurers from December 2018), there will be no major changes for these firms until they are fully authorised and leave the TPR. Minor changes are set out in the following section.

#### **APR and SM&CR for solo-regulated EEA branches in the TPR**

**4.12** For solo-regulated EEA branches in the TPR, the APR will still be in force on exit day. In line with our proposals for dual-regulated EEA branches, we will maintain the current requirements for EEA branches throughout their time in the TPR. If an EEA branch has

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<sup>29</sup> The text on which our proposed amendments relating to the SM&CR and the APR are based has been adjusted to take into account the changes to the Handbook made by the Individual Accountability (Dual-Regulated Firms) Instrument 2018.



not received full authorisation as a third-country branch before the SM&CR begins for solo-regulated firms (December 2019), their current APR functions will be converted to the SM&CR functions for EEA branches, in line with the near-final rules in PS18/14.<sup>30</sup>

- 4.13** If an EEA branch receives full authorisation as a third-country branch before the SM&CR commences for solo-regulated firms, it will need to apply for approval for the additional functions that apply to third-country branches under the APR. Those APR functions will be converted to the SM&CR functions for third-country branches when the SM&CR commences, in line with the near-final rules in PS18/14.
- 4.14** Dual-regulated EEA branches are already required to prepare and maintain Management Responsibilities Maps. This requirement will also apply to some solo-regulated firms. The requirement also applies when they are a third-country branch under the SM&CR. However, we propose to remove the current ability, set out in SYSC 25.6, of an EEA branch to omit details that are already included in information supplied as part of the passporting process (which the Handbook refers to as its requisite details). Firms in the TPR must therefore include this information.
- 4.15** Some elements of competence assessments of approved persons under the APR and Senior Managers under the SM&CR, as set out in FIT, are reserved to home state regulators. These reserved elements will disappear at exit day and any competence assessments for SMF applications submitted under TPR will include all relevant factors. There are similar reserved elements applying to the scope of controlled functions under the APR and Senior Manager and Certification Functions under the SM&CR, which we will also remove.
- 4.16** We will also remove the relevant provisions in APER 2.1A and COCON 1.1 that provide exemptions from obligations contrary to a Single Market Directive, the Auction Regulation or the Benchmarks Regulation, except where these continue to have effect in UK law under the EUWA.

#### **PRA Requirements**

- 4.17** Dual-regulated EEA branches in the TPR should also have regard to information published by the PRA<sup>31</sup> in this area.

**Q18: Do you agree with our proposals for applying the SM&CR to EEA branches while they are in the TPR? If not, why not?**

#### **Moving from the EEA to third-country SM&CR**

- 4.18** Once authorised by us, firms will move out of the TPR and be authorised as a third-country branch. For both solo- and dual-regulated firms, the EEA Branch Senior Management Function will then fall away. Firms will need to apply to us for approval for individuals to hold the additional functions that will apply to them under the third country branch regime at the same time as applying for authorisation, and then on an ongoing basis as applicable. This applies even where an individual previously held the EEA Branch Senior Management Function, as these are qualitatively different functions.

<sup>30</sup> [www.fca.org.uk/publication/policy/ps18-14.pdf](http://www.fca.org.uk/publication/policy/ps18-14.pdf)

<sup>31</sup> CP26/18 UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards, PRA, October 2018: [www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf](http://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf)



**4.19** Where a firm has an MLRO under the EEA branch regime, the individual's approval for this function will be maintained once the firm is fully authorised as a third country branch, as the role is the same in both regimes.

### EEA services firms

**4.20** The SM&CR and the APR do not apply to EEA firms who currently passport into the UK on a freedom to provide services basis, and therefore do not have a UK establishment (EEA services firms). We do not propose to change this when these firms move into the TPR, but the APR and SM&CR will apply to them once they have been fully authorised in the UK and leave the TPR.

**4.21** Dual-regulated EEA firms in the TPR without a UK branch should also have regard to information published by the PRA<sup>32</sup> in this area.

## Financial Services Compensation Scheme (FSCS)

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**4.22** In CP18/29,<sup>33</sup> we explained our intended approach for FSCS cover for firms in the TPR under our compensation rules.<sup>34</sup> In summary, we proposed to:

- provide consumers of EEA firms in the TPR operating from UK establishments with FSCS protection, equivalent to the cover provided to customers of UK firms
- continue to provide FSCS cover in respect of the activities of certain incoming fund managers (without an establishment) that are currently (pre-exit) covered by the FSCS

**4.23** In this CP, we confirm we are proposing to apply the approach set out above and are consulting on the rule changes required for these proposals. EEA firms covered by the FSCS in the TPR will be required to contribute to the FSCS levy from 1 April 2019, even if they were not covered by the FSCS pre-exit.<sup>35</sup>

**Q19:** Do you agree that consumers of EEA firms in the TPR with UK establishments should be protected by the FSCS, on an equivalent basis to other UK authorised firms, for activities from those establishments during TPR? If not, why?

**Q20:** Do you agree that we should continue to provide FSCS cover for activities of certain incoming fund managers without an establishment in the UK during TPR, as they are already covered by the FSCS without any need to “top up”? If not, why?

### Incoming EEA-based firms and compensation scheme cover

**4.24** We proposed in CP18/29 that firms in the TPR will have to comply with our Principles for Businesses. Principle 7 requires firms to pay due regard to the information needs

<sup>32</sup> CP26/18 UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards, PRA, October 2018: [www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf](http://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf)

<sup>33</sup> see paragraphs 4.62 to 4.78

<sup>34</sup> FSCS cover under PRA rules (for claims in respect of deposits and insurance provision) will be addressed in PRA Consultation Papers.

<sup>35</sup> Firms that become participant firms part way through the FSCS's financial year are not generally (outside the TPR) liable to pay a FSCS levy during that year (see FSCS 6.5.9R).



of their clients, and communicate information to them in a way which is clear, fair and not misleading. In the event of a no-deal Brexit, there may be an impact on the investor compensation scheme protection for UK customers of incoming EEA-based firms provided by the firms' home state compensation schemes. We consider this to be relevant to all firms which presently passport into the UK.

**4.25** Therefore, we propose to issue the following guidance:

We expect incoming EEA-based firms in the TPR to consider and communicate to their customers any material changes in home state investor compensation scheme coverage, as a result of UK withdrawal from the European Union. We would also expect such a firm to provide, on a customer's request, information concerning the firm's inclusion in any compensation schemes, including the firm's home state scheme.

**Q21: Do you agree with the proposed guidance for incoming EEA-based firms relating to material changes in home state compensation scheme coverage? If not, why?**

## Financial Ombudsman Service

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**4.26** In CP18/29,<sup>36</sup> we proposed to include EEA services firms<sup>37</sup> in the TPR in the Compulsory Jurisdiction (CJ) of the Financial Ombudsman Service. We also proposed to apply our complaints-handling rules to them. Firms with a UK branch are already included in the CJ and this will continue as part of the TPR.

**4.27** For EEA services firms that are already members of the Voluntary Jurisdiction (VJ), complaints (including post-exit complaints) about their pre-exit activities will continue to come under the VJ as they do now. If a firm wants to leave the VJ, it will continue to have to follow the Financial Ombudsman Service's process, as set out in DISP 4.2.7R. Furthermore, the proposed FEES rules<sup>38</sup> will allow for firms joining the TPR which are also in the VJ to pay a reduced VJ levy to reflect the fact that certain activities directed at the UK which were covered by the VJ will now be covered by the CJ going forward.

**4.28** The Financial Ombudsman Service will consider in future years whether any further adjustment to the VJ annual levy for EEA services firms who are VJ participants (whether or not they are also in the TPR) is appropriate.

**4.29** In this CP, we are consulting on the rule changes required for the above proposals.

**Q22: Do you agree that EEA services firms in the TPR should be included in the Compulsory Jurisdiction of the Financial Ombudsman Service and our complaints-handling rules and guidance? If not, why?**

**Q23: Do you agree with our proposals regarding EEA services firms in the TPR who are already members of the Voluntary Jurisdiction? If not, why?**

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36 see paragraphs 4.79 to 4.91

37 This includes EEA electronic money institutions, EEA payment institutions and EEA Registered AIS Providers that join the TPR.

38 FEES 5 – link to instrument or place in instrument when available

## Disclosure of TP firm's authorisation status (status disclosure)

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- 4.30** We are proposing that firms in the TPR should include specific disclosure in their letters (or electronic equivalents) to retail clients of their authorisation status in line with the current requirements of GEN 4.3. EEA branches must already make a status disclosure, and so they will need to change the existing wording to reflect the firm's status because of the TPR. For EEA services firms, disclosure is only currently required where the firm indicates it is an authorised person, so disclosure in all letters (or electronic equivalents) will be a new requirement.
- 4.31** Disclosure of the firm's status as a TP firm, and flagging to consumers where they can find out more about TPR, is important given the significant change to TP firms' regulatory status. This is because of the loss of passporting rights and their deemed temporary permission under Part 4A of FSMA, and the potential for home state protections and supervision to fall away following exit day. This will give consumers the opportunity to understand the nature of the firm they are dealing with, and the protections which are available to them.
- 4.32** We also propose that EEA services firms should include disclosure that the consumer protections which apply may be different from those in the UK, given that our rules will allow them to continue to comply with the home state implementation of many rules (rather than the UK implementation of those rules) as explained in paragraph 4.11 of CP18/29.
- 4.33** The wording we intend to use for solo-regulated TP firms is:
- "Deemed authorised and regulated by the Financial Conduct Authority. [For EEA services firms: The nature and extent of consumer protections may differ from those for firms based in the UK.] Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority's website."
- 4.34** The wording we intend to use for dual-regulated TP firms is:
- "Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. [For EEA services firms: The nature and extent of consumer protections may differ from those for firms based in the UK.] Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority's website."
- 4.35** In each case, the wording for firms with a top-up permission will include different text to reflect that top-up permission, explaining that firms are authorised by the FCA or PRA (as appropriate) and with deemed variation of permission.
- 4.36** We also propose to extend the current duties in GEN 4.5 which require that a firm must not indicate or imply that it is authorised, regulated or otherwise supervised by us or the PRA in respect of business for which it is not, so that it also applies to EEA services firms in the TPR (which are not currently subject to this rule), and to retain these duties for EEA branches in the TPR.



**Q24:** Do you agree with our proposals regarding status disclosure for firms in the TPR? If not, why?

## 5 Binding Technical Standards

### Our approach to BTS

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- 5.1** As in our first CP, this consultation sets out our proposals to correct provisions in BTS<sup>39</sup> that would no longer operate effectively, or otherwise amend them in line with our approach to onshoring, once the UK has left the EU.
- 5.2** This consultation covers many of the BTS that were not addressed in the first CP, but not all of them. This is because we will only present our proposed amendments to BTS when the corresponding SI or policy note has been published by the Government, as described in Chapter 1. In this CP, we are consulting on changes to BTS in respect of the following:
- Markets in Financial Instruments Directive and Regulation
  - Packaged Retail and Insurance-based Investment Products Regulation
  - Payment Accounts Directive
  - Payment Services Directive
  - European Market Infrastructure Regulation
  - Insurance Distribution Directive
  - Market Abuse Regulation
  - European Benchmark Regulation
  - Money Market Funds Regulation
  - Transparency Directive
  - Prospectus Directive
  - European Long-Term Investment Fund Regulation
  - European Venture Capital Funds Regulation
  - European Social Entrepreneurship Fund Regulation
- 5.3** There are also many BTS mandated under Level 1 legislation that have not been finalised by the EU. In this CP, we include BTS that have been either published in the Official Journal of the EU or published in near final form by the European Commission by 23:59 GMT on 24 October 2018. BTS that have not reached that stage are

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39 Please see full list of BTS covered in this CP in Annex 4



not included in this consultation, such as those mandated under the Prospectus Regulation and the Securities Financing Transactions Regulation.

- 5.4** The Treasury proposes to add relevant final BTS to individual onshoring legislation, or an addendum to the Financial Regulators' Powers (Technical Standards) (EU Exit) Regulations 2018, as needed, to specify BTS that can be amended using the delegated powers described.
- 5.5** Some BTS within CRD, CRR, EMIR, FICOD, MIFID and MIFIR<sup>40</sup> are relevant to firms and persons supervised by us, the Bank of England and the PRA. The SI giving us the power to correct BTS designates an appropriate regulator for each BTS, and in some cases, this is shared between two regulators.
- 5.6** In the case of CRD, CRR, EMIR, FICOD, and MIFID the approach we, the Bank and the PRA are taking is that one authority will take the lead in making corrections in preparation for exit day, based on which authority's remit and objectives are most relevant. We have collaborated with the other designated regulator, and we will be sharing consultation responses with one another.
- 5.7** Except for EMIR and MIFIR, as described below, we propose to make identical changes to those made by the other regulator, so that at exit day, we will have identical but separately controlled BTS on these areas. We can adjust them according to the populations we respectively regulate, so that the division of responsibility is clear to follow.
- 5.8** As mentioned in our first CP, for the existing BTS that accompany EMIR and MiFIR, we, the Bank and the PRA believe it is important that the substance of our BTS remains identical after exit day as these concern areas of overlap. Therefore, any changes to these BTS before exit day will be made with each other's consent.
- 5.9** Under the onshoring SIs, power is designated to each regulator to make new technical standards, so it is clear from where new rules will emerge after exit day.
- 5.10** Table 5 below shows the BTS included in this consultation or those of the Bank of England that are shared between regulators and the lead authority for each BTS.

**Table 5**  
***EU Regulations for which the appropriate regulator is both the PRA and the FCA or the Bank and the FCA***

Lead authority	EU Regulations
FCA is the lead authority for these EMIR BTS.	European Market Infrastructure Regulation BTS 148/2013; 149/2013; 1247/2012
PRA is the lead authority for these BTS. Details on proposed changes can be found in the PRA's consultation.	European Market Infrastructure Regulation BTS 2016/2251; Financial Conglomerates Directive BTS 342/2014; Financial Conglomerates Directive BTS 2015/2303

<sup>40</sup> Capital Requirements Directive, Capital Requirements Regulation, Financial Conglomerates Directive, Bank Recovery and Resolution Directive, European Market Infrastructure Regulation, Markets in Financial Instruments Directive/Regulation.

Lead authority	EU Regulations
The Bank is the lead authority for these BTS. Details on proposed changes can be found in the Bank's consultation.	European Market Infrastructure Regulation BTS 285/2014, 2015/2205, 2016/592, 2016/1178, 2017/751, 2017/2155

- 5.11** In correcting BTS, we have followed the approach envisaged by Government in its published secondary legislation under the EUWA, and so most of our changes are consequential. These proposed amendments are not described in detail in this consultation but we show all draft instruments with their changes in Appendix 4.
- 5.12** Paragraphs 5.15 to 5.47 provide more detail and reasoning where our proposals depart from the baseline approach described in paragraph 1.6 or where we consider a different approach to correcting the relevant deficiency is appropriate. We have also specified where changes are specific to certain BTS.
- 5.13** All changes to BTS should be read alongside the amendments made to the Level 1 legislation. You may also find it useful to refer to the amendments to our Handbook, where Handbook provisions and BTS interrelate.

## Sectoral changes

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- 5.14** Most of the changes that we are proposing to make to BTS are to fix gaps that are cross-cutting in nature and are reflected within the cross-cutting chapter of this and our first consultation. We have specified below where changes are specific to certain BTS.
- 5.15** **The Markets in Financial Instruments Transparency-related BTS**  
 The Markets in Financial Instruments Regulation (MiFIR) sets, among other things, the rules determining the conditions under which pre-and post-trade transparency (i.e. the disclosure of trading interests to the market before and after the trade is done) applies to trading venues and investment firms dealing over-the-counter (OTC).
- 5.16** The transparency regime is calibrated differently for equities (shares, ETFs, depositary receipts, certificates and other similar financial instruments) and non-equities (bonds, structured finance products, derivatives and emission allowances). However, the framework is, for both classes of instruments, built around the principle that trading interests (for example bid and offer prices) and executed transactions must be disclosed to the public unless exemptions in the form of waivers or deferrals apply.
- 5.17** The purpose of waivers and deferrals is to allow the transparency regime to foster more liquid and efficient markets. Waivers and deferrals depend on calculations and thresholds that must be published by regulators based on data and methodologies in BTS. Some of the calculations determine the size of orders or transactions above which transparency can be waived or deferred. Others determine whether financial instruments are liquid or not, and therefore benefit from waivers and deferrals.
- 5.18** To protect price formation in equities, certain waivers are also subject to a mechanism which limits the proportion of trading that can take place without being subject to pre-trade transparency (the so-called Double Volume Cap Mechanism).



**5.19** Onshoring this regime presents several challenges. First, the regime was designed and calibrated with the assumption that it would apply across 28 national markets. Some adjustments are therefore needed to ensure the regime continues to work as intended when applied on a standalone basis in the UK. Secondly, we will need to take on ESMA's role of performing and publishing a very large number of transparency calculations. We have already begun preparations for taking on this role.

**5.20** The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 creates the broad framework to allow us to meet these challenges. These Regulations grant a set of temporary powers that provide us with some flexibility as to how the MiFID II transparency regime is operated during a transitional period of up to four years from exit day, with the view to maintaining existing outcomes as far as possible. These temporary powers include the ability, in specified circumstances, to:

- amend certain transparency calibrations (which are otherwise frozen on exit day)
- direct suspensions of waivers under the Double Volume Cap Mechanism
- Suspend the obligation on trading venues to disclose pre-and post-trade trading information in respect of certain instruments
- determine the class to which financial instruments belong under Article 14(6)(a) MiFIR
- publish the data for the systematic internaliser determination under Article 16(z)(a) of the MiFID Delegated Regulation

**5.21** When exercising the temporary powers, we must consider, for example, whether the use of the relevant power would advance our market integrity objective or where a failure to use the power would unduly harm price formation. We will issue a statement of policy on how the temporary powers will be used.

**5.22** In recognition of the international nature of wholesale financial markets, the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 also grant us new permanent powers. These include the power to define the 'relevant area' (consisting of the UK and other countries or regions that we specify) for one or more financial instruments. This is subject to our ability to obtain sufficient reliable trading data from that country or region. This allows us to reflect the liquidity in financial instruments that are traded outside the UK when making determinations about the liquidity status of financial instruments admitted to trading or traded on a UK trading venue.

**5.23** The MiFID II transparency regime has several BTS associated with it. Much of the detailed specification of the regime is set out in those BTS. We propose to make amendments to the following:

- Commission Delegated Regulation (EU) 2017/587 regarding transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (RTS 1).



- Commission Delegated Regulation (EU) 2017/583 regarding transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (RTS 2).
- Commission Delegated Regulation (EU) 2017/577 regarding the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (RTS 3).
- Commission Delegated Regulation (EU) 2017/588 regarding the tick size regime for shares, depository receipts and exchange traded funds (RTS 11) Para.

**5.24** The key changes we propose to make to the BTS are intended to give effect to the onshoring principles in the SI. We propose:

- inserting the concept of the 'relevant area' into specific calculations
- continuing to publish transparency information under RTS 1, 2 and 11 during the transitional period. The new provision here reflects the fact that we will not immediately be in a position to apply the methodology for calculations to UK trading data, but we would nevertheless be required to have regard to the prescribed methodology, and we would be permitted to use a broad range of available data
- that, as of Exit day, the most recently published pre-exit calculations which take account of UK trading would continue to apply, until our own publications under RTS 1, 2 or 11 (as above) take effect.

**Q25: Do you agree that our proposed amendments to the MiFIR transparency-related BTS are appropriate, given the provisions of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 SI?**

### **The Packaged Retail and Insurance-based Investment Products (PRIIPS) Regulation BTS**

**5.25** The PRIIPs Regulatory Technical Standards (RTS) 2017/653 sets out standards applying to the presentation, content, review and revision of key information documents (KIDs). If an investment product falls within the scope of the PRIIPs Regulation, the PRIIP manufacturer must prepare a KID and publish it on its website.

**5.26** We propose to amend the PRIIPs RTS so that:

- EEA entities are not treated as third-country entities under certain RTS provisions related to risk indicators. The aim of this proposal is to ensure we maintain operable equivalence with the methodologies in the EU PRIIPs RTS and avoid risk ratings set out in KIDs for certain PRIIPs increasing on exit day, and potential market disruption. As part of this approach, in relation to the assessment of credit risk, we propose to allow PRIIP manufacturers to select an external credit assessment institution certified or registered either with the FCA or with ESMA. This deviates from, and does not affect, the approach which is being taken to the onshoring of the Credit Rating Agencies Regulation.
- As things stand, the PRIIPs RTS will not apply in relation to all UCITS schemes, including EEA domiciled funds, until 31 December 2019. This is because there is currently a time-limited exemption under the PRIIPs Regulation exempting UCITS



manufacturers from needing to produce a PRIIPs KIID until that date. They will provide the UCITS KIID instead. This approach is consistent with the approach taken to onshoring UCITS and aims to ensure different types of disclosure documents do not need to be provided at the same time for the same fund.

**Q26: Do you agree that our proposed approach to amending the PRIIPs RTSs to avoid risk ratings for certain PRIIPs increasing directly after exit is appropriate?**

**Insurance Distribution Directive (IDD)**

**5.27** IDD aims to enhance consumer protection when buying insurance and to support competition between insurance distributors by creating a level playing field. It has several delegated acts, including one which sets the standardised presentation format for the disclosure of key information to consumers for general insurance contracts: the Insurance Product Information Document (IPID).

**5.28** We propose to onshore the IPID requirements<sup>41</sup> so that, except for in one area, they continue to apply as at present to contracts of insurance sold in the UK. However, there is one substantive issue where we are proposing a change.

**5.29** We propose to remove the requirement for IPIDs to stipulate the EEA state in which the product manufacturer is registered. This is relevant for identifying the state responsible when a contract is sold cross-border. In the absence of EU passporting, we do not consider it is necessary for the IPID to specify this information, as firms would be expected to be authorised in the UK to continue to do insurance business here. There are also other existing requirements on firms to disclose their address.

**5.30** We do not consider that firms which already have, and continue to issue, IPIDs stipulating that they are registered in the UK or Gibraltar need to amend their documents to remove this information.

**The Payment Accounts Directive (PAD) BTS**

**5.31** BTS set out in Commission Implementing Regulations (EU) 2018/32, 2018/33 and 2018/34 aim to improve the transparency and comparability of fee information in relation to payment accounts for consumers through standardised terminology and disclosure documents.

**5.32** We published the final linked services list in April 2018<sup>42</sup>. This is a list of standardised terminology to describe key services that payment service providers must use in their information to consumers where applicable. The final linked services list incorporates the Union standardised terminology contained in BTS 2018/32.

**5.33** The Payment Accounts (Amendment) (EU Exit) Regulations 2018 will revoke the BTS and remove references to EU standardised terminology in the UK Payment Accounts Regulations as it will not be applicable under the onshored legislation. The final published linked service list will continue to apply.

**5.34** Most of the proposed amendments to 2018/33 and 2018/34 are minor and cross cutting. However, we propose to amend references to the 'national list' in 2018/33 and 2018/34 to refer to the 'final linked services list'. This aligns with the terminology used

<sup>41</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1469&from=EN>

<sup>42</sup> [www.fca.org.uk/publication/feedback/payment-accounts-regulations-final-linked-services-list.pdf](http://www.fca.org.uk/publication/feedback/payment-accounts-regulations-final-linked-services-list.pdf)

to describe the list that is used in the Payment Accounts Regulations 2015 and in our April 2018 publication.

- 5.35** We also propose to remove references to the comprehensive cost indicator in 2018/33 and 2018/34. Payment service providers did not need to provide that information to consumers under the Payment Account Regulations 2015 and will not be required to do so under the Payment Accounts (Amendment) (EU Exit) Regulations 2018.

**Q27: Do you agree with the proposed changes to the BTS under PAD?**

**The Bank Recovery and Resolution Directive (BRRD), Financial Conglomerates Directive (FICOD) and Capital Requirements associated BTS**

- 5.36** We share responsibilities with the PRA for a proportion of the BTS adopted under BRRD, FICOD, CRD IV and CRR. For these, we have agreed with the PRA to split each onshored BTS at exit day<sup>43</sup> and intend to make the same amendments as the PRA at exit. The outcome would be to have separate but identical BTS applying to PRA-authorized and firms authorized by us.

- 5.37** The Bank of England is consulting on the onshoring amendments to the BRRD BTS concerned with resolution, and the PRA is consulting on those to the BTS under FICOD, CRD IV and CRR. While we are conducting our own consultation through this paper on the amendments to our part of each split BTS, firms authorized by us should have regard to the PRA consultation, published on 25 October,<sup>44</sup> to view the detail of their proposed amendments.

**European Market Infrastructure Regulation (EMIR)**

- 5.38** EMIR imposes requirements on entities that enter into derivative contracts. It also establishes common organisational, conduct of business and prudential standards for central counterparties (CCPs) and trade repositories (TRs).

- 5.39** In this CP, we are consulting on proposed changes to BTSs concerning the data publication and data access requirements for TRs, general 'level 2' requirements concerning clearing, access by CCPs to trading venue market data, and risk mitigation techniques and the content, format and frequency of reports to be made to a TR.

- 5.40** The BTSs are:

- Commission Delegated Regulation (EU) 149/2013 regarding indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques.
- Commission Delegated Regulation (EU) 148/2013 on minimum details of the data to be reported to TRs (as amended by Commission Delegated Regulation (EU) 2017/104).
- Commission Delegated Regulation (EU) 1247/2012 on format and frequency of trade reports to TRs (as amended by Commission Delegated Regulation (EU) 2017/105).

<sup>43</sup> using Regulation 4 of the Financial Regulators' Powers (Technical Standards) (EU Exit) Regulations 2018

<sup>44</sup> [www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts](http://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts)



- Commission Delegated Regulation (EU) 151/2013 regarding the data to be published and made available by TRs and the standards for aggregating, comparing and accessing data (as amended by Commission Delegated Regulation (EU) 2017/2155).

**5.41** We and the Bank of England have shared remit and objectives in relation to the first three. As explained in paragraph 5.7, the approach that we and the Bank of England are taking, in preparation for exit day, is that one authority takes the lead in making corrections, based on which authority's remit and objectives are most relevant. In this case, we are the lead authority and have collaborated with the Bank of England, and will be sharing consultation responses with them.

**5.42** The changes are all consequential upon amendments made by the principal SI on EMIR<sup>45</sup> to correct deficiencies arising from the withdrawal of the United Kingdom from the EU.

**5.43** However, TRs should note that, in onshoring Commission Delegated Regulation (EU) 151/2013, we propose to amend the technical arrangements necessary for TRs to provide access to trade data, in accordance with article 81 of EMIR. This is a consequence of our replacing ESMA's existing 'TRACE' system with our 'Derivatives Data Store' system.

**5.44** Amendments to Commission Delegated Regulation (EU) 149/2013 reflect the Bank of England assuming functions in relation to:

- specifying the classes of OTC derivatives that should be subject to the clearing obligation, under article 5 of EMIR
- the register of classes of OTC derivatives subject to the clearing obligation, under article 6 of EMIR.

**5.45** In onshoring Commission Implementing Regulation (EU) 1247/2012, we propose to:

- remove sentences referring to Article 9(3) of EMIR in relation to reporting to ESMA until a trade repository is registered for a particular derivative class as this provision has been substantially reworded in the SI on EMIR; and
- replace references to "ESMA" with references to the "FCA" in connection with the endorsement of the code referred to in Article 4(9) and the unique trade identifier referred to in Article 4a(1); and
- align the taxonomy for financial counterparties with the definition of "financial counterparty" in the onshored EMIR.

**5.46** We note that some of these BTS contain cross-references to EU instruments which are yet to be onshored. It may be that further amendments to these BTS will be required to appropriately deal with these cross-references.

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45 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018. The EMIR provisions concerning applications for registration by TRs and related transitional arrangements are contained in The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.



**Q28:** Do you agree that we have correctly identified all relevant amendments in our draft BTS text related to the cross-cutting issues set out in Chapter 2? Are there any proposed changes in the instruments in Appendix 4 or discussed in this chapter where you think we should reconsider our approach?



## 6 Forms

- 6.1** Our Handbook forms and related guidance provide regulatory data, disclosures and other key information to us.
- 6.2** In many cases, our Handbook forms will have references and provisions that will no longer have their intended effect after Brexit.
- 6.3** At this stage, we propose to not carry out a detailed line by line review of all forms to identify and resolve these provisions. Instead, we will produce a guide which sets out the approach we expect users of our Handbook forms to take after Brexit.
- 6.4** The purpose of the guide is to provide clarity on how to interpret and complete the Handbook forms sensibly and purposively, taking into account Brexit, the provisions of the EUWA and amendments made to relevant legislation, including our Handbook rules. To draw attention to this, we propose to add a banner to our website where all Handbook forms are listed, directing users to the guide.
- 6.5** We consider this is a proportionate response to addressing EU-based references in our Handbook forms. It is consistent with the Bank/PRA, who also proposed<sup>46</sup> to issue a supervisory statement setting out the approach they expect firms to take when interpreting EU-based references found in reporting and disclosure requirements after Brexit.
- 6.6** The proposed draft guidance can be found at Appendix 2.

**Q29: Do you agree with our approach to Handbook forms?  
If not, why not? Do you have any comments on the  
proposed guidance at Appendix 2 to this CP?**

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46 [www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf](http://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf)

## 7 Credit rating agencies (CRAs) and trade repositories (TRs)

- 7.1** CRAs in the EU are regulated under the Credit Rating Agencies Regulation (CRAR) and supervised by the European Securities and Markets Authority (ESMA). The Treasury intends to amend the legislation to make us the supervisor responsible for CRAs registered under the UK regime.
- 7.2** TRs in the EU are regulated under the European Market Infrastructure Regulation (EMIR) and supervised by ESMA. As with CRAs, the Treasury intend to make us the supervisor responsible for TRs registered under the UK regime. More information on our regulation of CRAs and TRs can be found on our website.<sup>47</sup>
- 7.3** The legislation that transfers these responsibilities to us will apply our existing supervisory and enforcement processes as necessary to enable us to fulfil these new roles effectively. Therefore, we propose minor amendments to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG). These amendments are to reflect the changes made by the legislation and describe our enforcement powers and processes in relation to CRAs and TRs.

**Q30: Do you agree with our proposals to amend DEPP and EG?  
If not, why?**



## 8 Non-Handbook guidance

### Our general approach to non-Handbook guidance

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- 8.1** Non-Handbook guidance is guidance published outside of the Handbook.
- 8.2** Non-Handbook guidance relating to EU law or EU-derived law will continue to be relevant to matters arising after Brexit where the EUWA converts or preserves the provisions to which the guidance relates.
- 8.3** In many cases, the relevant provisions will have been amended to ensure deficiencies are remedied once the UK leaves the EU. However, we do not propose to update non-Handbook guidance issued before exit day to take these amendments into account.
- 8.4** In light of this, at Appendix 1 we set out how existing non-Handbook guidance should be interpreted where it relates to EU law or EU-derived law for matters arising on or after exit day.
- 8.5** In summary, we expect financial institutions and other market participants to sensibly and purposively interpret non-Handbook guidance, taking into account the provisions of the EUWA and any changes made to the underlying requirement as it is preserved or converted into UK law.
- 8.6** This approach reflects that we do not generally consider a detailed, line-by-line review of all existing non-Handbook guidance, in light of amendments to the underlying provision, to be necessary in current circumstances. However, we may at a later stage carry out a detailed review of specific guidance if there is a significant legal or policy reason.

**Q31:** Do you have any comments on the proposed guidance on our approach to non-Handbook guidance set out at Appendix 1 to this CP?

**Q32:** Have you identified any non-Handbook guidance which should be specifically reviewed and amended because you think that the interpretive approach proposed will not be enough to ensure the regulatory framework remains fit for purpose? If so, please explain why you think this is the case.



## Annex 1

### Questions in this paper

- Q1:** For those rules where we use powers under the EUWA, do you think any of the proposed changes in this CP or in relevant SIs represent a significant risk to compliance for your firm in time for exit day? If yes, please specify which and explain why this is the case, including projected time needed to comply with requirements were they to come into effect on exit day.
- Q2:** Do you agree with our proposals to introduce general continuity provisions? If not, why?
- Q3:** Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise about our approach to these cross-cutting issues?
- Q4:** Do you agree with our proposals to remove the claims representative requirement and retain our claims handling requirements?
- Q5:** Do you agree with our proposed changes to COBS 4 and COBS 6 in respect of compensation disclosures?
- Q6:** Do you agree with our proposal to maintain the current scope of the Glossary definitions of 'non-readily realisable security', 'non-mainstream pooled investment' and 'packaged product' and thereby maintain the application of the rules in COBS to which they relate?
- Q7:** Do you agree with our proposal to amend COBS 10A.4.1R(2)(a) and (b) to include reference to shares and bonds admitted to trading on EEA regulated markets? If not, why?
- Q8:** Do you agree with our proposal that we should rely on the new Handbook Glossary term for UCITS post exit and continue to treat UK and EEA UCITS as financial instruments in relation to which an appropriateness assessment is not necessarily required? If not, why?
- Q9:** Do you agree we should continue to allow ISPVs assuming risks from EEA insurers to do so under COBS 18.6A?



- Q10:** Do you agree with the proposed amendment, which will lead to shareholders in all jurisdictions being eligible for inclusion in the free float calculation of shares in public hands?
- Q11:** Do you agree with our proposal to remove the reference to the EEA in the provisions setting out which issuers can benefit from an exemption from producing accounts?
- Q12:** Do you agree with our proposals to amend the requirements in DTR 4.1.6R and DTR 4.1.7R in relation to audited financial statements?
- Q13:** Do you agree that we should narrow the exemption from the voting rights notification requirements so that it applies only to the Bank of England?
- Q14:** Do you agree with our proposal to require issuers to use a PIP for disseminating regulated information?
- Q15:** Do you agree with our proposal to change the exemption from DTR 7.1 in respect of subsidiary undertakings?
- Q16:** Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 2) or discussed in this chapter where you think we should re-consider our approach? If so, why?
- Q17:** Are there any proposed changes where you think we should not follow the baseline approach of treating the EEA as a third country? If so, why?
- Q18:** Do you agree with our proposals for applying the SM&CR to dual-regulated branches?
- Q19:** Do you agree that consumers of EEA firms in the TPR with UK establishments should be protected by the FSCS, on an equivalent basis to other UK authorised firms, for activities from those establishments during TPR? If not, why?
- Q20:** Do you agree that we should continue to provide FSCS cover for activities of certain incoming fund managers without an establishment in the UK during TPR, as they are already covered by the FSCS without any need to “top up”? If not, why?
- Q21:** Do you agree with the proposed guidance for incoming EEA-based firms relating to material changes in home state compensation scheme coverage? If not, why?

- Q22:** Do you agree that services firms in the TPR should be included in the Compulsory Jurisdiction of the Financial Ombudsman Service and our complaints-handling rules and guidance? If not, why?
- Q23:** Do you agree with our proposals regarding EEA services firms in the TPR who are already members of the Voluntary Jurisdiction? If not, why?
- Q24:** Do you agree with our proposals regarding status disclosure for firms in the TPR? If not, why?
- Q25:** Do you agree that our proposed amendments to the MiFID II transparency-related BTS are appropriate, given the provisions of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 SI?
- Q26:** Do you agree with our proposed approach about the exemption for UCITS manufacturers from producing a PRIIPs KID?
- Q27:** Do you agree with the proposed changes to the BTS under PAD?
- Q28:** Do you agree that we have correctly identified all relevant amendments in our draft BTS text related to the cross-cutting issues set out in Chapter 2? Are there any proposed changes in the instruments in Appendix 2 or discussed in this chapter where you think we should reconsider our approach?
- Q29:** Do you agree that our proposals to amend DEPP and EG reflect the changes made by legislation? If not, why not?
- Q30:** Do you agree with our approach to amending forms? If not, why not?
- Q31:** Do you have any comments on the proposed guidance on our approach to non-Handbook guidance set out at Appendix 1 to this CP?
- Q32:** Have you identified any non-Handbook guidance which should be specifically reviewed and amended because you think that the interpretive approach proposed will not be enough to ensure the regulatory framework remains fit for purpose? If so, please explain why you think this is the case.



## Annex 2

# Cost benefit analysis related to the Temporary Permissions Regime

### Introduction

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1. This CBA is prepared in relation only to those rules where we propose to use our powers under FSMA, as amended by the Financial Services Act 2012. FSMA requires us to publish a cost benefit analysis (CBA) of our proposed Handbook rules where we use certain powers under FSMA, unless we consider that comparing the overall position in which we make the rules with not making them, there is no increase in costs or there is an increase but that increase will be of minimal significance (section 138L (3)).
2. Section 138I(2)(a) requires us to publish an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. It also requires us to include estimates of those costs and benefits, unless in our opinion these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate. In those cases, we have to include a statement of that opinion.
3. This analysis presents estimates of the significant impacts of our proposals. We give a quantitative estimate of the costs and benefits unless we think it is not reasonably practicable to do so or we cannot reasonably estimate them. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about ensuring that disruption for firms moving into the UK regulatory regime, and their customers, is minimised but still maintaining appropriate consumer protections, considering all the other impacts we foresee.

#### **Problem and rationale for intervention**

4. In CP18/29, we explained the position of firms in the TPR (TP firms) if we do not make changes to our Handbook. We said that they would be required to comply with our Handbook as firms with an authorisation under Part 4A of FSMA whose head or registered offices are overseas (Part 4A firms) because of the EEA Passporting Rights (Amendment, etc. and Transitional Provisions) (EU Exit) Regulations 2018 (TPR Regulations).
5. This would potentially be challenging for many TP firms to comply with in a short timeframe and would also leave gaps in consumer protection. Therefore, we need to amend our Handbook to apply an appropriate regime to TP firms. This needs to take into account the need to balance consumer protection and the need to create a regime which firms can comply with from exit day to minimise disruption to consumers and the UK market. Further information can be found in the CBA in CP18/29.
6. However, in relation to FSCS cover for TP firms, the TPR Regulations provide that the FSCS may only cover TP firms operating at the time the act or omission giving rise to the claim occurred from UK establishments as well as certain fund managers (whether or not they have a UK establishment) that already benefit from FSCS protection. Our rules may not, therefore, extend FSCS cover to most TP firms that will operate in the

UK without an establishment during the TPR (other than the fund managers referred to above).

## Our intervention

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7. The CBA in CP18/29 addressed the rules which we were consulting on in that CP relating to the TPR. This CBA analyses the costs and benefits of the rule changes which we are consulting on in this CP, specifically the changes we are proposing to the Handbook in relation to:
- the APR and the SM&CR (both for TPR related rules and for “end state” rules referred to in paragraph 3.7 onwards)
  - FSCS
  - the Financial Ombudsman Service
  - status disclosure
- as against the baseline scenario described below.
8. All other proposals in this CP are proposed to be made using our delegated powers under the EUWA, and therefore it is not necessary to carry out a CBA in respect to those rule changes or are proposed to be made under provisions of FSMA that do not require a CBA.<sup>48</sup>

## Baseline

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9. As explained in CP18/29, this CBA does not analyse the costs and benefits of the TPR itself, which is established by the TPR Regulations rather than because of our proposed Handbook changes. Our duty is to analyse the costs and benefits of the changes to the Handbook rules on which we are consulting in this CP.
10. This CBA compares the overall position if the proposed rule amendments are applied and the overall position if no changes were made to our Handbook for TP firms following exit day.<sup>49</sup> Without the proposed rule changes, TP firms would be subject to the Handbook (in its post-Brexit form) as Part 4A firms with or (in the case of EEA services firms) without an establishment. Further information on the baseline scenario is included in the CBA of CP18/29.

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48 A CBA is not required to accompany rules for the funding of the Financial Ombudsman Service made under section 234 of FSMA (see 138(6)).

49 The baseline, or the “appropriate comparison”, also reflects the new FSCS funding structure following the rules made in CP18/11 (Reviewing the funding of the Financial Services Compensation Scheme (FSCS)), which comes into effect on 1 April 2019.



## Senior Managers & Certification Regime (SM&CR) during temporary permission

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11. We have proposed to maintain the current EEA branch regime under the APR and SM&CR during the period in which firms have a temporary permission. This means that the additional requirements that apply to UK branches of third-country firms will only apply once a TP firm has been fully authorised as a third-country branch.
12. The SM&CR and APR do not currently apply to firms who only have a services passport. We do not propose to change this.
13. Below we set out baseline assumptions used for the CBA and analyse the costs and benefits of our proposals related to dual-regulated and solo-regulated firms.

### Baseline assumptions for the continued application of the EEA-branch regime during the TPR and application of the third-country regime after the branch has Part 4A authorisation

14. The baseline scenario for EEA branches entering the TPR and then seeking Part 4A authorisation differs depending on the type of business they undertake:
  - deposit-takers<sup>50</sup> would need to meet the SM&CR requirements for third-country branches following exit day
  - solo-regulated firms<sup>51</sup> would need to meet the APR requirements for third-country branches immediately following exit day, until 9 December 2019 when the SM&CR requirements for third-country branches would apply
  - Insurers<sup>52</sup> would need to continue meeting the SM&CR requirements for EEA branches.
15. Applying the third-country branch requirements to solo-regulated firms and deposit-takers immediately following exit day will, we consider, not give these firms enough time to comply with these rules, particularly:
  - obtaining FCA approval for individuals to perform additional FCA-approved functions (APR and SM&CR)
  - drafting Statements of Responsibilities (SoRs) for the additional approved functions (SM&CR)
  - allocating Prescribed Responsibilities for the first time (SM&CR)
16. As a result, under the baseline scenarios, the potential costs associated with these elements could discourage firms from entering the TPR. We therefore propose that all EEA branches in the TPR remain subject to the requirements that currently apply to EEA branches. Once a branch receives Part 4A authorisation, we propose they will need to meet the third country requirements. This, we believe, will give firms sufficient time to prepare to comply with these rules.

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50 Deposit-takers includes banks, building societies, credit unions and PRA-designated investment firms.

51 Solo-regulated firms includes all firms regulated by the FCA except deposit-takers and insurers (which are dual-regulated by the FCA and PRA).

52 A small minority of EEA insurers are exempt from the SM&CR requirements, including pure reinsurers. Under our proposals, we intend to maintain this exemption.

17. A small minority of EEA branches are currently exempt from either the APR or SM&CR requirements. As a result of the proposals included in this consultation, that exemption will continue to apply.

**Assessing the baseline costs of moving insurers from the EEA regime to the third country regime without the TPR**

18. For insurers, as the baseline scenario would mean that they will continue to be subject to the SM&CR EEA branch regime after exit day, these firms will benefit from facing delayed costs when applying the extra SM&CR requirements that apply to third country branches if, and when, they receive Part 4A authorisation.
19. In Chapters 4 and 5 of our final CBA<sup>53</sup> on the extension of the SM&CR to solo-regulated firms and insurers we set out several qualitative factors that we assessed to form a view of the costs and benefits of the regime. In our proposals in this CP we have looked to ensure the continuing validity of this assessment as far as possible.

**Dual-regulated firms (deposit-takers and insurers)**

20. By exit day, all dual-regulated firms will be subject to the SM&CR. Our proposal to maintain the SM&CR EEA branch regime (for deposit-takers) means that they may benefit from the delayed application of the extra SM&CR requirements that apply to third-country branches.
21. This benefit accrues for the period between exit day and the point at which the firm is authorised as a third-country branch, when compared with the baseline scenario (having to apply the third-country branch regime immediately). This is because these firms would save the costs associated with implementing these requirements for this period. We would expect these costs savings to arise mainly from a reduction in the use of staff time on complying with various parts of the regime (as described in the CBA that accompanied PS18/15 – Extending the Senior Managers & Certification Regime: Cost-Benefit Analysis) but there may also be small reductions in training costs, record keeping costs or IT changes.
22. While there are no material costs to firms associated with these proposals, there may be costs in the form of fewer regulatory protections and an associated reduction in our ability to mitigate potential harms. For example, not applying Prescribed Responsibilities could restrict our scope to take disciplinary action. The full benefits of the SM&CR may also not be realised immediately if the additional Senior Manager Functions and Handover Procedures are not applied. Not applying these parts of the SM&CR for this period may therefore create a cost when compared with the baseline scenario.
23. For insurers, as the baseline scenario would mean that they will continue to be subject to the SM&CR EEA branch regime after exit day, these firms will benefit from facing delayed costs when applying the extra SM&CR requirements that apply to third country branches if, and when, they receive Part 4A authorisation.
24. In paragraphs 4.4, 6.2 and 6.7 of the CBA<sup>54</sup> published alongside PS18/15 we explained why it was not reasonably practicable to estimate the benefits from the SM&CR regime. The costs of applying the TPR are the delays to the benefits that immediately applying the third country regime at exit day. As we cannot estimate these benefits,

53 [www.fca.org.uk/publication/research/cost-benefit-analysis.pdf](http://www.fca.org.uk/publication/research/cost-benefit-analysis.pdf)

54 [www.fca.org.uk/publication/research/cost-benefit-analysis.pdf](http://www.fca.org.uk/publication/research/cost-benefit-analysis.pdf)



we cannot estimate the costs to consumers of delaying application of the SM&CR EEA branch regime to dual-regulated firms during the temporary permissions regime, or until we apply the third country requirements once a firm has received Part 4A authorisation.

- 25.** Also in the CBA published alongside CP18/29 we have explained why it is not reasonably practicable to produce a quantitative estimate of costs and benefits in relation to the rules applying to TP firms consulted on in that CP. In general, the same reasons equally apply to the proposals in this paper.
- 26.** For TP firms:
- We have designed the rules in this CP that apply to TP firms so that TP firms can generally continue to comply with our rules with which they are already complying, rather than requiring firms to make significant changes or incremental changes that are too small to measure.
  - The TPR is only for a temporary period, and TP firms will need to come into compliance with the full Handbook as it applies to third-country firms on UK authorisation in due course.
  - There is significant uncertainty about the number and type of EEA firms that will decide to come into the TPR.
- 27.** For insurers:
- We believe it would not be reasonably practicable to estimate the potential costs or benefits of our proposal to apply the third country requirements to EEA branches at exit day. This is because a pro forma analysis of the SM&CR extension CBA cannot be used to derive meaningful incremental cost or benefit estimates (as we cannot isolate them robustly) and we do not have time to conduct another CBA before we need to make the Handbook rules.
- 28.** In addition, for all firms:
- There is insufficient time in which to conduct the analysis and produce quantitative estimates has by necessity been constrained by external dependencies, and the deadline for finalising this work is not moveable as we need to make the Handbook rules by early 2019.
- Solo-regulated firms**
- 29.** The SM&CR for solo-regulated firms begins on 9 December 2019. This means that, on exit day, these firms will still be subject to the APR. The key difference between the APR EEA branch regime and the APR third-country branch regime is that fewer controlled functions apply to EEA branches (3) than third-country branches (10).
- 30.** As we propose to maintain the APR and then SM&CR EEA branch regimes until TPR firms are fully authorised as third-country branches, firms will benefit from the savings associated with these comparatively limited regimes for that period. We would expect similar types of cost saving as for deposit-takers.



- 31.** As with deposit-takers, there may also be costs, in the form of fewer regulatory protections and an associated reduction in our ability to mitigate potential harms compared with the baseline approach.
- 32.** We believe it is not reasonably practicable to estimate the potential costs or benefits of the continued application of the SM&CR EEA branch regime to solo-regulated firms during the TPR or applying the third country requirements once a firm has received Part 4A authorisation for the same reasons that are mentioned in Paragraph 25-28 above.

### Financial Services Compensation Scheme (FSCS)

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- 33.** Currently, EEA firms with a UK branch passporting into the UK may choose to be covered by the FSCS via a 'top-up' mechanism<sup>55</sup> (in addition to their home compensation scheme if any). EEA services firms may also have FSCS cover via the top-up mechanism if they set up a branch, or automatically as a matter of course (which is the case with some fund managers).<sup>56</sup> Customers of other EEA services firms that are not covered by FSCS may have access to home state compensation schemes.
- 34.** Under the baseline referred to in paragraphs 9 and 10 above, FSCS protection under our compensation rules is afforded to the customers of most types of Part 4A authorised firm and depending on the nature of their business.<sup>57</sup> The FSCS generally covers only activities carried on from a UK establishment, with some exceptions.<sup>58</sup> All TP firms will be treated as if they have permission under Part 4A of FSMA to carry on the relevant regulated activities in the UK on a temporary basis while in the TPR. Therefore, under the baseline scenario, only TP firms operating from UK establishments, plus some exceptions,<sup>59</sup> would receive FSCS coverage and would be required to contribute to the costs of the FSCS (known as 'levies') as Part 4A firms following exit day.
- 35.** The TPR Regulations provide that the FSCS is to cover UK branches during the TPR. In addition, under the TPR Regulations, customers of firms in the TPR without a UK establishment will not have access to the FSCS, other than where there is existing (pre-exit) FSCS cover for such firms, that is, in respect of the activities of certain incoming fund managers. Further, FSCS levies may not be imposed on TP firms without a UK establishment, except those certain incoming fund managers without a UK branch to which FSCS cover is nevertheless to be extended during the TPR (as now).

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55 As set out in COMP Chapter 14: [www.handbook.fca.org.uk/handbook/COMP/14/?view=chapter](http://www.handbook.fca.org.uk/handbook/COMP/14/?view=chapter)

56 As set out in COMP 5.5.2R: [www.handbook.fca.org.uk/handbook/COMP/5/?view=chapter](http://www.handbook.fca.org.uk/handbook/COMP/5/?view=chapter)

57 FSCS protection under the FCA rules extends to investment provision, investment intermediation, insurance intermediation, debt management and home finance intermediation. FSCS cover under the PRA rules (for claims in respect of deposits and insurance provision) will be addressed in the PRA's consultation papers on the TPR.

58 The exceptions are: certain incoming fund managers' activities have FSCS cover even where they are not carried out from a UK establishment; and the FSCS covers home finance mediation where the customer is a UK resident. Pre-exit, incoming home finance mediation firms have to set up a branch if they wish to elect to participate in the FSCS.

59 The exceptions are: certain incoming fund managers' activities have FSCS cover even where they are not carried out from a UK establishment; and the FSCS covers home finance mediation where the customer is a UK resident. Pre-exit, incoming home finance mediation firms have to set up a branch if they wish to elect to participate in the FSCS.



36. Therefore, our proposals are:

- To provide customers of EEA firms in the TPR operating from UK establishments with FSCS protection, equivalent to the cover provided to customers of UK firms. These firms will be required to contribute to the costs of the FSCS.
- To continue providing FSCS cover in respect of the activities of certain incoming fund managers (without an establishment) that are currently (pre-exit) covered by the FSCS. These firms will be required to contribute to the costs of the FSCS.
- No FSCS cover for the customers of other EEA firms in the TPR operating in the UK without a UK establishment, nor will these firms be required to pay FSCS levies.

### Costs of our proposals

37. In respect of EEA firms in the TPR operating from UK establishments, we estimate that there will be no costs as against the baseline. This is because such firms would be covered by the FSCS, and be liable to pay FSCS levies, under our post-exit compensation rules in the baseline scenario.

38. In respect of certain incoming fund managers operating in the UK without an establishment with existing (pre-exit) FSCS cover, we estimate there will be some costs as against the baseline. This is because all firms without an establishment in the UK would not be covered by FSCS<sup>60</sup> and therefore would not be liable to pay FSCS levies under our post-exit compensation rules.

39. In respect of other EEA firms in the TPR operating in the UK without a UK establishment, we estimate no additional costs to these firms as against the baseline. This is because we are unable to extend cover to their customers or to require the FSCS to impose levies upon them because of the legislative constraints within the TPR Regulations.<sup>61</sup> However, as we highlighted in CP18/29, Brexit could result in customers of incoming EEA services firms (temporary) losing compensation scheme protection offered by home states, depending on the terms of the withdrawal.

40. We think it is unlikely that incoming EEA services firms with no FSCS cover will have a competitive advantage to expand their business as a result of not paying FSCS levies. This is because the cost savings are not big enough and the temporary period is not long enough for firms to benefit from this advantage.

### Benefits of our proposals

41. In respect of certain incoming fund managers operating in the UK without an establishment with existing (pre-exit) FSCS cover, we estimate that there will be a benefit to customers of these firms as they will be receiving compensation scheme protection as against the baseline position of no cover.

## Financial Ombudsman Service

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42. Presently, certain activities of Part 4A firms and incoming EEA firms with a UK establishment are covered by the Compulsory Jurisdiction (CJ) of the Financial

60 Unless they were home finance mediation firms dealing with UK residents; but the above-mentioned fund managers are not within this exception.

61 See subsections (4A) and (9A) to (9C) of section 213 of FSMA.

Ombudsman Service and our complaint-handling rules. Therefore, under the baseline scenario, TP firms with a UK establishment would be covered by the CJ of the Financial Ombudsman Service and would be required to apply our complaints-handling rules, whereas TP firms without a UK establishment would not be covered.

**43.** The CJ does not generally cover EEA services firms. Currently, UK consumers of EEA services firms should be able to refer complaints to alternative dispute resolution (ADR) schemes in other EEA member states if the firm that they are dealing with agrees to consider complaints under such schemes and has not signed up to join the voluntary jurisdiction (VJ) of the Financial Ombudsman Service.

**44.** We propose to include EEA services firms in the TPR in the CJ of the Financial Ombudsman Service and to apply our complaints-handling rules to them. These firms will be required to pay case fees and annual fees because of being included in the CJ. Firms in the regime with a UK branch are already included in the CJ and this will continue as part of the regime.

#### **Costs of our proposals**

**45.** In respect of all EEA firms with a UK branch, we estimate that there will be no costs as the firms will be subject to the same requirements under the baseline and the proposals.

**46.** In respect of all EEA services firms, we estimate that there will be some implementation costs associated with being included in the CJ and being required to apply our complaints-handling rules as against the baseline. We also estimate that there will be some costs for these firms in respect of the case fees and annual fees because of being included in the CJ. However, given these fees relate to the funding of the Financial Ombudsman Service and its operation in relation to the CJ, it is not necessary to carry out a CBA in respect of this rule change under the exemption in FSMA regarding the FOS funding.<sup>62</sup>

#### **Benefits of our proposals**

**47.** Including all EEA services firms in the CJ would ensure consumers of these firms will not lose rights to refer complaints to an ADR scheme on exit. The proposal is intended to preserve consumer protection and access to redress and should also help to maintain consumer trust and confidence when dealing with EEA services firms in the TPR. If we do not amend our rules to include these firms in the CJ this could have an impact on a consumer's decision to use EEA services firms in the TPR. If a consumer is unable to access an ADR scheme, progressing disputes through formal court processes could be lengthy and costly for both the firm and the consumer.

#### **Status disclosure**

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**48.** Currently EEA branches are required to disclose their authorisation status in their letters and electronic communications (under GEN 4.3), unless they are subject to equivalent home state requirements whilst EEA services firms are only required to include a disclosure in communications (under GEN 4.4) where they indicate that they are an authorised person.

**49.** In the baseline scenario, TP firms with a UK branch would be required to comply with the disclosure requirements which apply to any other firm with a Part 4A permission

<sup>62</sup> See section 138(6)(c) of FSMA



(including taking into account that the exclusion for equivalent home state rules in GEN 4.1.1.R (3) is proposed to be removed in our onshoring changes) which would involve costs to them in having to make changes to their existing disclosures.

- 50.** Therefore, we believe that our proposals requiring a different disclosure from TP firms, whilst involving a cost to them, does not represent an additional cost, or represents only minimal additional costs, to TP firms as against the baseline.
- 51.** EEA services firms in the TPR would not however be required to comply with these requirements in the baseline scenario, and only GEN 4.4 would continue to apply to them. Requiring a status disclosure in all circumstances from these firms therefore represents a cost as against the baseline scenario.
- 52.** In CP 12/24,<sup>63</sup> we estimated that, on the basis of certain assumptions, including taking an average number of customers and an average number of relevant communications per year to each customer, the one-off costs for a firm of making the required changes to status disclosures at that time could range from less than £100 to no more than £2,500. If we adjust these estimates to take account of inflation, these numbers in 2018 are £108 to £2,700.<sup>64</sup>
- 53.** However as explained elsewhere in this CBA and in the CBA in CP18/29, there is significant uncertainty about the number and type of firms which will come into the TPR. It is possible that the size of TP firms will differ from the size of firms used to produce the estimate above. Therefore, this estimate might not accurately reflect the costs which a TP firm would incur. For the reasons explained in paragraph 26 above, we believe that it is not reasonably practicable to produce a more reflective estimate.
- 54.** We believe that requiring appropriate status disclosure represents a benefit to consumers of having the opportunity to understand the nature of the firm they are dealing with, and the protections which are available to them. This will allow consumers to factor the nature of a TP firm in to their decision about the extent and character of their relationship with a particular firm.
- 55.** Taking into account the limited time available for the exercise and the wide range of business potentially within the TPR, it is not reasonably practicable to produce an estimate of how many decisions might be influenced by this or reasonably practicable to quantify this benefit.
- 56.** GEN 4.5 would continue to apply to EEA branches in the baseline scenario, but would not apply to EEA services firms. We do not believe that applying the duties set out in that chapter to EEA services firms will involve more than a minimal cost for them, as it is a duty not to misrepresent their regulatory position, and their regulatory position will be readily known to the firm, rather than a positive duty to act which would incur a cost.
- 57.** This represents a corresponding benefit to consumers of not being misled about the firm's position. We consider that in applying GEN 4.5 and making the appropriate comparison there will either be no costs or, to the extent there are new compliance costs, only minimal costs.

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63 [www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf)

64 [www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-october-2018-budget-2018](http://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-october-2018-budget-2018)

## Annex 3

# List of Statutory Instruments and policy notes <sup>65</sup>

### Statutory Instruments

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- Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018
- Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018
- Consumer Credit (Amendment) (EU Exit) Regulations 2018
- Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018
- Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018
- Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018
- Payment Accounts (Amendment) (EU Exit) Regulations 2018
- Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019
- Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2018
- The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018
- The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018
- The Insurance Distribution (Amendment) (EU Exit) Regulations 2018
- The Long-term Investment Funds (Amendment) (EU Exit) Regulations 2018
- The Capital Requirements (Amendment) (EU Exit) Regulations 2018
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision (EU Exit) Regulations 2018
- The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018

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<sup>65</sup> Please also see annex 2 of CP18/28 for other relevant SI's and policy notes



The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

The Venture Capital Funds (Amendment) (EU Exit) Regulations 2018

## Policy notes

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Benchmarks (Amendment) (EU Exit) Regulations 2018

Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018

E-Commerce Directive statement

Financial Services (Distance Marketing) (Amendment) (EU Exit) Regulations 2018

Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations 2018

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018

Market Abuse (Amendment) (EU Exit) Regulations 2018

Money Market Funds (Amendment) (EU Exit) Regulations 2018

Mortgage Credit (Amendment) (EU Exit) Regulations 2019

Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019

The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

## Annex 4

# List of relevant Binding Technical Standards

### List of BTSs consulted on in this CP where the FCA is the sole regulator

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#### EMIR

- Annex A and B – please see FCA CP18/28
- Commission Delegated Regulation (EU) 151/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

#### TD (Modification)

- Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings.

#### MAR

- Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.
- Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.
- Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance.
- Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications.
- Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems



and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions.

- Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.
- Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings.
- Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.
- Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

#### **MMFR**

- Commission Implementing Regulation (EU) 2018/708 of 17 April 2018 laying down implementing technical standards with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council.

#### **PAD**

- Commission Implementing Regulation (EU) 2018/33 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the statement of fees and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council.
- Commission Implementing Regulation (EU) 2018/34 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the fee information document and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council.

#### **IDD**

- Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information document.

#### **MiFIR**

- Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on



transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

- Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.
- Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.

#### **PD**

- Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.
- Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

#### **PSD**

- Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions.

#### **BMR**

- Commission Implementing Regulation (EU) 2018/1106 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council.
- Commission Delegated Regulation (EU) 2018/1637 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function.
- Commission Delegated Regulation (EU) 2018/1638 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function.



- Commission Delegated Regulation (EU) 2018/1641 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology.
- Commission Delegated Regulation (EU) 2018/1639 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors.
- Commission Delegated Regulation (EU) 2018/1640 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors.
- Commission Delegated Regulation (EU) 2018/1642 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements.
- Commission Delegated Regulation (EU) 2018/1643 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark.
- Commission Delegated Regulation (EU) 2018/1644 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent.
- Commission Delegated Regulation (EU) 2018/1645 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA).
- Commission Delegated Regulation (EU) 2018/1646 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration.

#### **ELTIF**

- Regulation 2018/480 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the

market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors.

#### **PRIIPS**

- Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

#### **MiFID**

- Commission Delegated Regulation (EU) 2017/566 of 18 May 2016 Supplementing Directive 2014/65/EU of the European Parliament and of the Council on Markets in Financial Instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

#### **EuSEF (Revocation)**

- The FCA revokes Commission Implementing Regulation (EU) 594/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 17(1) of Regulation (EU) 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds.

#### **EuVECA (Revocation)**

- The FCA revokes Commission Implementing Regulation (EU) 593/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation (EU) 345/2013 of the European Parliament and of the Council on European venture capital funds.

#### **TD (Revocation)**

- Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level.

### **List of BTSs that are shared with the Bank of England or the PRA, where the FCA is the lead authority**

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#### **EMIR**

- Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories.
- Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP.



- Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

## Annex 5

# Compatibility Statement

This annex records the FCA's compliance with legislation relevant to the proposals in this consultation.

### **The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018**

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In relation to changes that we propose to make using the delegated powers under this SI, the FCA considers that the changes in this CP are appropriate to prevent, remedy or mitigate any failure of the relevant FCA Handbook provisions or BTS to operate effectively, or any other deficiency in the relevant FCA Handbook provisions or BTS, arising from the withdrawal of the United Kingdom from the EU.

The proposals proposed under these powers do not impose or increase taxation or fees; make retrospective provision; create a criminal offence which is capable of leading to imprisonment of more than two years; establish a public authority; implement the Article 50 Withdrawal Agreement; result in the transfer of a function of an EU authority to a UK authority; confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or amend any legislation other than the relevant FCA Handbook provisions and BTS.

### **The Financial Services and Markets Act 2000 (FSMA)**

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In relation to the additional changes that we propose to make to elements of the Senior Managers and Certification Regime, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is:

- a.** compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and
- b.** its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA.

The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

The UK's exit from the EU changes the supervisory relationship with EEA branches and removes the reasons for the difference in treatment between EEA and third country branches. The reasons for the additional elements of the SM&CR for third country branches (e.g. additional Senior Management Functions) will now apply equally to branches of EEA firms.



The TPR provides time for TP firms to adjust to these additional requirements. Firms should read the compatibility statement for the Temporary Permissions Regime set out in CP18/29 for more information.

Our proposals comply with the FCA's duty (so far as compatible with acting in a way which advances the consumer protection or integrity objectives) to discharge its general functions in a way that promotes effective competition in the interests of consumers. We have considered competition in relevant markets and our proposals intend to maximise competition by ensuring that firms that wish to remain in the market can do so in the most effective way possible.

We do not believe that these proposals will have a significantly different impact on mutual societies as opposed to other authorised persons.

## Equality and diversity

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Under the Equality Act 2010 (the Act), in exercising our functions we must 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

As explained in section 1, the cross-cutting and majority of sector-specific technical changes proposed in chapters 2, 3 and 5 have not involved a choice being made on our part.

By contrast, some of the other changes proposed do involve a choice being made. Overall, we do not think that the proposals in this CP result in discrimination for the purposes of the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome your comments on any equality and diversity considerations you believe may arise.

Where individual products or services are directly affected, we recognise that the impact of our overall proposals for our Handbook may be particularly challenging for vulnerable consumers to understand.

## Legislative and Regulatory Reform Act

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Under the LRRRA, we must have regard to the principles in the LRRRA and to the Regulator' Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).

We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance. We believe that our proposals will be effective in helping firms and others subject to Handbook requirements understand

and meet regulatory requirements more easily. We also believe that our proposals are a proportionate response to the need to amend the Handbook to take account of Brexit.

We have also had regard to the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance.

## Treasury recommendations about economic policy

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In the remit letter published by the Chancellor of the Exchequer on 8 March 2017, the Chancellor affirms our role in ensuring that stability in financial services can create the right conditions for access to finance. This is part of the Government's economic objective to create strong, sustainable and balanced growth. We have regard to this letter and the recommendations within. As set out in this CP, our proposals ensure that there is a functioning, legally sound Handbook should the UK leave the EU without a transitional arrangement.

Treasury's recommendations most relevant to our proposals are the following:

- The government's economic policy – 'continuing to strengthen the financial system, improving the regulatory framework to reduce risks to the taxpayer and building resilience, so that it can provide finance and financial services to the real economy and realise better outcomes for consumers, supporting sustainable economic growth and encouraging productive investment.'
- Matters about aspects of the government's economic policy that relate to 'Growth', 'Better outcome for consumers' and 'Competition'.

Our proposals are intended to ensure minimum disruption to markets, consumers and firms that rely on the participation of EEA firms in UK markets. This should contribute to greater sustainability in UK financial services markets and in the UK economy as a result, ensuring better outcomes for consumers.

Our proposals are also intended to preserve the effect of the SM&CR rules and ensure that the objectives and regulatory principles set out in paragraphs 10 to 22 of the compatibility statements in Annex 3 of [CP17/25](#) and [CP17/26](#) remain. These include:

- The desirability of sustainable growth in the UK economy in the medium or long term
- The desirability of recognising differences in the nature and objectives of business carried out by different persons, including mutual societies and other kinds of business organisations
- Our duty, as required by s. 1B(5)(b) FSMA, to have regard to the importance of taking action intended to minimise the extent to which business may be used for financial crime



## Proposals relating to the Temporary Permissions Regime

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In CP18/29, we included a Compatibility Statement recording our compliance with legal requirements<sup>66</sup> applicable to our proposals for the TPR. That Compatibility Statement took into account proposals which are included in this CP (the intended approach was set out in paragraphs 4.62 to 4.105 in CP18/29 and they were referred to in the Statement for example in paragraphs 11 and 24 of Annex 3). We consider that the Compatibility Statement in CP18/29 equally applies to the proposals in this CP.

In addition to the information included in that CP, the proposed changes relating to the funding of the FSCS are designed to ensure that the scheme remains sufficiently funded as a result of extending cover to EEA firms in the TPR operating from UK establishments. We have considered this in accordance with our obligations under section 213(5) of FSMA.

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<sup>66</sup> Including an explanation of our reasons for concluding that the proposals are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).



## Annex 6

# Abbreviations in this document

<b>AIFM</b>	Alternative Investment Fund Managers
<b>AIFMD</b>	Alternative Investment Fund Managers Directive
<b>AIFs</b>	Alternative Investment Funds
<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons
<b>APR</b>	Approved Persons Regime
<b>BCOBS</b>	Banking Conduct of Business Sourcebook
<b>BENCH</b>	General guidance on Benchmark Submission and Administration
<b>BIPRU</b>	Prudential Sourcebook for Banks, Building Societies and Investment Firms
<b>BMR</b>	Benchmark Regulations
<b>BRRD</b>	The Bank Recovery and Resolution Directive
<b>BST</b>	British Summer Time
<b>BTS</b>	Binding Technical Standards
<b>CASS</b>	Client Assets Sourcebook
<b>CBA</b>	Cost Benefit Analysis
<b>CCP</b>	Central Counterparty
<b>CMID</b>	Consolidated Motor Insurance Directive
<b>COBS</b>	Conduct of Business Sourcebook
<b>COCON</b>	Code of Conduct Sourcebook
<b>COLL</b>	Collective Investment Schemes Sourcebook
<b>COMP</b>	Compensation Sourcebook
<b>CONC</b>	Consumer Credit
<b>COND</b>	Threshold Conditions



<b>CONRED</b>	Consumer Redress Schemes Sourcebook
<b>CP</b>	Consultation Paper
<b>CRAs</b>	Credit Rating Agencies
<b>CRAR</b>	Credit Rating Agencies Regulation
<b>CRD</b>	Capital Requirements Directive
<b>CREDS</b>	Credit Unions Sourcebook
<b>CRR</b>	Capital Requirements Regulation
<b>DEPP</b>	Decision Procedure and Penalties Manual
<b>DfT</b>	Department for Transport
<b>DISP</b>	Disputes Resolution Sourcebook
<b>DMD</b>	Distance Marketing Directive
<b>DTR</b>	Disclosure Guidance and Transparency Rules
<b>EBA</b>	European Banking Authority
<b>ECA</b>	Electronic Commerce Activity
<b>ECD</b>	E-Commerce Directive
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide
<b>ELTIF</b>	European Long-Term Investment Fund
<b>EMIR</b>	European Markets and Infrastructure Regulation
<b>EMPS</b>	Energy Market Participants Guide
<b>ESAs</b>	European Supervisory Authorities
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>EuSEF</b>	European Social Entrepreneurship Fund
<b>EuVECA</b>	European Venture Capital Fund

<b>EUWA</b>	European Union Withdrawal Act
<b>FEES</b>	FEES Manual
<b>FCA</b>	Financial Conduct Authority
<b>FICOD</b>	Financial Conglomerates Directive
<b>FINMAR</b>	Financial Stability and Market Confidence
<b>FIT</b>	Fit and Proper Test for Approved Persons
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>FUND</b>	Investment Funds Sourcebook
<b>GEN</b>	General Provisions
<b>GENPRU</b>	General Prudential sourcebook
<b>GMT</b>	Greenwich Meridian Time
<b>ICOBS</b>	Insurance: Conduct of Business Sourcebook
<b>ICSD</b>	Investor Compensation Scheme Directive
<b>IDD</b>	Insurance Distribution Directive
<b>IFPRU</b>	Prudential sourcebook for Investment Firms
<b>ILS</b>	Insurance-Linked Securities
<b>IPRU-INV</b>	Interim Prudential sourcebook for Investment Businesses
<b>IPID</b>	Insurance Product Information Document
<b>ISPV</b>	Insurance Special Purpose Vehicles
<b>KID</b>	Key Information Document
<b>LR</b>	Listing Rules
<b>LRRA</b>	Legislative and Regulatory Reform Act
<b>MAR</b>	Market Conduct sourcebook
<b>MCOB</b>	Mortgages and Home Finance Conduct of Business Sourcebook



<b>MIB</b>	Motor Insurance Bureau
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MIFIR</b>	Markets in Financial Instruments Regulation
<b>MIIC</b>	Motor Insurers Information Centre
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>MLRO</b>	Money Laundering Reporting Officer
<b>MTF</b>	Multilateral Trading Facility
<b>OTC</b>	Over-the-counter Derivatives
<b>PAD</b>	Payment Accounts Directive
<b>PERG</b>	The Perimeter Guidance Manual
<b>PR</b>	Prospectus Rules
<b>PR</b>	Prescribed Responsibilities
<b>PRA</b>	Prudential Regulation Authority
<b>PRIIPS</b>	Packaged Retail and Insurance-based Investment Products Regulation
<b>PRIN</b>	Principles for Business Sourcebook
<b>PROD</b>	Product Intervention and Product Guidance Sourcebook
<b>PROF</b>	Professional Firms
<b>PSR</b>	Payment Systems Regulator
<b>RAO</b>	Regulated Activities Order
<b>RCB</b>	Regulated Covered Bonds
<b>REC</b>	Recognised Investment Exchanges
<b>RTS</b>	Regulatory Technical Standards
<b>SIs</b>	Statutory Instruments
<b>SM&amp;CR</b>	Senior Managers and Certification Regime
<b>SMF</b>	Senior Manager Functions

<b>SUP</b>	Supervision Sourcebook
<b>SYSC</b>	Systems and Controls Sourcebook
<b>TC</b>	Training and Competence Sourcebook
<b>TP</b>	Transitional Provisions
<b>TPR</b>	Temporary Permissions Regime
<b>TR</b>	Trade Repositories
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities
<b>UK</b>	United Kingdom
<b>UNFCOG</b>	The Unfair Contract Terms and Consumer Notices Regulatory Guide
<b>USA</b>	United States of America
<b>WDPG</b>	Wind-down Planning Guide

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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# Appendix 1

## Draft Guidance – our approach to non-Handbook guidance where it relates to EU-law or EU-derived law

### The purpose of this guidance

1. This document sets out our approach to existing non-Handbook guidance where it relates to EU law or EU-derived law.
2. It is concerned with non-Handbook guidance issued before exit day.
3. The guidance in this document is relevant to consumers, firms, financial institutions, issuers and other market participants operating, or intending to operate, in the United Kingdom.

### What is non-Handbook guidance?

4. Non-Handbook guidance is guidance published outside of the Handbook.
5. It may include technical notes, case studies and 'Dear CEO' letters. Specific examples of non-Handbook guidance include the 'Payment Services and Electronic Money – Our Approach'<sup>67</sup> guidance and the procedural and technical notes within the UK Listing Authority's knowledge base.<sup>68</sup>

### What is happening to non-Handbook guidance that relates to EU law or EU-derived law after Brexit?

6. We are not, in general, amending existing non-Handbook guidance relating to EU law or EU-derived law.
7. It will continue to be relevant to take this guidance into account in relation to matters that occur before exit day.
8. It will also continue to be relevant, and should be taken into account, in relation to matters arising on or after exit day where the EU or EU-derived provisions to which it relates become or remain UK law.
9. In many cases, such provisions will have been amended to address deficiencies arising from the UK's withdrawal from the EU. Non-Handbook guidance issued before exit day will not, in general, be amended to take these changes into account.
10. Instead, until stated otherwise, we expect firms to interpret such guidance in line with the approach set out below.

<sup>67</sup> [www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)

<sup>68</sup> [www.fca.org.uk/markets/ukla/knowledge-base](http://www.fca.org.uk/markets/ukla/knowledge-base)

### **How to interpret non-Handbook guidance after Brexit where it relates to EU or EU derived law and matters arising after exit day**

- 11.** We expect firms and other market participants to sensibly and purposively interpret pre-exit non-Handbook guidance in light of the provisions of the European Union (Withdrawal) Act 2018 (EUWA) and any changes to the underlying provision as it is preserved or converted into UK law.
- 12.** We expect references to EU or EU-derived law in non-Handbook guidance to be read in a way that takes into account the following:
  - the UK is no longer part of the EU;
  - EU regulations and EU decisions will no longer directly apply but may have been converted into UK law;
  - passporting of financial services will end;
  - the purpose of the EUWA is to provide a functioning legal system in the UK, and, as a general rule, ensure that the same rules and laws will apply on the day after exit day as on the day before, subject to amendments made to prevent, mitigate or remedy deficiencies.
- 13.** For example, unless the context requires otherwise, where existing non-Handbook guidance refers to:
  - a provision in EU law that has been converted into national law, we expect it to be read as a reference to the post-exit national law provision;
  - an EU body or EU process, we expect it to be read as a reference to the UK body to which the relevant functions have been transferred or to the equivalent UK process (if any);
  - all or part of an EU or EU-derived provision that has been deleted, we expect this guidance to be read excluding this aspect (and any consequential statements).
- 14.** Non-Handbook guidance will apply to firms in the temporary permissions regime in accordance with GEN 2.2.35R (Guidance applying while a firm has temporary permission). In most cases it should be clear when non-Handbook guidance remains relevant to a temporary permissions firm.



# Appendix 2

## Draft Guidance – our approach to Forms



# Draft Guidance – our interpretive guide on completing Handbook forms after the UK’s withdrawal from the EU

## **The purpose of this guide**

1. This guide sets out the approach the FCA expects users of FCA Handbook forms to take when interpreting EU-based references found in forms after the UK’s withdrawal from the European Union (EU). This guide covers references in Handbook forms and the accompanying guidance on how to complete them.
2. The guide does not set out the approach to take for users of CRR BTS forms and non-Handbook forms (hosted on the FCA website). We will be publishing interpretative guidance for non-Handbook forms before exit day but we expect the guidance on those forms to be similar to these changes. Our approach to the CRR BTS forms is that these forms will not be changed for exit day and should be read in line with FCA interpretative guidance, to be published in due course. The FCA’s guidance will reflect corresponding guidance produced by the PRA for dual-regulated firms.
3. It should also be noted that for Temporary Permission (TP) firms, some references within our Handbook forms to passporting firms (and related concepts) may still be relevant to firms within the Temporary Permissions Regime (TPR). For example, although there will not be “incoming EEA firms” after the UK’s withdrawal from the EU there will be TP firms which used to be incoming EEA firms or incoming Treaty firms (some of whom may still be operating without a UK branch). TP firms should consider whether EU-based references remain applicable to them. For more information on the TPR, please see our October Consultation Paper.<sup>1</sup>

## **The content of this guide**

4. Table 1 sets out a default approach for interpreting EU-based references found in our Handbook forms. This is in line with the approach taken more widely in the FCA Handbook to take account of the UK’s withdrawal from the EU and the associated legislative changes made. This reference list is not exhaustive, and users of the forms and accompanying guidance must continue to read the relevant form in the context of the corresponding overarching Handbook rule or direction for exit day.
5. Table 2 sets out more specific cases, and sets out an expected approach in each instance. The specific case guidance takes priority over table 1.
6. We expect users of Handbook forms and accompanying guidance to use this interpretive guide in light of the UK’s withdrawal from the EU and the associated legislative changes. This includes the rules and directions in the FCA Handbook and our published policy approach. There may be circumstances where it is appropriate to use the pre-exit day EU-based reference.

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<sup>1</sup> CP18/29 ‘Temporary permissions regime for inbound firms and funds’ (October 2018)  
<https://www.fca.org.uk/publication/consultation/cp18-29.pdf>

7. This guidance should also be read in conjunction with the Prudential Regulation Authority’s (PRA’s) Supervisory Statement on interpreting reporting and disclosure requirements<sup>2</sup>, where relevant for shared forms. Where appropriate, our approach to Handbook forms is the same as the PRA’s.

### General guidance

**Table 1**

This table sets out the various types of EU-based references, and a default approach to how these should be interpreted.

Type of reference	Default interpretation
Reference to UK primary or secondary legislation	This should be read as a reference to UK legislation as amended under the European Union (Withdrawal) Act 2018 (EUWA).
Reference to an EU regulation	This should be read as a reference to the UK version of the EU regulation which is part of UK law by virtue of the EUWA.
Reference to an EU technical standard	This should be read as a reference to the UK version of the EU technical standard, as amended.
Reference to an EU directive	This should generally be read as a reference to the implementing UK legislation (including FCA or PRA rules), or the UK, FCA or PRA processes, that give effect to the directive, as amended on EU withdrawal. In some cases it may also be helpful to refer to the text of the EU directive as at exit day, to provide additional context.
Reference to the ESA guidelines and recommendations and other non-legislative material	See Guidance on our approach to EU non-legislative materials [URL to be inserted once finalised – the guidance is being consulted on as part of our October CP <sup>3</sup> ]
Stand-alone reference to the European Union or EU; or the European Economic Area or EEA (i.e. not in relation to, for example, an ‘EEA firm’ etc)	This should be read as a reference to the UK subject to the context and the EU withdrawal legislative changes (which include the FCA Handbook).

<sup>2</sup> Please see pages 35 to 40 in the current consultation document produced by the PRA - <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp2618-complete.pdf>

<sup>3</sup> CP18/28 ‘Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation’ (October 2018) <https://www.fca.org.uk/publication/consultation/cp18-28.pdf>

Reference to Member State, Member States or home Member State	This should be read as a reference to the UK, subject to the context and the EU withdrawal legislative changes (which include the FCA Handbook).
Reference to third country	This should be read as a reference to a territory or country which is not the United Kingdom
Reference to an EEA bank	These should be read as references to a UK bank or a non-UK bank depending on the context and the EU withdrawal legislative changes.
Reference to an EEA firm	This should be read as a reference to a third-country firm depending on the context and the EU withdrawal legislative changes (which include the FCA Handbook).
References to EEA other than the UK	This should be read as a reference to EEA states.
Reference to EEA notifications	This should be read as if deleted as there is no longer a requirement to submit them, subject to the context and the EU withdrawal legislative changes (which include the FCA Handbook).
References to an EEA regulator and EEA branch	These should be read as if they are deleted, subject to the context and the EU withdrawal legislative changes (which include the FCA Handbook).
Stand-alone reference to the European Union (i.e. not in relation to legislation)	This should be read as a reference to the UK.
Reference to Euros	Any threshold set in Euros will continue to apply as such. This is subject to the EU withdrawal legislative changes (which include the FCA Handbook).
References to an incoming EEA firm or to an incoming Treaty firm	These should be read as if they are deleted as there will be no firms passporting into the UK after exit day. However it should be noted that for TP firms, some references within our Handbook forms to passporting firms (and related concepts) may still be relevant to firms within the Temporary Permissions Regime (TPR).
References to the official language or languages of the <i>EEA State</i>	These should be read as 'the official languages of the United Kingdom'. This is subject to the EU withdrawal legislative changes (which include the FCA Handbook).

Reference to freedom to provide services	<p>On the basis that UK firms will no longer be able to write business under the Freedom to Provide Services in the EU after exit:</p> <ul style="list-style-type: none"> <li>• any data relating to business performed through freedom to provide service will be a nil entry after EU withdrawal, and</li> <li>• any references to the country where the freedom to provide services notification was made for the purpose of identifying the location where a contract is entered into should be disregarded.</li> </ul>
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## Guidance on specific legislation and cases

**Table 2**

This table sets out guidance on how to approach specific cases.

<b>Handbook form or accompanying guidance location</b>	<b>Form title</b>	<b>Reference</b>	<b>Interpretation</b>
SUP 10A Annex 10D	MiFID Article 4 APER Information Form	MiFID II requires certain information to be provided by the applicant firm when making changes to their management body or key function holders and currently refers to European technical standards.	The information required is detailed in the MiFID II UK version of Regulatory Technical Standards (RTS) Implementing Technical Standards (ITS) which are part of UK law by virtue of the EUWA.
SUP 16 Annex 42AR (and guidance notes in SUP 16 Annex 42BG)	REP-CRIM – Financial Crime Report	Non-EEA Correspondent Banks	Question 5 of the return requires firms to report the number of 'non-EEA Correspondent Banks' at the end of the reporting period and the number new in the same period. these references to 'correspondent banks' should be taken to mean any

			relationship <i>outside of the UK</i> .
SUP 16 Annex 19B in relation to form at SUP 16 Annex 19AR	Notes for completion of the Mortgage Lenders & Administrators Return ('MLAR')	Land in the EEA	References to land in the EEA for the purpose of SUP 16 Annex 19B should be taken to mean 'land in the UK'.
GENPRU 3 Annex 3G	Classification of groups (GENPRU 3.1.3G)	EU non-regulated country of location	As in all instances of this term 'EU' will become 'UK' there is no longer a need to specify the country of location. This means that 'country of location' should be ignored, as if it was deleted.
GENPRU 3 Annex 3G	Classification of Groups	Financial Conglomerate definition	The definition of 'financial conglomerate' refers to article 2(14) of FICOD, is amended in the UK Financial Groups Directive Regulations with the geographical scope changed from EEA to UK.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 3 Non-UK, EEA authorised applicant entities</i>	Delete this section.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 4 Data types, 4.1 (see note)</i>	The references to non-MiFID firms should be read to mean non-UK investment firms, excluding UK branches.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 6 Fees (2<sup>nd</sup> paragraph)</i>	Delete the sentence 'An incoming DRSP, authorised in another EU member state, would pay 80% of each charge.'

MAR 9 Annex 5D in relation to MAR 9.3.1R	Data Reporting Services Provider (DRSP) Material Change in information	EEA	References to the term 'EEA' should be read to mean EEA, and the general guidance with respect to the term 'EEA' in Table 1 does not apply.
MAR 9 Annex 3D in relation to MAR 9.2.3D and MAR 9.2.4G	Data Reporting Services Provider (DRSP) Variation of Authorisation	EEA	References to the term 'EEA' should be read to mean 'non-UK', and the general guidance with respect to the term 'EEA' in Table 1 does not apply.
MAR 9 Annex 4D in relation to MAR 9.2.5D	Data Reporting Services Provider (DRSP) Cancellation of authorisation	EEA	References to the term 'EEA' should be read to mean 'non-UK', and the general guidance with respect to the term 'EEA' in Table 1 does not apply.



# Appendix 3

## Draft Handbook Text

**EXITING THE EUROPEAN UNION: GLOSSARY (AMENDMENTS) INSTRUMENT  
201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) section 137A (the FCA's general rules) of the Financial Services and Markets Act 2000; and
  - (3) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. Part 1 of this instrument comes into force on 29 March 2019 at 11 p.m. and Part 2 comes into force on 9 December 2019.

**Amendments to the Handbook**

- C. The Glossary of definitions is amended in accordance with the Annex to this instrument.
- D. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to section 8 of the European Union (Withdrawal) Act 2018.

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Glossary (Amendments) Instrument 201[X].

By order of the Board  
[date]



**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

**Part 1: Comes into force on 29 March 2019 at 11p.m.**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>Annex 1 activities</i>	has the meaning in article 4(1)(26A) of the <i>UK CRR</i> .
<i>Capital Requirements Regulations 2013</i>	the Capital Requirements Regulations 2013 (SI 2013/3115).
<i>credit rating agency</i>	(as defined in Article 3(1)(b) of the <i>CRA Regulation</i> ) means a legal person whose occupation includes the issuing of credit ratings on a professional basis.
<i>CRA Regulation</i>	means the <i>UK</i> version of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies and Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies) which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRR ITS on supervisory reporting</i>	the <i>UK</i> version of Regulation (EU) 2015/1278 of 9 July 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions as regards instructions, templates and definitions which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRD ITS on templates, definitions and IT-solutions</i>	the <i>UK</i> version of Regulation (EU) 2016/2070 of 14 September 2016 laying down implementing technical standards for templates, definitions and IT-solutions to be used by institutions when reporting in accordance with Article 78(2) of the <i>CRD</i> which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates</i>	the <i>UK</i> version of Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>EU auction regulation</i>	Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme

	for greenhouse gas emission allowances trading within the Community).
<i>EU benchmarks regulation</i>	Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.
<i>EU CRR</i>	the <i>EU</i> version of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012.
<i>EU EMIR</i>	Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.
<i>EEA State compensation scheme</i>	a compensation scheme, akin to the <i>FSCS</i> , in an <i>EEA State</i> .
<i>EU MiFIR</i>	Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
<i>EU OTF</i>	(as defined in Article 2(1)(15B) of <i>MiFIR</i> ) means a multilateral system: <ul style="list-style-type: none"> <li>(a) which is not a regulated market or an MTF;</li> <li>(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15 May 2014.</li> </ul>
<i>EU regulated market</i>	(as defined in Article 2(1)(13B) of <i>MiFIR</i> ) means a regulated market which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15 May 2014.
<i>EU Securities Financing Transactions Regulation</i>	the <i>EU</i> version of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.
<i>EUWA</i>	the European Union (Withdrawal) Act 2018.

<i>exit day</i>	as defined in section 20(1) of the <i>EUWA</i> , means 29 March 2019 at 11 p.m. or such date as is specified further to section 20(2) to (5)).
<i>General data protection regulation</i>	the <i>UK</i> version of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>IAS Regulation</i>	the <i>UK</i> version of EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Insolvency Proceedings Regulation</i>	the <i>UK</i> version of Regulation (EC) No.1346/2000 on 29 May 2000 on insolvency proceedings, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>LTIF</i>	a long-term investment fund (as defined in the <i>LTIF regulation</i> ) authorised under the <i>LTIF Regulation</i> .
<i>LTIF Regulation</i>	the <i>UK</i> version of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>MAR Level 2 Regulations</i>	<ol style="list-style-type: none"> <li>(1) the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications, which is part of <i>UK</i> law by virtue of the <i>EUWA</i>;</li> <li>(2) the <i>UK</i> version of Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of <i>UK</i> law by virtue of the <i>EUWA</i>;</li> <li>(3) the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures, which is part of <i>UK</i> law by virtue of the <i>EUWA</i>;</li> <li>(4) the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU)</li> </ol>

- No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions, which is part of *UK* law by virtue of the *EUWA*;
- (5) the *UK* version of Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings, which is part of *UK* law by virtue of the *EUWA*;
  - (6) the *UK* version of Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
  - (7) the *UK* version of Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance, which is part of *UK* law by virtue of the *EUWA*;
  - (8) the *UK* version of Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions, which is part of *UK* law by virtue of the *EUWA*;
  - (9) the *UK* version of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;

- (10) the *UK* version of Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
- (11) the *UK* version of Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
- (12) the *UK* version of Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest, which is part of *UK* law by virtue of the *EUWA*;

*Material Risk  
Takers Regulation*

the *UK* version of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile, which is part of *UK* law by virtue of the *EUWA*.

*Money Market  
Funds Regulation*

the *UK* version of Regulation (EU) No 2017/1131 of the European Parliament and the Council of 14 June 2017 on money market funds, which is part of *UK* law by virtue of the *EUWA*.

*non-UK AIF*

an *AIF* which is not a *UK AIF*.

*non-UK AIFM*

an *AIFM* which is not a *UK AIFM*.

*onshored  
regulation*

a regulation made pursuant to the *Treaty* and which is part of *UK* law by virtue of the *EUWA*.

*overseas SMCR  
banking firm*

a *firm* identified as an overseas banking firm in the decision tree in SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms) and Part Four of that Annex.

*pre-exit incoming  
EEA firm*

(in *COMP*) an EEA firm, or Treaty firm, that, before *exit day*, exercised its right to carry on a regulated activity in the United Kingdom, and qualified for authorisation, within the meaning of, and in

	accordance with, respectively, section 193(1)(a) and Schedule 3 of the <i>Act</i> (EEA Passport Rights), or section 193(1)(b) and Schedule 4 of the <i>Act</i> (Treaty Rights), as from time to time in force before <i>exit day</i> .
<i>Prospectus RTS Regulation 1</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Prospectus RTS Regulation 2</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Regulatory technical standards 1152/2014</i>	the <i>UK</i> version of Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates which is part of <i>UK</i> law as a result of section 3 of the <i>EUWA</i> .
<i>RRD Regulation</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>RVECA</i>	a qualifying venture capital fund (as defined in the <i>RVECA Regulation</i> ).
<i>RVECA manager</i>	the manager of a qualifying venture capital fund (as defined in the <i>RVECA Regulation</i> ) that is registered in accordance with article 14 of the <i>RVECA Regulation</i> .
<i>RVECA Regulation</i>	the <i>UK</i> version of Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SEF</i>	a qualifying social entrepreneurship fund (as defined in the <i>SEF Regulation</i> ).

<i>SEF manager</i>	the manager of a qualifying social entrepreneurship fund (as defined in the <i>SEF Regulation</i> ) that is registered in accordance with article 15 of the <i>SEF Regulation</i> .
<i>SEF Regulation</i>	the <i>UK</i> version of Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Delegated Regulation 1</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Delegated Regulation 2</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Implementing Regulation</i>	the <i>UK</i> version of Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>TD Major Holdings Regulation</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Trade Repositories (EU Exit) Regulations</i>	the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/XXXX).



- trade repository* a legal person that centrally collects and maintains the records of derivatives.
- UK-adopted IFRS* has the meaning given in section 474(1) of the Companies Act 2006.  
[*Editor's note:* The Department for Business, Energy and Industry Strategy will lay a statutory instrument containing amendments to section 474(1) of the Companies Act 2006 in due course.]
- UK AIFM regime* *FUND*, other *rules* in the *FCA Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation*, and the *AIFMD UK regulation*.
- UK MTF* (as defined in article 2(1)(14A) of *MiFIR*) means a multilateral system, operated by a UK investment firm or market operator, which:
- (a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and
  - (b) complies, as applicable, with:
    - (i) paragraph 9A of the *Recognition Requirements Regulations*;
    - (ii) the EU regulations specified in Schedule 2 of *MiFIR*;
    - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,
- and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its registered office (or if it does not have a registered office, its head office) in the United Kingdom.
- UK OTF* (as defined in article 2(1)(15A) of *MiFIR*) means a multilateral system:
- (a) which is not a regulated market or an MTF;
  - (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, and complies, as applicable, with:
    - (i) paragraph 9A of the *Recognition Requirements Regulations*;
    - (ii) the EU regulations specified in Schedule 2 of *MiFIR*;

- (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to OTFs.

*UK parent financial holding company*

has the meaning in article 4(1)(30) of the *UK CRR*.

*UK parent institution*

has the meaning in article 4(1)(28) of the *UK CRR*.

*UK parent mixed financial holding company*

has the meaning in article 4(1)(32) of the *UK CRR*.

*UK parent undertaking*

- (a) a *UK parent institution*;
- (b) a *UK parent financial holding company*; or
- (c) a *UK parent mixed financial holding company*.

*UK prudential sectoral legislation*

(in relation to a *financial sector*) requirements applicable to *persons* in that *financial sector* in accordance with *UK* legislation and *rules* about prudential supervision of *regulated entities* in that *financial sector* and so that:

- (a) (in relation to the *banking sector* and the *investment services sector*) in particular this includes the requirements laid down in the *UK CRR* (in relation to a *CAD investment firm*), *GENPRU* and *BIPRU*; and
- (b) (in relation to the *insurance sector*) in particular this includes requirements laid down in the *UK* provisions which implemented the *Solvency II Directive* and *Solvency II Regulations*.

*UK regulated entity*

a *regulated entity* that is a *UK* firm.

*UK UCITS*

means (in accordance with sections 236A and 237 of the *Act*) subject to (4) below, an undertaking which may consist of several *sub-funds* and:

- (1) is an *AUT*, an *ACS* or an *ICVC*:
  - (a) with the sole object of collective investment of capital raised from the public in *transferable securities* or other liquid financial assets specified in paragraph (2), and operating on the principle of risk-spreading;
  - (b) with *units* which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets (see also paragraph (3)); and

- (c) which (in accordance with the *rules* in *COLL* 4.2) has identified itself as a *UCITS* in its *prospectus* and has been authorised accordingly by the *FCA*.
- (2) The *transferable securities* or other liquid financial assets specified for the purposes of paragraph (1)(a) are those which are permitted by *COLL* 5.2.
  - (3) For the purposes of paragraph (1)(b), action taken by the undertaking to ensure that the price of its *units* on an investment exchange do not significantly vary from their net asset value is to be regarded as equivalent to such repurchase or redemption.
  - (4) The following undertakings are not a *UK UCITS*:
    - (a) a collective investment undertaking of the closed-ended type;
    - (b) a collective investment undertaking which raises capital without promoting the sale of its *units* to the public in the *UK*;
    - (c) an open-ended investment company, or other collective investment undertaking, the *units* of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in countries or territories outside the *UK*.

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

<i>above-threshold non-<del>EEA</del> <u>UK</u> AIFM</i>	a non- <del>EEA</del> <u>UK</u> AIFM that is not a <i>small AIFM</i> .
<i>acting as trustee or depositary of a <u>UK UCITS</u></i>	the <i>regulated activity</i> , specified in article 51ZB of the <i>Regulated Activities Order</i> which is, in summary, acting as: <ul style="list-style-type: none"> <li>(a) a trustee of an <i>authorised unit trust scheme</i>; or</li> <li>(b) a depositary of an <i>open-ended investment company</i>; or</li> <li>(c) a depositary of an <i>authorised contractual scheme</i>;</li> </ul> where that company or <i>scheme</i> is a <u>UK UCITS</u> .
<i>additional tier 1 capital</i>	as defined in article 61 of the <del>EU CRR</del> <u>UK CRR</u> .
<i>additional tier 1 instrument</i>	a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the <del>EU CRR</del> <u>UK CRR</u> .
<i>ADR entity</i>	any <u>alternative dispute resolution</u> entity, <del>however named or referred to, which is listed in accordance with article 20(2) of the ADR Directive</del> as defined in regulation 4 of the <u>ADR Regulations</u> . [Note: article 4(1) of the <i>ADR Directive</i> ]
<i>agreeing to carry on a regulated activity</i>	the <i>regulated activity</i> specified in article 64 of the <i>Regulated Activities Order</i> (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II or Part 3A of that Order other than: <ul style="list-style-type: none"> <li>...</li> <li>(ca) <i>managing a <u>UK UCITS</u></i>;</li> <li>(cb) <i>acting as trustee or depositary of a <u>UK UCITS</u></i>;</li> <li>...</li> </ul>
<i>AIFM investment firm</i>	a <i>firm</i> which: <ul style="list-style-type: none"> <li>(a) is: <ul style="list-style-type: none"> <li>(i) a <i>full-scope UK AIFM</i>; <del>or</del> and</li> <li>(ii) <del>an incoming EEA AIFM branch</del>; and <u>[deleted]</u></li> </ul> </li> </ul>

- (b) has a *Part 4A permission* (~~or an equivalent permission from its *Home State* regulator~~) for *managing investments* where:
- (i) the *investments* managed include one or more *financial instruments*; and
  - (ii) the *permission* is limited to the activities ~~permitted by article 6(4) of *AIFMD*~~ referred to in *FUND 1.4.3R(3)* to (6).

*AIFM investment management functions* investment management functions of an *AIFM* as set out in 1(a) (~~being portfolio management~~) or (b) (~~risk management~~) of ~~Annex I to *AIFMD*~~.

*AIFM management functions* the management functions of an *AIFM* listed in ~~Annex I to *AIFMD*~~ *FUND 1.4.7G*.

*AIFMD level 2 regulation* the UK version of Commission delegated regulation (EU) No 231/2013 supplementing Directive 2011/16/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0231>), which is part of UK law by virtue of the *EUWA*.

*alternative debenture* the *investment* specified in article 77A of the *Regulated Activities Order* (Alternative finance investment bonds).

[*Editor's note*: The current policy intention for COLL is to reflect the current scope of this article in the *Regulated Activities Order*. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*alternative investment fund* (~~in accordance with article 4(1)(a) of *AIFMD*~~) a collective investment undertaking, including investment compartments thereof, which:

- (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (b) ~~does not require authorisation pursuant to article 5 of the *UCITS Directive*~~ is not a *UK UCITS*.

[Note: article 4(1)(a) of *AIFMD*]

*alternative investment fund manager* (1) (~~in *GENPRU 3.1*~~) a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an *undertaking* which is outside the *EEA* and which would require authorisation in accordance

~~with Directive 2011/61/EU if it had its registered office within the EEA.~~

- (2) ~~(except in GENPRU 3.1 and in accordance with article 4(1)(b) of AIFMD)~~ a legal person whose regular business is performing *AIFM investment management functions* for one or more *AIF*.

[Note: article 4(1)(b) of AIFMD]

*ancillary service*

- (1) ~~(except in CONC)~~ any of the services listed in ~~Section B of Annex I to MiFID~~ Part 3A of Schedule 2 to the Regulated Activities Order, that is:

...

- (g) investment services and activities included in Part 3 of Schedule 2 to the Regulated Activities Order, as well as ancillary services ~~within (a) to (f), above~~, of the type included in Part 3A, related to the underlying of the derivatives included under Section C 5, 6, 7 and 10, that is (in accordance with that Annex and Recital 21 to, and Article 39 of, the MiFID Regulation) in paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the Regulated Activities Order where these are connected to the provision of investment or ancillary services. ÷

(i) ~~commodities;~~

(ii) ~~climatic variables;~~

(iii) ~~freight rates;~~

(iv) ~~emission allowances;~~

(v) ~~inflation rates or other official economic statistics;~~

(vi) ~~telecommunications bandwidth;~~

(vii) ~~commodity storage capacity;~~

)

(viii) ~~transmission or transportation capacity relating to commodities, where cable, pipeline or other means;~~

(ix) ~~an allowance, credit, permit, right or similar asset which is directly linked to the supply;~~

~~distribution or consumption of energy derived from renewable resources;~~

- ~~(x) a geological, environmental or other physical variable;~~
- ~~(xi) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;~~
- ~~(xii) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;~~

~~where these are connected to the provision of investment services or ancillary services.~~

[Note: article 4(1)(3) 2(3) of ~~MiFID~~ MiFIR]

- ancillary services undertaking*
- (2) ...
  - (1) ~~(in accordance with Article 4(21) of the *Banking Consolidation Directive* (Definitions) for the purpose of GENPRU (except in GENPRU 3) and BIPRU (except in BIPRU 12) and subject to (2)) and in relation to an undertaking in a consolidation group, sub-group or another group of persons) an undertaking complying with the following conditions:~~
    - (a) its principal activity consists of:
      - (i) owning or managing property; or
      - (ii) managing data-processing services; or
      - (iii) any other similar activity;
    - (b) the activity in (a) is ancillary to the principal activity of one or more *credit institutions* or *investment firms*; and
    - (c) those *credit institutions* or *investment firms* are also members of that *consolidation group, sub-group or group*.

[Note: article 4(21) of the *Banking Consolidation Directive* (Definitions)]

- (2) ...
- (3) (except in (1)) has the meaning in article 4(1)(18) of the ~~EU CRR~~ UK CRR.

*appropriate UK regulator*

- (1) ~~in relation to an EEA firm (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the Act), whichever of the FCA or PRA is the competent authority for the purposes of the relevant Single Market Directive; [deleted]~~
- (2) in relation to a UK firm (in accordance with Schedule 3 paragraph 18A to the Act),
  - (a) the PRA, where the firm is a PRA-authorised person; and
  - (b) in any other case, the FCA.
- (3) ~~in relation to a Treaty firm (in accordance with section 35(2A) of the Act); [deleted]~~
  - (a) ~~in the case of a PRA-authorised person, the PRA; and~~
  - (b) ~~in any other case, the FCA~~

*approved bank*

- (except in COLL) (in relation to a bank account opened by a firm):
- (a) if the account is opened at a branch in the United Kingdom:
    - (i) the Bank of England; or
    - (ii) the central bank of a member state of the OECD; or
    - (iii) a bank; or
    - (iv) a building society; or
    - (v) a bank which is supervised by the central bank or other banking regulator of a member state of the OECD; or
  - (b) if the account is opened elsewhere:
    - (i) a bank in (a); or
    - (ii) ~~a credit institution established in an EEA State other than the United Kingdom and duly authorised by the relevant Home State regulator; or [deleted]~~
    - (iii) a bank which is regulated in the Isle of Man or the Channel Islands; or
  - (c) a bank supervised by the South African Reserve Bank; or
  - (d) any other bank that:



- (i) is subject to regulation by a national banking regulator;
- (ii) is required to provide audited accounts;
- (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and
- (iv) has an annual audit report which is not materially qualified.

(in *COLL*) any person falling within (a-c) and a *credit institution* established in an *EEA State* and duly authorised by the relevant *Home State regulator*.

*approved credit institution* a *credit institution* recognised or permitted under the law of an *EEA State* or the *United Kingdom* to carry on any of the activities set out in Annex 1 to the *CRD*.

*approved financial institution* any of the following:

- (a) the European Central Bank;
- (b) the central bank of an *EEA State* or the *United Kingdom*;

...

*approved security* (1) (in *COLL*) a *transferable security* that is admitted to *official listing* in the *UK* or an *EEA State* or is traded on or under the rules of an *eligible securities* market (otherwise than by the specific permission of the market authority).

...

*article 18(5) relationship* the relationship where there are participations or capital ties other than those referred to in article 18(1) and (4) of the ~~*EU CRR*~~ *UK CRR* (Methods for prudential consolidation).

*article 18(6) relationship* (in accordance with article 18 of the ~~*EU CRR*~~ *UK CRR* (Methods for prudential consolidation)) a relationship of one of the following kinds:

- (a) where an *institution* exercises a significant influence over one or more *institutions* or *financial institutions*, but without holding a *participation* or other capital ties in these *institutions*; or

- (b) where two or more *institutions* or *financial institutions* are placed under single management other than under a contract or clauses of their memoranda or articles of association.

*asset backed  
commercial paper  
programme*

for the purposes of *BIPRU 9* (Securitisation) ~~and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~ a programme of *securitisations* (within the meaning of paragraph (2) of the definition of securitisation) the securities issued by which predominantly take the form of commercial paper with an original maturity of one year or less.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

*asset management  
company*

a *management company* ~~management company within the meaning of Article 2(1)(b) of the *UCITS Directive*, as well as or an *undertaking*~~ the registered office of which is outside the ~~EEA~~ UK and which would require ~~authorisation in accordance with Article 6(1) of the *UCITS Directive*~~ Part 4A permission under Article 51ZA of the *Regulated Activities Order* (Managing a UK UCITS) if it had its registered office within the ~~EEA~~ UK.

*Audit Regulation*

the UK version of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC), which is part of UK law by virtue of the *EUWA*, except that any reference to Article 16 of that Regulation, shall, where and to the extent that the effect of that Article has been reproduced in any of the following enactments in relation to a category of *issuer*, be a reference to that enactment in relation to that category of *issuer*:

- (1) for private companies, sections 485A to 485C and 494ZA of the Companies Act 2006;
- (2) for public companies, sections 489A to 489C and 494ZA of the Companies Act 2006;
- (3) for *building societies*, paragraphs 3B to 3E of Schedule 11 to the Building Societies Act 1986;
- (4) for *friendly societies*, paragraphs 2 to 5 of Schedule 14A to the Friendly Societies Act 1992;
- (5) for limited liability partnerships, sections 485A to 485C and 494ZA of the Companies Act 2006 as applied by regulations 36 and 38A of the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008;

- (6) for insurance undertakings within the meaning given by regulation 2 of The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008, sections 485A to 485C and 494ZA of the Companies Act 2006 as applied by regulation 6(1A) of those Regulations.
- authorised contractual scheme manager* a ~~firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM,~~ which is the *authorised fund manager* of the ACS in accordance with the *contractual scheme deed*.
- authorised corporate director* the director of an ICVC who is the *authorised corporate director* of the ICVC in accordance with COLL 6.5.3R (Appointment of an ACD) ~~including, if relevant, an EEA UCITS management company or incoming EEA AIFM.~~
- authorised person* (in accordance with section 31 of the Act (Authorised persons)) one of the following:
- (a) a *person* who has a *Part 4A permission* to carry on one or more *regulated activities*;
  - (b) ~~an incoming EEA firm; [deleted]~~
  - (c) ~~an incoming Treaty firm; [deleted]~~
  - (d) ~~a UCITS qualifier; [deleted]~~
  - (e) an ICVC;
  - (f) the *Society of Lloyd's*.
- (see also GEN 2.2.18R for the position of an *authorised partnership* or unincorporated association which is dissolved.)
- bank* (a) a *firm* with a *Part 4A permission* which includes *accepting deposits*, and:
- (i) which is a *credit institution*; ~~or~~
  - (ii) ~~whose Part 4A permission includes a requirement that it comply with the rules in GENPRU and BIPRU relating to banks; [deleted]~~
- but which is not a *building society*, a *friendly society* or a *credit union*;
- (b) ~~an EEA bank which is a full credit institution. [deleted]~~
- banking and investment group* a group of *persons* (at least one of which is an ~~EEA regulated entity~~ a UK regulated entity that is a *credit institution* or an *investment firm*) who:

- (a) form a group in respect of which the consolidated capital adequacy requirements for the *banking sector* or the *investment services sector* under:
- (i) the *appropriate regulator's sectoral rules*;
  - (ii) ~~the *sectoral rules* of another competent authority apply; or [deleted]~~
- (b) would form such a group if the scope of those *sectoral rules* were amended as described in paragraph 3.1 of *GENPRU 3 Annex 2* (removing restrictions relating to place of incorporation or head office of members of those *financial sectors*).

*benchmarks regulation*

the UK version of Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, which is part of UK law by virtue of the EUWA.

~~[Note: see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>~~

*BIPRU firm*

a *firm*, as defined in article 4(1)(2)(c) of the ~~*EU-CRR*~~ *UK CRR* that satisfies the following conditions:

- (a) ...

*BMR benchmark administrator*

a *person* who:

- (1) is an administrator as defined in article 3.1(6) of the *benchmarks regulation* (which in summary is a *person* who has control over the provision of a *benchmark*); and
- (2) has been authorised or registered (~~whether in the UK or elsewhere~~) in accordance with article 34 of the *benchmarks regulation*.

*branch*

- (a) (in relation to a *credit institution*):
- (i) a place of business which forms a legally dependent part of a *credit institution* and which carries out directly all or some of the transactions inherent in the business of *credit institutions*;
  - (ii) ~~for the purposes of the CRD and in accordance with article 38 of the CRD, any number of places of business set up in the same EEA State by a credit~~

~~institution with headquarters in another EEA State are to be regarded as a single branch; [deleted]~~

- (b) (in relation to an *investment firm*):
- (i) a place of business other than the head office which is a part of an *investment firm*, which has no legal personality and which provides *investment services and/or activities* and which may also perform *ancillary services* for which the *firm* has been authorised;
  - (ii) ~~all the places of business set up in the same EEA State by an investment firm with headquarters in another EEA State are regarded as a single branch; [deleted]~~

[Note: article 4(1)(30) of *MiFID*]

- (c) (in relation to an *insurance undertaking*) any permanent presence of the *insurance undertaking* in an *EEA State* other than ~~that~~ the country in which it has its head office is to be regarded as a single *branch*, whether that presence consists of a single office which, or two or more offices each of which:
- (i) is managed by the *insurance undertaking*'s own staff; or
  - (ii) is an agency of the *insurance undertaking*; or
  - (iii) is managed by a *person* who is independent of the *insurance undertaking*, but has permanent authority to act for the *insurance undertaking* as an agency would.
- (d) (in relation to an *IDD insurance intermediary*):
- (i) a place of business which is a part of an *IDD insurance intermediary*, not being the principal place of business, which has no separate legal personality and which provides *insurance distribution* for which the *IDD insurance intermediary* has been registered;
  - (ii) ~~for the purposes of the IDD, all the places of business set up in the same EEA State by an IDD insurance intermediary with headquarters in another EEA State are to be regarded as a single branch [deleted];~~
  - (iii) ~~an agency or permanent presence of an IDD insurance intermediary in a Host State that is equivalent to a branch is to be regarded as a branch,~~

~~unless the intermediary lawfully sets up such permanent presence in another legal form [deleted].~~

[Note: articles 2(1)(12) and 6(1) of the *IDD*]

- (e) (in relation to an *IDD reinsurance intermediary*):
- (i) a place of business which is a part of an *IDD reinsurance intermediary*, not being the principal place of business, which has no separate legal personality and which provides *reinsurance distribution* for which the *IDD reinsurance intermediary* has been registered;
  - (ii) ~~for the purposes of the *IDD*, all the places of business set up in the same *EEA State* by an *IDD reinsurance intermediary* with headquarters in another *EEA State* are to be regarded as a single *branch* [deleted];~~
  - (iii) ~~an agency or any permanent presence of an *IDD reinsurance intermediary* in the territory of a *Host State* that is equivalent to a *branch* is to be regarded as a *branch*, unless the intermediary lawfully sets up such permanent presence in another legal form [deleted].~~

[Note: articles 2(1)(12) and 6(1) of the *IDD*]

- (f) (in relation to an *EEA UCITS management company*):  
[deleted]
- (i) ~~a place of business which is a part of an *EEA UCITS management company*, which has no separate legal personality and which provides the services for which the *EEA UCITS management company* has been authorised;~~
  - (ii) ~~for the purposes of the *UCITS Directive*, all the places of business set up in the same *EEA State* by an *EEA UCITS management company* with headquarters in another *EEA State* are to be regarded as a single *branch*.~~
- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*, or a *registered account information service provider* or an *EEA registered account information service provider*) a place of business of such a *payment service provider*, other than its head office, which forms a legally dependent part of such a provider and which carries out directly all or some of the services inherent in its business. ~~For the purposes of the~~

~~*Payment Services Regulations*, all places of business set up in the same *EEA State* other than the *United Kingdom* by such a *payment service provider* are to be regarded as a single *branch*.~~

[Note: article 4 (39) of the *Payment Services Directive*]

- (h) ~~(in relation to a person carrying on *auction regulation bidding*) a *branch*.~~ [deleted]
- (i) (in relation to an *AIFM*)
  - (i) a place of business which is a part of an *AIFM* that has no legal personality and provides the services for which the *AIFM* has been authorised;
  - (ii) for the purpose of (i), all places of business established in the same ~~*EEA State*~~ country by an *AIFM* with its registered office in another ~~*EEA State*~~ country shall be regarded as a single *branch*.

[Note: article 4(1)(c) of *AIFMD*]

*Buy-back and  
Stabilisation  
Regulation*

the UK version of Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures, which is part of UK law by virtue of the EUWA. See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1052>

*buy-to-let credit  
agreement*

a contract that:

- (a) at the time it is entered into:
  - (i) is one under which a lender provides credit to an individual or to trustees (the ‘borrower’);
  - (ii) provides for the obligation of the borrower to repay to be secured by a mortgage on land in ~~the EEA~~ the UK;

where “land” for these purposes means:

- (iii) in relation to a contract entered into before *exit day*:
  - (A) land in the *United Kingdom*; or
  - (B) if the contract was entered into on or after 21 March 2016, land in the *United Kingdom* or within the territory of a State that was an *EEA*

State at the time the contract was entered into;  
and

- (iv) in relation to a contract entered into on or after exit day, land in the United Kingdom.

...

...

*CAD article 22 group*

*UK consolidation group or ~~non-EEA non-UK~~ sub-group that meets the conditions in BIPRU 8.4.9R (Definition of a CAD Article 22 group).*

*CAD investment firm*

a *firm* that is subject to the requirements imposed by the UK implementation of MiFID (or a *firm* which would be subject to ~~that Directive~~ those requirements if its head office were in ~~an EEA State~~ the UK) but excluding a *bank*, a *building society*, a *credit institution*, a *local* and an *exempt CAD firm* that meets the following conditions:

- (a) it is a *firm* as defined in article 4(1)(2)(c) of the ~~EU CRR~~ UK CRR;

...

*capital conservation buffer*

(in accordance with ~~article 128(1) of CRD (Definitions)~~ regulation 2(1) (Interpretation) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014) the amount of *common equity tier 1 capital* a *firm* must calculate in line with in *IFPRU 10.2*.

*capital resources*

- (1) in relation to a *BIPRU firm*, the *firm's* capital resources as calculated in accordance with the *capital resources table*; or
- (2) ~~(in relation to a CAD investment firm that is an EEA firm and not a BIPRU firm and which is required to meet the capital resources requirements of the CRD implementation measures for its EEA State on an individual basis) capital resources calculated under those CRD implementation measures; or [deleted]~~
- (3) (for the purposes of *GENPRU* and *BIPRU* (except in BIPRU 12), in relation to an undertaking not falling within (1) ~~or (2)~~ and subject to (4)), capital resources calculated in accordance with (1) on the assumption that:
- (a) it is a *BIPRU firm* with a *Part 4A permission*; and
- (b) it carries on all its business in the *United Kingdom* and has obtained whatever *permissions* for doing so are required under the *Act*; or



- (4) (for the purposes of *GENPRU* and *BIPRU* (except in *BIPRU* 12) and in relation to any *undertaking* not falling ~~within~~ in (1) ~~or~~ (2) for which the methodology in (3) does not give an answer whose *capital resources* a *BIPRU firm* (the “relevant firm”) is required to calculate under a *Handbook rule*) capital resources calculated under (1) on the assumption that it is a *BIPRU firm* of the same category as the relevant firm; or
- (5) (for a *firm* carrying on any *home financing* connected to *regulated mortgage contracts* or *home financing* and *home financing administration* connected to *regulated mortgage contracts*) *capital resources* calculated under *MIPRU* 4.2.23R.

*cash assimilated instrument*

~~in accordance with Article 4(35) of the *Banking Consolidation Directive (Definitions)*~~ a certificate of deposit or other similar instrument issued by a *lending firm*.

[Note: article 4(35) of the *Banking Consolidation Directive (Definitions)*]

*CASS 7 asset management firm*

a *firm* subject to the *client money rules* and which falls within either (a) or (b), or both, but not (c):

...

(b) ...

...

(viii) *acting as trustee or depositary of a UK UCITS*;

...

*CESR’s UCITS eligible assets guidelines*

the Committee of European Securities Regulators’ guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044). ~~These are available at~~

[https://www.esma.europa.eu/sites/default/files/library/2015/11/07\\_044.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf)

*CCR internal model method permission*

~~an Article 129 implementing measure, Article 129 permission,~~ a requirement or a waiver that requires a *BIPRU firm* or a *CAD investment firm* to use the *CCR internal model method*

*central bank*

(1) (~~in accordance with Article 4(23) of the *Banking Consolidation Directive (Definitions)*~~ and for the purposes of *GENPRU* (except *GENPRU* 3) and *BIPRU* (except *BIPRU* 12)) includes the European Central Bank unless otherwise indicated, the Bank of England and the central banks of other countries.

[Note: article 4(23) of the *Banking Consolidation Directive* (Definitions)]

- (2) (except in (1)) has the meaning in article 4(1)(46) of the *EU CRR UK CRR*.

*central counterparty* (in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) an entity that legally interposes itself between counterparties to contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*certificate representing certain securities* the *investment* specified in article 80 of the *Regulated Activities Order* (Certificates representing certain securities), which is in summary: a certificate or other instrument which confers contractual or property rights (other than rights consisting of options):

...

[Editor's note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*CIU* (1) (except in *IFPRU*) collective investment undertaking.

- (2) (in *IFPRU*) has the meaning in article 4(1)(7) of the *EU CRR UK CRR*.

*class* (1) ...

(2) (in *COLL*):

- (a) a particular class of *units* of an *authorised fund*; or
- (b) all of the *units* relating to a single *sub-fund*; or
- (c) a particular class of *units* relating to a single *sub-fund*; ~~or~~
- (d) ~~in relation to an EEA UCITS scheme, any arrangement equivalent to (a), (b) or (c).~~ [deleted]

...

*clean-up call option* (1) (for the purposes of *BIPRU 9* (Securitisation), in relation to a securitisation (within the meaning of paragraph (2) of the definition of securitisation) ~~and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) a contractual option for the *originator* to repurchase or extinguish the *securitisation positions* before all of the underlying *exposures* have been repaid, when the amount of outstanding *exposures* falls below a specified level.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

...

*collective portfolio management* in relation to a *management company*, the activity of management of *UCITS schemes*, *EEA UCITS schemes* or other collective investment undertakings not covered by the *UCITS Directive* that the ~~*firm*~~ *management company* is permitted to carry on in accordance with *COLL 6.9.9R* or article 6(2) of the *UCITS Directive* as applicable. This includes the functions mentioned in Annex II to that directive.

*collective portfolio management firm* a *firm* which:

(a) ...

(b) is a *UCITS firm* that has a *Part 4A permission* for managing a *UK UCITS*.

*combined buffer* ~~the sum of:~~  
~~(1) the *capital conservation buffer*; and~~  
~~(2) the *countercyclical capital buffer*.~~

has the meaning in regulation 2(1) (Interpretation) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014).

*commodity* (1) (except for (2)) a physical asset (other than a financial instrument or cash) which is capable of delivery.

(2) (for the purpose of calculating *position risk requirements*) any of the following (but excluding gold):

(a) a commodity within the meaning of paragraph (1); and

(b) any:

(i) physical or energy product; or

- (ii) of the items referred to in ~~paragraph 10 of Section C of Annex I of MiFID~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order as an underlying with respect to the *derivatives* mentioned in that paragraph;

which is, or can be, traded on a secondary market.

- (3) (in relation to the UK provisions which implemented MiFID or MiFIR) any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.

*commodity derivative*

~~those financial instruments defined in:~~

- (a) ~~point (44)(e) of article 4(1) of MiFID which relate to a commodity; or an underlying referred to in Section C(10) of Annex I of MiFID; or~~
- (b) ~~in points (5), (6), (7) and (10) of Section C of Annex I to MiFID.~~

means financial instruments:

- (a) defined in article 2(1)(24)(c) of MiFIR;
- (b) which relate to a commodity or an underlying referred to in paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order; or
- (c) which are referred to in paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the Regulated Activities Order.

[Note: article 2(1)(30) of MiFIR]

*common equity tier 1 capital*

as defined in article 50 of the ~~EU CRR~~ UK CRR.

*common equity tier 1 instrument*

a capital instrument that qualifies as a common equity tier 1 instrument under article 26 of the ~~EU CRR~~ UK CRR.

*common platform firm*

...

- (c) a ~~UK~~ MiFID investment firm which falls within the definition of ‘local firm’ in article 4(1)(4) of the ~~EU CRR~~ UK CRR; or

...

*competent authority*

- (1) (in relation to the functions referred to in Part VI of the *Act*)

- (a) ~~the FCA, or the functions referred to in Part VI of the Act under the laws of~~
- (b) ~~an authority exercising functions corresponding to the functions referred to in Part VI of the Act under the laws of another EEA State.~~
- (2) (in relation to ~~the exercise of an EEA right and the exercise of the overseas financial stability information power~~) a competent authority for the purposes of the UK provisions which implemented the relevant Single Market Directive or the auction regulation.
- (3) (in relation to a group, and for the purposes of SYSC 12 (Group risk systems and controls requirement), GENPRU and BIPRU, any national authority of ~~an EEA State~~ the UK which is empowered by law or regulation to supervise *regulated entities*, whether on an individual or group-wide basis.
- (4) the authority, designated by ~~each EEA State~~ in accordance with ~~Article 67 of MiFID, unless otherwise specified in MiFID.~~ regulation 3 of the MiFI Regulations, or by regulation 17 of the DRS Regulations.  
 [Note: article 4(1)(26) 2(18) of ~~MiFID~~ MiFIR]
- (5) (in *REC*) in relation to an *investment firm* or *credit institution*, means the competent authority in relation to that firm or institution for the purposes of the UK provisions which implemented MiFID.
- (6) [deleted]
- (7) ~~the authority designated by each EEA State in accordance with article 32 of the short selling regulation.~~ [deleted]
- (8) ~~(for an AIF) the national authorities of an EEA State which are empowered by law or regulation to supervise AIFs.~~  
 [deleted]
- (9) ~~(for an AIFM) a national authority in an EEA State which is empowered by law or regulation to supervise AIFMs.~~  
 [deleted]
- (10) (for the purposes of *IFPRU*) has the meaning in article 4(1)(40) of the ~~EU~~ UK CRR.
- (11) in relation to an EU State the authority designated by each that EU (and where applicable, EEA) State in accordance with article 40 of the EU benchmarks regulation; and in relation to a third country which is not an EU State, the supervisory authority which exercises functions equivalent to those

exercised by competent authorities in EU States under the EU benchmarks regulation.

(12) (in COLL) an authority exercising functions corresponding to the functions referred to in Part VI of the Act under the laws of an EEA State.

<i>conglomerate capital resources</i>	in relation to a <i>financial conglomerate</i> with respect to which <i>GENPRU</i> 3.1.29R (Application of method 1 or 2 <del>from Annex I of the <i>Financial Groups Directive</i></del> ) applies) capital resources as defined in whichever of paragraphs 1.1 or 2.1 of <i>GENPRU</i> 3 Annex 1 (Capital adequacy calculations for financial conglomerates) applies with respect to that <i>financial conglomerate</i> .
<i>conglomerate capital resources requirement</i>	(in relation to a <i>financial conglomerate</i> with respect to which <i>GENPRU</i> 3.1.29R (Application of method 1 or 2 <del>from Annex I of the <i>Financial Groups Directive</i></del> ) applies) the capital resources requirement defined in whichever of paragraphs 1.3 or 2.4 of <i>GENPRU</i> 3 Annex 1 (Capital adequacy calculations for financial conglomerates) applies with respect to that <i>financial conglomerate</i> .
<i>consolidated basis</i>	has the meaning in article 4(1)(48) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>consolidated capital resources</i>	(in relation to a <i>UK consolidation group</i> or a <del>non-EEA non-UK sub-group</del> and in <i>GENPRU</i> and <i>BIPRU</i> ) that group's capital resources calculated in accordance with <i>BIPRU</i> 8.6 (Consolidated capital resources).
<i>consolidated capital resources requirement</i>	(in relation to a <i>UK consolidation group</i> or a <del>non-EEA non-UK sub-group</del> and in <i>GENPRU</i> and <i>BIPRU</i> ) an amount of <i>consolidated capital resources</i> that that group must hold in accordance with <i>BIPRU</i> 8.7 (Consolidated capital resources requirement).
<i>consolidated indirectly issued capital</i>	has the meaning in <i>BIPRU</i> 8.6.12R (Indirectly issued capital and group capital resources), which is in summary any <i>capital instrument</i> issued by a member of a <i>UK consolidation group</i> or <del>non-EEA non-UK sub-group</del> where the conditions in <i>BIPRU</i> 8.6.12R are met.
<i>consolidated situation</i>	has the meaning in article 4(1)(47) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>consolidated tape provider</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of: <ul style="list-style-type: none"> <li>(a) collecting trade reports for <i>financial instruments</i> made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i> from <i>regulated markets</i>, <u>UK MTFs</u>, <u>UK OTFs</u> and <i>APAs</i>; and</li> <li>(b) consolidating them into a continuous electronic live data stream providing price and volume data per <i>financial instrument</i>.</li> </ul>

<i>consolidating supervisor</i>	has the meaning in article 4(1)(41) of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>consolidation Article 12(1) relationship</i>	<p>a relationship between <del>one undertaking (the first undertaking) and one two or more other undertakings</del> which satisfies <del>satisfying</del> the following conditions set out in <del>Article 12(1) of the Seventh Company Law Directive</del>, which in summary are as follows:</p> <p>(a) <del>those</del> <u>the undertakings</u> are not connected <del>in the manner, as described in article 1(1) or (2) of that Directive section 1162 and Schedule 7 of the Companies Act 2006;</del> and</p> <p>(b) <del>one of the following conditions is satisfied</del> <u>either</u>:</p> <p>(i) <del>they</del> <u>the undertakings</u> are managed on a unified basis pursuant to a contract <del>with one of them concluded with the first undertaking,</del> or provisions in the <u>undertaking's</u> memorandum or articles of association <del>of those undertakings;</del> or</p> <p>(ii) the administrative, management or supervisory bodies of those <i>undertakings</i> consist, for the major part, of the same <i>persons</i> in office during the financial year in respect of which it is being decided whether such a relationship exists.</p>
<i>consolidation group</i>	<p>(1) ...</p> <p>(2) (for the purposes of <i>SUP 16</i>) the <i>undertakings</i> included in the scope of prudential consolidation to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the <del>EU-CRR</del> <u>UK CRR</u> and <i>IFPRU</i> 8.1.3R to <i>IFPRU</i> 8.1.4R (Prudential consolidation) for which the <i>FCA</i> is the <i>consolidating supervisor</i> under <del>article 111 of the CRD</del> <u>regulation 20 of the Capital Requirements Regulations 2013</u>.</p>
<i>consumer</i>	<p>...</p> <p>(2A) (as further defined in section 425A of the <i>Act</i>) (in relation to the issue of statements or codes under section 64 of the <i>Act</i>); <u>and</u> general exemptions to consultation by the <i>FCA</i> (section 138L of the <i>Act</i>) in the publication of notices (section 391 of the <i>Act</i>) <del>and the exercise of Treaty rights (Schedule 4 to the Act)</del> a <i>person</i> who uses, has used, may have used, or has relevant rights or interests in relation to any services provided by:</p> <p>(a) <i>authorised persons</i> in carrying on regulated activities;</p>

- (b) *authorised persons* who are investment *firms*, or credit institutions, in providing relevant ancillary services; or
- (c) *persons* acting as appointed representatives.

for the purposes of this definition:

...

(D) (for the purposes of (2A)(b)):

(a) “credit institution” means:

- (i) a credit institution authorised under the UK provisions which implemented the CRD; or
- (ii) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in ~~an EEA State~~ the UK;

...

...

(7) (in the definitions of ~~cross-border dispute~~, *domestic dispute*, *sales contract* and *service contract*, and in *DISP* 1.1.10-BR, *DISP* 1.1A.42R, *DISP* 2.7.3R and *DISP* 2.7.9AR) has the meaning in regulation 3 of the *ADR Regulations*, which is an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft, or profession.

[Note: article 4(1) of the *ADR Directive*]

...

*contingent convertible instrument*

a *financial instrument* which meets the requirements for either:

- (a) Additional Tier 1 instruments under article 52; or
- (b) Tier 2 instruments under article 63, provided:
  - (i) the provisions governing the instrument require that, upon the occurrence of a trigger event, the principal amount of the instrument be written down on a permanent or temporary basis or the instrument be converted to one or more common equity Tier 1 instruments; and



- (ii) the trigger mechanism in (i) is different from, or additional to, any discretionary mechanism for converting or writing down the principal amount of the instrument which is activated following a determination by the relevant authority that the issuer of the *financial instrument* (or its *group*, or any member of its *group*) is no longer viable, or will no longer be viable unless the relevant instrument is converted or written down;

in each case of ~~Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012~~ the UK CRR.

*contract for differences*

the *investment*, specified in article 85 of the *Regulated Activities Order* (Contracts for differences etc), which is in summary rights under:

...

[*Editor's note*: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*contract of insurance*

...

- (2) (in relation to a contract) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) any contract of insurance which is a *long-term insurance contract* or a *general insurance contract*, including:

...

- (e) contracts of a kind referred to in the UK provisions which implemented article 2(3)(b)(v) of the *Solvency II Directive* (Collective insurance etc); and
- (f) contracts of a kind referred to in article 2(3)(c) of the Solvency II Directive (Social insurance) contracts relating to the length of human life that are regulated by or under any enactment relating to social security, in so far as they are effected or carried out at their own risk by undertakings with permission to effect or carry out contracts of long-term insurance as principals;

...

*contracts of large risks*

(in *ICOBS* and *PROD*) *contracts of insurance* covering risks within the following categories, in accordance with the UK provisions which implemented article 13(27) of the *Solvency II Directive*:

...

[Note: article 13(27) of the *Solvency II Directive* and article 2(1)(16) of the *IDD*]

*controller*

...

(4) *shares* and *voting power* that a *person* holds in a *firm* (“B”) or in a *parent undertaking* of B (“P”) are disregarded for the purposes of determining *control* in the following circumstances:

...

(c) *shares* representing no more than 5% of the total *voting power* in B or P held by an *investment firm*, provided that:

(i) it holds the *shares* in the capacity of a *market maker* (~~as defined in article 4.1(7) of *MIFID*~~) (article 2(1)(6) of *MiFIR*);

(ii) ~~it is authorised by its *Home State Regulator* under *MiFID*~~ has a *Part 4A permission* under the *Act* to carry on one or more *investment services and/or activities*; and

(iii) it does not intervene in the management of B or P nor exerts any influence on B or P to buy the *shares* or back the share price;

...

(e) *shares* held by a *credit institution* or an *investment firm* are disregarded, provided that:

(i) the *shares* are held as a result of performing the *investment services* and activities of:

(A) underwriting share issues; or

(B) placing shares on a firm commitment basis in accordance with ~~Annex I, section A.6 of *MiFID*~~ paragraph 6 of Part 3 of Schedule 2 to the *Regulated Activities Order*; and

...

...

*conversion factor* (in accordance with Article 4(28) of the *Banking Consolidation Directive (Definitions)* and for the purposes of *BIPRU*) the ratio of the currently undrawn amount of a commitment that will be drawn and outstanding at default to the currently undrawn amount of the commitment; the extent of the commitment is determined by the advised limit, unless the unadvised limit is higher.

[Note: article 4(28) of the *Banking Consolidation Directive (Definitions)*]

*coordinator* (in relation to a *financial conglomerate*) the *competent authority* which has been appointed, in accordance with Article 10 of the *Financial Groups Directive (Competent authority responsible for exercising supplementary supervision (the coordinator))* Article 1(2) of the *Financial Groups Directive Regulations*, as the competent authority which is responsible for the co-ordination and exercise of supplementary supervision of that *financial conglomerate*.

*core UK group*

- (1) (in relation to a *BIPRU firm*) all *undertakings* which, in relation to the *firm*, satisfy the conditions set out in *BIPRU* 3.2.25R (Zero risk-weighting for intra-group exposures: core UK group).
- (2) (in relation to an *IFPRU investment firm*) all counterparties which:
  - (a) are listed in the *firm's* core UK group permission;
  - (b) satisfy the conditions in article 113(6) of the ~~*EU CRR*~~ *UK CRR* (Calculation of risk-weighted exposure amounts: intragroup); and
  - (c) (unless it is an *IFPRU limited-activity firm* or *IFPRU limited-licence firm*, or an exempt *IFPRU commodities firm* to which article 493(1) of the ~~*EU CRR*~~ *UK CRR* (Transitional provision for large exposures) apply) for which *exposures* are exempted, under article 400(1)(f) of the ~~*EU CRR*~~ *UK CRR* (Large exposures: exemptions), from the application of article 395(1) of the ~~*EU CRR*~~ *UK CRR* (Limits to large exposures).

*core UK group permission* a permission given by the *FCA* under article 113(6) of the ~~*EU CRR*~~ *UK CRR* (see *IFPRU* 8.1.14G to *IFPRU* 8.1.21G).

*corporate governance rules* (in accordance with sections 73A(1) and 89O(1) of the *Act*) ~~rules for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any *EU* law~~

~~obligation~~ relating to the corporate governance of *issuers* who have requested or approved *admission to trading* of their securities and about corporate governance in relation to such *issuers* ~~for the purpose of implementing, or dealing with matters arising out of or related to, any EU law obligation~~. The *corporate governance rules* are located in chapters 1B, 4 and 7 of *DTR*.

*countercyclical  
buffer rate*

~~(in accordance with article 128(7) of the CRD (Definitions))~~ the rate:

- (a) expressed as a percentage of *total risk exposure amount* set by the *UK countercyclical buffer authority* ~~or an EEA countercyclical buffer authority~~; or
- (b) expressed in terms equivalent to a percentage of total risk exposure amount set by a *third-country countercyclical buffer authority*,

that a *firm* must apply in order to calculate its *countercyclical capital buffer*.

[Note: article 128(7) of the CRD (Definitions)]

*countercyclical  
capital buffer*

(in accordance with ~~article 128(2) of CRD (Definitions)~~ regulation 2(1) (Interpretation) of the Capital Requirements (Capital Buffers and Macro-prudential Measures Regulations 2014)) the amount of *common equity tier 1 capital* a *firm* must calculate in line with IFPRU 10.3.

*counterparty credit  
risk*

- (1) ~~(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions))~~ and for the purposes of *BIPRU*) the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.
- (2) (other than in (1)) has the meaning as used in the ~~EU CRR~~ UK CRR.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

*covered bond*

- (1) ~~(in accordance with Article 52(4) of the UCITS Directive and~~ except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued by a *credit institution* which has its registered office in the UK or an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a

priority basis for the reimbursement of the principal and payment of the accrued interest.

[Note: article 52(4) of the UCITS Directive]

- (2) ~~(in accordance with point 68 of Part 1 of Annex VI of the Banking Consolidation Directive (Exposures in the form of covered bonds) and for the purposes of the IRB approach or the standardised approach to credit risk in BIPRU) a covered bond as defined in (1) collateralised in accordance with BIPRU 3.4.107R (Exposures in the form of covered bonds).~~ that meets the following conditions:

- (a) it is issued by a credit institution which has its registered office in the United Kingdom; and
- (b) it is collateralised in accordance with BIPRU 3.4.107R (Exposures in the form of covered bonds).

[Note: point 68 of Part 1 of Annex VI of the Banking Consolidation Directive (Exposures in the form of covered bonds)]

- (3) ...
- (4) ~~for the purposes of INSPRU 2.1) a debenture that is issued by a credit institution which:~~ [deleted]
- (a) ~~has its head office in an EEA State; and~~
- (b) ~~is subject by law to special official supervision designed to protect the holders of the debenture; in particular, sums deriving from the issue of the debenture must be invested in accordance with the law in assets which, during the whole period of validity of the debenture, are capable of covering claims attaching to the debenture and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.~~

*CRD bank*

a bank which uses the EU CRR UK CRR to measure the capital requirement on its trading book.

*CRD credit institution*

- (1) (except in COLL and FUND) a credit institution that has its registered office (or, if it has no registered office, its head office) in an EEA State the UK, excluding an institution to which the CRD does not apply under the UK provisions which implemented article 2 of the CRD (see also full CRD credit institution).
- (2) (in COLL and FUND) a credit institution that:

- (a) has its registered office (or, if it has no registered office, its head office) in the UK, excluding an institution to which the CRD does not apply under the UK provisions which implemented article 2 of the CRD; or
- (b) has its registered office (or, if it has no registered office, its head office) in an EEA State, excluding an institution to which the CRD does not apply under article 2 of the CRD.

*CRD full-scope firm* an investment firm as defined in article 4(1)(2) of the ~~EU CRR UK CRR~~ that is subject to the requirements imposed by the UK provisions that implemented MiFID (or which would be subject to ~~that Directive those requirements~~ if its head office were in ~~an EEA State~~ the UK) and that is not a *limited activity firm* or a *limited licence firm*.

*credit enhancement* (1) ~~(in accordance with Article 4(43) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU)~~ a contractual arrangement whereby the credit quality of a *position* in a *securitisation* (within the meaning of paragraph (2) of the definition of *securitisation*) is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior *tranches* in the *securitisation* and other types of credit protection.

[Note: article 4(43) of the *Banking Consolidation Directive (Definitions)*]

...

*credit institution* (1) (except in *REC*, *SUP 11* and *SUP 16*):

- (a) has the meaning in article 4(1)(1) of the ~~EU CRR UK CRR~~; or
- (b) [deleted]
- (c) [deleted]
- (d) [deleted]

(2) (in *REC* and ~~in SUP 11 (Controllers and close links)~~ and *SUP 16* (Reporting requirements)):

- (a) a credit institution ~~authorised under the CRD~~ which has permission under Part 4A of the Act to carry on the regulated activity of accepting deposits; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under ~~the CRD~~

Part 4A of the *Act* if it had its registered office (or if it does not have a registered office, its head office) in an ~~EEA State~~ the UK.

- (3) (in relation to the definition of *electronic money issuer* and *payment service provider*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of article 4(1)(17) of the ~~EU CRR~~ UK CRR which is situated within the ~~EEA UK~~ and which has its head office in a territory outside the ~~EEA UK~~ in accordance with article 47 of the CRD.

[Note: article 47 of the CRD]

- (4) (in *SUP 11*) (Controllers and close links) a *credit institution* that has its registered office (or, if it has no registered office, its head office) in an EEA State, excluding an institution to which the CRD does not apply under article 2 of the CRD.

- credit risk mitigation* (1) (in *GENPRU* (except in *GENPRU 3*) and *BIPRU* (except in *BIPRU 12*)) ~~(in accordance with Article 4(30) of the Banking Consolidation Directive (Definitions))~~ a technique used by an *undertaking* to reduce the credit risk associated with an *exposure* or *exposures* which the *undertaking* continues to hold.

[Note: article 4(30) of the Banking Consolidation Directive (Definitions)]

- (2) (except in (1)) has the meaning in article 4(1)(58) of the ~~EU CRR~~ UK CRR.

*critical functions* activities, services or operations (wherever carried out) the discontinuance of which is likely, ~~in one or more EEA States~~ to lead to the disruption of essential services to the real economy of the UK or disrupt financial stability in the UK due to the:

...

*cross product netting* ~~(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ the inclusion of transactions of different product categories within the same *netting set* pursuant to the *rules* about cross product netting set out in *BIPRU 13*.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

*CRR firm* (for the purposes of *SYSC*) a *UK bank*, *building society* and an *investment firm* that is subject to the ~~EU CRR~~ UK CRR.

<i>CSDR</i>	<u>the UK version of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the EU and on central securities depositories and amending the <i>Settlement Finality Directive</i> and <i>MiFID</i> and the <i>short selling regulation</i>, which is part of UK law by virtue of the <i>EUWA</i>.</u>
<i>current approved person approval</i>	<p>...</p> <p>(a) ...</p> <p>(b) ...</p> <p><u>A person treated as approved under section 59ZZA of the Act (as treated as being inserted into the Act by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX])) has a <i>current approved person approval</i>.</u></p>
<i>current exposure</i>	<p><del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))</del> the larger of zero, or the market value of a transaction or portfolio of transactions within a <i>netting set</i> with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in bankruptcy.</p> <p><u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p>
<i>current market value</i>	<p><del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of BIPRU 13.5 (CCR standardised method))</del> the net market value of the portfolio of transactions within the <i>netting set</i> with the counterparty; both positive and negative market values are used in computing <i>current market value</i>.</p> <p><u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p>
<i>custody asset</i>	<p>(1) other than when <i>acting as trustee or depositary of an AIF</i> or <i>acting as trustee or depositary of a UK UCITS</i>:</p> <p>...</p> <p>(3) in relation to <i>acting as trustee or depositary of a UK UCITS</i> in CASS 6:</p> <p>...</p>
<i>deal on own account</i>	(1) (for the purposes of <i>GENPRU</i> and <i>BIPRU</i> ) has the meaning in <i>BIPRU</i> 1.1.23R (Meaning of dealing on own account)



which is in summary the service referred to in paragraph 3 of point 3 of Section A Annex I to ~~MiFID~~ Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *BIPRU* 1.1.23R(2) and *BIPRU* 1.1.23R(3) (~~Implementation of Article 5(2) of the *Capital Adequacy Directive*~~).

- (2) (other than in *GENPRU* and *BIPRU*) has the meaning in *IFPRU* 1.1.12R (Meaning of dealing on own account) which is, in summary, the service referred to in point 3 of Section A of Annex I to ~~MiFID~~ paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *IFPRU* 1.1.12R(2) and *IFPRU* 1.1.12R(3) (~~Implementation of article 29(2) of *CRD*~~).

*dealing on own account*

trading against proprietary capital resulting in the conclusion of transactions in one or more *financial instruments*.

[Note: article 4(1)(6) 2(1)(5) of ~~MFID~~ *MiFIR*]

*debt security*

...

- (2) (in *DTR* 4, *DTR* 5 and *DTR* 6) (~~in accordance with article 2.1(b) of the *Transparency Directive*~~) bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to *shares* in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire *shares* or securities equivalent to *shares*.

[Note: article 2.1(b) of the *Transparency Directive*]

...

*deposit*

- (1) (except in *COMP*) the *investment*, specified in article 74 and defined in articles 5(2) and 5(3) of the *Regulated Activities Order*, which is in summary: a sum of money (other than one excluded by any of articles 6 to 9 AB of the *Regulated Activities Order*) paid on terms:

...

[*Editor's note*: The current policy intention for COLL is to reflect the current scope of these articles in the *Regulated Activities Order*. If amendments are made to the scope of these articles in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*depository*

- (1) (except in *LR*):

...

(ca) ~~(in relation to an EEA UCITS scheme) the person fulfilling the function of a depositary in accordance with article 2(1)(a) of the UCITS Directive; [deleted]~~

...

...

(e) ~~(for an AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM~~ (other than an AIF which is an ICVC, an AUT or an ACS)) the person fulfilling:

(i) ~~the function of a depositary in accordance with article 21(1) of AIFMD~~ FUND 3.4.11R; or

(ii) one or more of the functions of cash monitoring, safekeeping or oversight for a ~~non-EEA UK AIF~~, in line with FUND 3.11.33R(1)(a) (AIFM of a non-EEA UK AIF).

...

*derivative*

(1) (other than in *REC*, *MAR 5* and *MAR 5A*) a *contract for differences*, a *future* or an *option* (see also *securitised derivative*).

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of these definitions, which in turn are defined by reference to articles in the Regulated Activities Order. Please refer to the individual glossary terms for further information.]

(2) (in *REC*, *MAR 5* and *MAR 5A*) ~~has the meaning in article 2(1)(29) of MiFIR~~ those financial instruments defined in article 2 (1)(24)(c) of MiFIR or referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order.

[Note: article 2(1)(29) of MiFIR]

*designated investment*

(1) a *security* or a *contractually-based investment* (other than a *funeral plan contract* and a right to or *interest* in a *funeral plan contract*) specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of this Part of the Regulated Activities Order. If amendments are made to the scope of this

Part in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

...

*designated investment business* any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:

...

(ba) ~~*MiFID business bidding* (part of *bidding in emissions auctions*) (article 24A); [deleted]~~

...

(p) *managing a UK UCITS*;

(q) *acting as trustee or depositary of a UK UCITS*;

...

*designated money market fund* (in *BIPRU 12* and *BSOCS*) ~~a *collective investment scheme* authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of an *EEA State*, and which an *authorised fund* which~~ satisfies the following conditions:

...

*dilution risk* ~~(in accordance with Article 4(24) of the *Banking Consolidation Directive* (Definitions))~~ the risk that an amount receivable is reduced through cash or non-cash credits to the obligor.

[Note: article 4(24) of the *Banking Consolidation Directive* (Definitions)]

*discretionary pension benefit* (1) (in *SYSC 19C*) enhanced pension benefits granted on a discretionary basis by a *firm* to an *employee* as part of that *employee's* variable *remuneration* package, but excluding accrued benefits granted to an *employee* under the terms of his company pension scheme. [Note: article 4(49) of the *Banking Consolidation Directive*]

(2) (in *IFPRU*, *SYSC 19A* (*IFPRU Remuneration Code*) and *SYSC 19D* (*Dual-regulated firms Remuneration Code*)) has the meaning in article 4(1)(73) of the ~~*EU-CRR*~~ *UK CRR*.

*distribution in connection with* ~~(in accordance with article 141(10) of *CRD*)~~ includes:

*common equity tier 1 capital*

- (a) a payment of cash dividends;
- (b) a distribution of fully or partly paid bonus *shares* or other capital instruments referred to in article 26(1)(a) of the ~~EU CRR~~ UK CRR (Common equity tier 1 items);
- (c) a redemption or purchase by a *firm* of its own *shares* or other capital instruments referred to in article 26(1)(a) of the ~~EU CRR~~ UK CRR (Common equity tier 1 items);
- (d) a repayment of amounts paid in connection with capital instruments referred to in article 26(1)(a) of the ~~EU CRR~~ UK CRR (Common equity tier 1 items); and
- (e) a distribution of items referred to in article 26(1)(b) to (e) of the ~~EU CRR~~ UK CRR (Common equity tier 1 items).

[Note: article 141(10) of CRD]

*distribution of exposures*

(~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)~~ and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the forecast of the probability distribution of market values that is generated by setting forecast instances of negative net market values equal to zero.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*distribution of market values*

(~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)~~ and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the forecast of the probability distribution of net market values of transactions within a *netting set* for some future date (the forecasting horizon), given the realised market value of those transactions up to the present time.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*DLG by default*

...

- (ca) In the case of a *group liquidity reporting firm* that is within paragraph (a) of the definition of *UK lead regulated firm* (it is not part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* or any other *regulatory body*), paragraph (c)(i) of the definition of *DLG by default* is

amended so that it only includes a member of the *firm's group* that falls into one of the following categories:

- (i) it is a *credit institution*; or
- (ii) it is an *investment firm* or *third country investment firm* authorised to *deal on own account*.

For these purposes:

- (iii) *credit institution* has the meaning used in SUP 16 (Reporting requirements), namely either of the following:
  - (A) a credit institution authorised under the *CRD* or
  - (B) an institution which would satisfy the requirements for authorisation as a credit institution under the UK provisions which implemented the CRD if it had its registered office (or if it does not have a registered office, its head office) in ~~an EEA State~~ the UK; and
- (iv) a *person* is authorised to *deal on own account* if:
  - (A) it is a *firm* and its *permission* includes that activity; or
  - (B) ~~it is an EEA firm and it is authorised by its Home State regulator to do that activity; or [deleted]~~
  - (C) (if the carrying on of that activity is prohibited in a state or territory without an authorisation in that state or territory) that *person* has such an authorisation.

...

*domestic UCITS merger*

(in *COLL* and in accordance with ~~article 2(1)(r) of the UCITS Directive~~ regulations 7 and 8 of the UCITS Regulations 2011) a *UCITS merger* between two or more *UCITS schemes* in relation to which a *UCITS marketing notification* has been made in respect of at least one of the relevant *schemes*.

*durable medium*

- (a) paper; or
- (b) any instrument which enables the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In relation to the *equivalent business of a third country*

*investment firm, MiFID optional exemption business or collective portfolio management, if the relevant rule derives from the MiFID Org Regulation or is a rule which ~~implements~~ implemented the UCITS Directive, the UCITS implementing Directive or the UCITS implementing Directive No 2 the instrument used must be:*

(i) ...

...

*early amortisation provision* (1) (in *BIPRU*) ~~(in accordance with Article 100 of the *Banking Consolidation Directive* (Securitisation of revolving exposures) and~~ in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*) a contractual clause which requires, on the occurrence of defined events, investors' positions to be redeemed prior to the originally stated maturity of the securities issued.

[Note: article 100 of the *Banking Consolidation Directive* (Securitisation of revolving exposures)]

(2) (except in (1)) has the meaning in article 242(14) of the *EU CRR UK CRR*.

*ECAI* (1) (except in *MIPRU*) an external credit assessment institution, as defined in article 4(1)(98) of the *EU CRR UK CRR*.

(2) (in *MIPRU*) an external credit assessment institution.

*EEA AIF* an *AIF*, ~~other than a *UK AIF*~~, which:

(a) is authorised or registered in an *EEA State* under the applicable national law; or

(b) is not authorised or registered in an *EEA State* but has its registered office or head office in an *EEA State*.

*EEA AIFM* an *AIFM* which has its registered office in an *EEA State* ~~other than the *UK*~~.

*EEA firm* ~~(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights))~~ any of the following, if it does not have its relevant office in the *United Kingdom*:

...

(h) a *person* who has received authorisation under article 18 of the *EU auction regulation*;

...

<i>EEA key investor information document</i>	<p>a document that:</p> <p>(a) relates to an <i>EEA UCITS scheme</i>;</p> <p>(b) complies with the requirements of <del>the <i>KII Regulation</i></del> <u>Commission Regulation (EU) No 583/2010</u>; and</p> <p>(c) is provided in a <del>language stipulated by article 94(1)(b) of the <i>UCITS Directive</i></del> <u>English</u>.</p>
<i>EEA MiFID investment firm</i>	a <del>MiFID investment firm whose Home State is not the United Kingdom</del> <u>an EEA firm which would be a MiFID investment firm if it had its head office or registered office in the UK.</u>
<i>EEA regulator</i>	<p><del>(1)</del> a <i>competent authority</i> for the purposes of any of the <i>Single Market Directives</i> or the <u>EU auction regulation</u>.</p> <p><del>(2)</del> <del>(in DEPP 7)</del> (as defined in section 131FA of the Act) the <i>competent authority</i> of an <i>EEA State</i> other than the <i>United Kingdom</i> for the purposes of the <i>short selling regulation</i>.</p> <p>...</p>
<i>EEA SMCR firm</i>	<p>(a) ...</p> <p>(b) any other <i>SMCR firm</i> that is <del>an incoming EEA firm or incoming Treaty firm</del> <u>a TP firm</u>.</p>
<i>EEA State</i>	<p>(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -</p> <p>(a) a state which at that time is a member State; or</p> <p>(b) any other state which is at that time a party to the EEA agreement.</p> <p>[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. <del>[Where the context requires, references to an EEA State include references to Gibraltar as appropriate.]</del>]</p>
<i>EEA UCITS management company</i>	<del>any incoming EEA firm that is</del> a <i>management company</i> <u>established in the EEA</u> .
<i>EEA UCITS Scheme</i>	a <i>collective investment scheme</i> established in accordance with the <i>UCITS Directive</i> in an <i>EEA State</i> <del>other than the United Kingdom</del> .
<i>effective expected exposure</i>	<del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement</del>

transactions) and as at a specific date) the maximum *expected exposure* that occurs at that date or any prior date; alternatively, it may be defined for a specific date as the greater of the *expected exposure* at that date, or the effective *exposure* at the previous date.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*effective expected positive exposure*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of BIPRU 13)~~ the weighted average over time of *effective expected exposure* over the first year, or, if all the contracts within the *netting set* mature before one year, over the time period of the longest maturity contract in the *netting set*, where the weights are the proportion that an individual *expected exposure* represents of the entire time interval.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*effective maturity*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions);~~ for the purpose of the *CCR internal model method* and with respect to a *netting set* with maturity greater than one year) the ratio of the sum of *expected exposure* over the life of the transactions in the *netting set* discounted at the risk-free rate of return divided by the sum of *expected exposure* over one year in a *netting set* discounted at the risk-free rate; this effective maturity may be adjusted to reflect *rollover risk* by replacing *expected exposure* with *effective expected exposure* for forecasting horizons under one year.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*efficient portfolio management*

~~(in COLL and in accordance with article 11 of the *UCITS eligible assets Directive*)~~ techniques and instruments which relate to *transferable securities* and *approved money-market instruments* and which fulfil the following criteria:

...

[Note: article 11 of the *UCITS eligible assets Directive*]

*electronic commerce activity*

an activity which:

- (a) consists of the provision of an *information society service* from an *establishment* in ~~an EEA State~~ the UK; and
- (b) is, ~~or but for article 72A (Information society services) of the *Regulated Activities Order* (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)) would be,~~ a *regulated activity*.



<i>electronic money issuer</i>	<p>(1) (except in <i>DISP</i>) any of the following <i>persons</i> when they issue <i>electronic money</i>:</p> <p>...</p> <p>(c) <del><i>EEA authorised electronic money institutions;</i></del> <u>[deleted]</u></p> <p>...</p> <p>(f) the Bank of England, <del>the European Central Bank and the national central banks of <i>EEA States</i> other than the United Kingdom,</del> when not acting in <del>their</del> <u>its</u> capacity as a monetary authority or other public authority;</p> <p>...</p> <p>...</p>
<i>eligible capital</i>	has the meaning in article 4(1)(71) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>eligible institution</i>	(in <i>COLL</i> ):
	<p>(a) a <i>CRD credit institution</i> authorised by its <i>Home State regulator</i>;</p> <p>(b) an <i>MiFID investment firm</i> authorised by <u>the <i>FCA</i> or an <i>EEA MiFID investment firm</i> authorised by its <i>Home State regulator</i>.</u></p>
<i>EMIR</i>	<u>the <i>UK version of</i> Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, which is part of <i>UK law by virtue of the EUWA</i>, sometimes referred to as the “European Markets Infrastructure Regulation”.</u>
<i>EMIR indirect clearing RTS</i>	<u>the <i>UK version of</i> Commission Delegated Regulation (EU) No 2017/2155 of 22 September 2017 amending Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 with regard to regulatory technical standards on indirect clearing arrangements, which is part of <i>UK law by virtue of the EUWA</i>.</u>
<i>EMIR L2 Regulation</i>	<u>the <i>UK version of</i> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, which is part of <i>UK law by virtue of the EUWA</i>.</u>

*EMIR requirements* requirements imposed under *EMIR* and any *onshored regulation* made under ~~it~~ EU EMIR.

*EMIR technical standards on OTC derivatives* means the UK version of “Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing EMIR with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a central counterparty<sup>22</sup>, which is part of UK law by virtue of the EUWA.”

*energy market participant* a firm:

...

- (b) which is not an *authorised professional firm, bank, BIPRU firm* (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm, oil market participant, service company, insurance intermediary, home finance administrator, home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission)* or *regulated benchmark administrator*.

*ESMA MAR delayed disclosure guidelines* ESMA’s guidelines on ‘Delay in the disclosure of inside information’ (ESMA 2016/1478) dated 20 October 2016. ~~These are available at:~~ [https://www.esma.europa.eu/sites/default/files/library/2016-1478\\_mar\\_guidelines\\_-\\_legitimate\\_interests.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf).

- established* (1) ~~(in accordance with article 4(1)(j) AIFMD):~~
- (a) for *AIFMs*, ‘having its registered office in’;
  - (b) for *AIFs*, ‘being authorised or registered in’ or, if the AIF is not authorised or registered, ‘having its registered office in’; or
  - (c) for *depositaries of unauthorised funds only*, ‘having its registered office or branch in’.

[Note: article 4(1)(j) of AIFMD]

- (2) for a *depositary* of a *UCITS scheme*, ‘having its registered office or branch in’.

*EU* the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as

amended), taking into account the UK's withdrawal from the Union pursuant to Article 50 of the Treaty.

EU-adopted International Financial Reporting Standards (or EU adopted IFRS)

international financial accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.

EU UK CRR

the UK version of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the EUWA.

*excess spread*

(for the purposes of *BIPRU 9* (Securitisation), in relation to a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) ~~and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) finance charge collections and other fee income received in respect of the *securitised exposures* net of costs and expenses.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

*exchange-traded fund*

a fund of which at least one *unit* or *share* class is traded throughout the day on at least one *trading venue* and with at least one market maker which takes action to ensure that the price of its *units* or *shares* on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value.

[Note: article 4(1)(46) 2(26) of ~~MiFID~~ MiFIR]

*exchange traded product*

any of the following *investments*:

- (a) a *unit* or *share* in an *open-ended investment company*, a *debt security* or a *contract for differences* which meets all of the following criteria:
  - (i) it is admitted to trading on a *regulated market*, an EU regulated market or a market operated by a *ROIE*;

...

*excluded custody activities*

any activities of a *firm* which:

- (a) are carried on in connection with, or for the purposes of, *managing a UK UCITS* or an *AIF* (as the case may be); and

	(b) ...
<i>exempt CAD firm</i>	<p>(1) (except in <i>SYSC</i> and <i>IPRU(INV)</i>) a firm as defined in article 4(1)(2)(c) of the <del><i>EU-CRR</i></del> <i>UK CRR</i> that is authorised to provide only one or more the following <i>investment services</i>:</p> <p>(a) investment advice;</p> <p>(b) receive and transmit orders from investors as referred to in <del>Section A of Annex I of <i>MiFID</i></del> <u>Part 3 of Schedule 2 to the <i>Regulated Activities Order</i></u>.</p> <p>(2) (in <i>SYSC</i> and <i>IPRU(INV)</i>) a firm in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.</p>
<i>exempt IFPRU commodities firm</i>	an <i>IFPRU investment firm</i> which falls within the meaning in articles 493(1) and 498(1) of the <del><i>EU-CRR</i></del> <i>UK CRR</i> .
<i>expected exposure</i>	<p><del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))</del> the average of the distribution of <i>exposures</i> at any particular future date before the longest maturity transaction in the <i>netting set</i> matures.</p> <p><u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p>
<i>expected loss</i>	<p><del>(in accordance with Article 4(29) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of the <i>IRB approach</i> and the <i>standardised approach</i> to credit risk)</del> the ratio of the amount expected to be lost on an <i>exposure</i> from a potential <i>default</i> of a counterparty or dilution over a one year period to the amount outstanding at default.</p> <p><u>[Note: article 4(29) of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p>
<i>expected positive exposure</i>	<p><del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))</del> the weighted average over time of <i>expected exposures</i> where the weights are the proportion that an individual <i>expected exposures</i> represents of the entire time interval; when calculating the minimum capital requirement, the average is taken over the first year or, if all the contracts within the <i>netting set</i> mature before one year, over the time period of the longest-maturity contract in the <i>netting set</i>.</p>

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

- exposure*
- (1) (in relation to a *firm* but subject to (2) and (6)) the maximum loss which the firm might suffer if:
    - (a) a counterparty or a group of connected counterparties fail to meet their obligations; or
    - (a) it realises assets or off-balance sheet positions.
  - (2) ~~(in accordance with Article 77 of the *Banking Consolidation Directive* and~~ for the purposes of the calculation of the *credit risk capital component* and the *counterparty risk capital component* (including *BIPRU 3* (Standardised credit risk), *BIPRU 4* (The IRB approach), *BIPRU 5* (Credit risk mitigation), *BIPRU 9* (Securitisation)) an asset or off-balance sheet item.

[Note: article 77 of the *Banking Consolidation Directive*]

...

- (4) (in *IFPRU* and to calculate *own funds requirements* under Part Three Title II (credit risk and counterparty credit risk)) has the meaning in article 5(1) of the ~~*EU CRR*~~ *UK CRR*.
- (5) (in *IFPRU* 8.2 (Large exposures) for the purpose of Part Four ((Large exposures) of the ~~*EU CRR*~~ *UK CRR*) has the meaning in article 389 of the ~~*EU CRR*~~ *UK CRR* (Large exposures: definitions).

...

*external valuer* a person who performs the valuation function described in ~~article 19 of the *AIFMD*~~ *FUND* 3.9.4R and 3.9.5R in respect of an *AIF* managed by a *full-scope UK AIFM*, and is not the *AIFM* of that *AIF*.

*extraordinary public financial support* ~~State aid within article 107(1) of the *Treaty*, or any other public financial support at supra-national level, which, if given at national level, would constitute state aid that is given to preserve or restore the viability, liquidity or solvency of any member of an *RRD group*~~ has the meaning provided in section 3 of the Banking Act 2009.

[Note: article 2(1)(28) of *RRD*]

*FCA consolidation group* the *undertakings* included in the scope of prudential consolidation to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the ~~*EU CRR*~~ *UK CRR* and *IFPRU* 8.1.3 R to *IFPRU* 8.1.4 R (Prudential consolidation) for which the *FCA* is the *consolidating supervisor* under ~~article 111 of the *CRD*~~ regulation 20 of the *Capital Requirements Regulations 2013*.

*fee-paying electronic money issuer* any of the following when they issue *electronic money*:

...

- (c) ~~an EEA authorised electronic money institution; [deleted];~~
- (d) a full credit institution, including a branch of the full credit institution within the meaning of article 4(17) of the *EU CRR UK CRR* which is situated ~~within the EEA in the United Kingdom~~ and which has its head office in a territory outside the ~~EEA United Kingdom~~ in accordance with article 47 of the *EU CRR UK CRR*;

...

~~A full credit institution that is an EEA firm is only a fee-paying electronic money issuer if it is exercising an EEA right in accordance with Part II of Schedule 3 to the Act (Exercise of passport rights by EEA firms) to issue electronic money in the United Kingdom. An EEA authorised electronic money institution is only a fee paying electronic money issuer if it is exercising a right under Article 3 of the Electronic Money Directive to issue electronic money in the United Kingdom. [deleted]~~

*fee-paying payment service provider* any of the following when they provide *payment services*:

- (a) a payment institution;
- (b) a full credit institution;
- (c) an electronic money issuer (except where it is an electronic money issuer whose only payment service activities are those relating to the issuance of electronic money by itself or if it is a credit union, a municipal bank or the National Savings Bank);
- (d) the Post Office Limited;
- (e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and
- (f) government departments and local authorities, other than when carrying out functions of a public nature.

~~A full credit institution that is an EEA firm is only a fee-paying payment service provider if it is exercising an EEA right in accordance with Part 2 of Schedule 3 to the Act (exercise of passport rights) to provide payment services in the United Kingdom. An EEA~~

~~authorised payment institution or an EEA authorised electronic money institution is only a fee-paying payment service provider if it is exercising a right under Article 25 of the Payment Services Directive or Article 3 of the Electronic Money Directive to provide payment services in the United Kingdom.~~

*feeder AIF* ~~(in accordance with article 4(1)(m) of AIFMD) an AIF which:~~  
...

[Note: article 4(1)(m) of AIFMD]

*feeder UCITS* ~~(in accordance with article 58(1) of the UCITS Directive):~~

~~(a) a UCITS scheme or a sub-fund of a UCITS scheme which has been approved by the FCA; or~~

~~(b) an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the competent authority of the UCITS Home State;~~

to invest at least 85% of its assets in the *units* of a single *master UCITS*.

[Note: article 58(1) of the UCITS Directive]

*final response* ...

(3) (in *DISP*) either:

(a) in relation to a *MiFID complaint*, a response in accordance with *DISP* 1.1A.29EUUK, *DISP* 1.1A.30EUUK and *DISP* 1.1A.31R; or

(b) in relation to all other *complaints*, has the meaning given in *DISP* 1.6.2R(1).

*financial conglomerate*

~~(in accordance with Article 2(14) of the Financial Groups Directive (Definitions) Regulation 1(2) of the Financial Groups Directive Regulations)~~ a *consolidation group* that is identified as a *financial conglomerate* by the *financial conglomerate definition decision tree*.

*financial holding company*

a *financial institution* that fulfils the following conditions:

(1) (except in (2)) has the meaning in article 4(1)(20) of the ~~EU~~ CRR UK CRR.

(2) (in *GENPRU* (except *GENPRU* 3) and *BIPRU* (except *BIPRU* 12)) a *financial institution* that fulfils the following conditions:

- (a) its *subsidiary undertakings* are exclusively or mainly *CAD investment firms* or *financial institutions*;
- (b) at least one of those *subsidiary undertakings* is a *CAD investment firm*; and
- (c) it is not a *mixed financial holding company*.

- financial institution*
- (1) (~~in accordance with paragraph 5(e) of Schedule 3 to the Act (EEA Passport Rights: EEA firm) and article 3 (22) of the CRD (Definitions), but not for the purposes of GENPRU, BIPRU and IFPRU, an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities listed in points 2 to 12 and 15 of Annex I to the CRD, which is a subsidiary of the kind mentioned in article 34 of the CRD and which fulfils the conditions in that article [deleted]~~)
  - (2) for the purposes of *GENPRU* (except *GENPRU 3*), *BIPRU* (except in *BIPRU 12*) and ~~in accordance with Articles 1(3) (Scope) and 4(5) (Definitions) of the *Banking Consolidation Directive*~~:
    - (a) an *undertaking*, other than a *credit institution* or an *investment firm*, the principal activity of which is to acquire holdings or to carry on one or more of the ~~*listed activities*~~ activities listed in points 2 to 12 and 15 of Annex I to the ~~*Banking Consolidation Directive Annex 1 activities*~~ including the services and activities provided for in Sections A and B of Annex I of the ~~*MIFID*~~ Parts 3 and 3A of Schedule 2 to the *Regulated Activities Order* when referring to *financial instruments*. ~~the financial instruments provided for in Section C of Annex I of that Directive~~
    - (b) (for the purposes of consolidated requirements) those institutions ~~permanently excluded by~~ listed in Article 2 of the *Banking Consolidation Directive* (Scope), with the exception of the Bank of England and the central banks of *EEA States* other countries.  
 [Note: articles 1(3) (Scope) and 4(5) (Definitions) of the *Banking Consolidation Directive*]
  - (3) (except in (1) and (2) and subject to (4)) has the meaning in article 4(1)(26) of the ~~*EU CRR*~~ *UK CRR*.
  - (4) (for the purposes of consolidated requirements in *IFPRU* and ~~in accordance with article 2(6) of *CRD*~~) the following:



- (a) financial institutions within the meaning in article 4(1)(26) of the ~~EU CRR~~ UK CRR; and
- (b) those institutions permanently excluded by article 2(5) of *CRD* (Scope) with the exception of the ~~ESCB~~ *central banks* as defined in article 4(1)(~~45~~46) of the ~~EU CRR~~ UK CRR.

[Note: article 2(6) of *CRD*]

- financial instrument*
- (1) (other than in (2); ~~and (3) and (4)~~ instruments specified in Section C of Annex I of MiFID, those instruments specified in Part 1 of Schedule 2 to the Regulated Activities Order, that is:
    - ...
    - (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market*, an *MTF* or an *OTF*, except for wholesale energy products (having regard to article 6 of the *MiFID Org Regulation*) traded on an *OTF* or an EU OTF that must be physically settled where the conditions of article 5 of the *MiFID Org Regulation* are met;
    - (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and:
      - (i) not being for commercial purposes or wholesale energy products traded on an EU OTF, having regard to article 7(4) of the *MiFID Org Regulation*;
      - (ii) which have the characteristics of other derivative financial instruments, having regard to article 7(1) of the *MiFID Org Regulation*; and
      - (iii) not being spot contracts having regard to articles 7 (1) and (2) of the *MiFID Org Regulation*;
    - ...
  - (2) ...

(3) (in *IFPRU*) has the meaning in article 4(50) of the ~~*EU CRR*~~ *UK CRR*.

(4) ~~(for a *UCITS custodial asset*) an instrument specified in Section C of Annex I to *MiFID*. [deleted]~~

*financial promotion* ...

(2) (in relation to *COBS* 3.2.1R(3) and *COBS* 4.3.1R) (in addition to (1)) a marketing communication within the meaning of the *UK provisions which implemented MiFID* made by a firm in connection with its *MiFID*, *equivalent third country* or *optional exemption business*.

(3) (in *MCOB* 3A), in addition to (1), any advertising or marketing communications within the meaning of the *UK provisions which implemented* articles 10 or 11 of the *MCD* made by an *MCD firm* in relation to an *MCD credit agreement*.

(4) (in *ICOBS* and in relation to a *life policy*, in *COBS* 3.2.1R(3) and *COBS* 4.3.1R), in addition to (1), any marketing communication within the meaning of the *UK provisions which implemented* article 17(2) of the *IDD*.

[Note: articles 10 and 11 of the *MCD*; and article 17(2) of the *IDD*]

*financial sector entity*

has the meaning in article 4(1)(27) of the ~~*EU CRR*~~ *UK CRR*.

*Financial Services Register*

the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), regulation 4 of the *Electronic Money Regulations* and article 8 of the *MCD Order*, of every:

...

(aa) *authorised payment institution* and its ~~*EEA branches*~~;

...

(aca) *authorised electronic money institution* and an ~~*EEA branch of an authorised electronic money institution*~~;

...

*FINREP firm*

(a) a *credit institution* or *investment firm* subject to article 99(2) of the ~~*EU CRR*~~ *UK CRR* that is also subject to ~~article 4 of Regulation (EC) No 1606/2002; or~~

- (b) ~~a credit institution other than one referred to in article 4 of Regulation (EC) No 1606/2002 that prepares its consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in article 6(2) of that Regulation. [deleted]~~

[Note: article 99 of the ~~EU CRR~~ UK CRR]

*foreign currency loan*

an *MCD credit agreement* where the *credit* is:

- (a) denominated in a currency other than that in which the *consumer* receives the income or holds the assets from which the *credit* is to be repaid; or
- (b) denominated in a currency other than ~~that of the EEA State in which the consumer is resident~~ sterling.

[Note: article 4(28) of the *MCD*]

*full CRD credit institution*

an *undertaking* whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account and that has its registered office (or, if it has no registered office, its head office) in ~~an EEA state~~ the UK, excluding an institution to which ~~CRD does~~ did not apply under the UK provisions which implemented article 2 of CRD.

*full-scope UK AIFM*

a *UK AIFM* which:

- (a) is not a *small AIFM*; or
- (b) is a *small AIFM* but has ~~opted in to AIFMD in accordance with article 3(4) of AIFMD~~ exercised the option to meet the full requirements applying to a full-scope AIFM.

*funded credit protection*

~~(in accordance with Article 4(31) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU)~~ a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an undertaking derives from the right of the *undertaking*, in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the *exposure* to, or to replace it with, the amount of the difference between the amount of the *exposure* and the amount of a claim on the *undertaking*.

[Note: article 4(31) of the *Banking Consolidation Directive (Definitions)*]

*future*

the *investment*, specified in article 84 of the *Regulated Activities Order (Futures)*, which is in summary: rights under a contract for the

sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made and futures and forwards to which article 84(1A), (1B), (1C), (1CA) or (1D) of the *Regulated Activities Order* applies.

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*general market risk* ~~(in accordance with paragraph 12 of Annex I of the *Capital Adequacy Directive*)~~ the risk of a price change in an *investment*:

- (a) (in relation to items that may or must be treated under *BIPRU* 7.2 (Interest Rate PRR)) owing to a change in the level of interest rates; or
- (b) (in relation to items that may or must be treated under *BIPRU* 7.3 (Equity PRR and basic interest rate PRR for equity derivatives) except insofar as *BIPRU* 7.3 relates to the calculation of the *interest rate PRR*) owing to a broad equity-market movement unrelated to any specific attributes of individual *securities*.

[Note: paragraph 12 of Annex I of the *Capital Adequacy Directive*]

*general wrong-way risk* ~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ the risk that arises when the probability of default of counterparties is positively correlated with general market risk factors.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*government and public security* the *investment*, specified in article 78 of the *Regulated Activities Order* (Government and public securities), which is in summary: a loan stock, bond or other instrument creating or acknowledging indebtedness, issued by or on behalf of:

...

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*group* ...

- (5) (in relation to a *common platform firm*) means the group of which that *firm* forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a consolidation article 12(1) relationship within the meaning of Article 12(1) of Directive 83/349/EEC on consolidated accounts.

...

*group of connected clients* has the meaning given to it in article 4.1(39) of the ~~EU CRR~~ UK CRR.

*hedging set* (~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a group of *risk positions* from the transactions within a single *netting set* for which only their balance is relevant for determining the *exposure* value under the *CCR standardised method*.~~

[Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]

*Home State*

...

- (4) (~~in relation to an insurance undertaking with an *EEA right* the *EEA State* in which the registered office of the insurance undertaking is situated.~~ [deleted])

...

- (7) (~~in relation to a *Treaty firm* the *EEA State* in which its head office is situated, in accordance with paragraph 1 of Schedule 4 to the *Act (Treaty Rights)*.~~ [deleted])

- (8) (~~in *LR* and *PR*) (as defined in section 102C of the Act) in relation to an issuer of *transferable securities*, the *EEA State* which is the “home Member State” for the purposes of the *prospectus directive* (which is to be determined in accordance with Article 2.1(m) of that directive).~~ [deleted])

- (9) (~~in *DTR*~~): [deleted])

(a) in the case of an issuer of *debt securities* the denomination per unit of which is less than EUR 1 000 or an issuer of *shares*:

(ii) where the issuer is incorporated in the *EEA*, the ~~*EEA State* in which it has its registered office;~~

- (ii) ~~where the *issuer* is incorporated in a third country, the *EEA State* chosen by the *issuer* from among the *EEA States* where its securities are admitted to trading on a *regulated market*; the choice of *Home State* shall remain valid unless the *issuer* has chosen a new *Home State* under (c) and has disclosed the choice in accordance with *DTR 6.4.2R* and *DTR 6.4.3R*.~~

~~The definition of *Home State* shall be applicable to *debt securities* in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;~~

- (b) ~~for an *issuer* not covered by (a), the *EEA State* chosen by the *issuer* from among the *EEA States* in which the *issuer* has its registered office, where applicable, and those *EEA States* where its securities are admitted to trading on a *regulated market*. The *issuer* may choose only one *EEA State* as its *Home State*. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any *regulated market* in the *EEA* or unless the *issuer* becomes covered by (a) or (c) during the three year period;~~
- (c) ~~for an *issuer* whose securities are no longer admitted to trading on a *regulated market* in its *Home State* as defined by (a)(ii) or (b) but instead are admitted to trading in one or more other *EEA States*, such new *Home State* as the *issuer* may choose from among the *EEA States* where its securities are admitted to trading on a *regulated market* and, where applicable, the *EEA State* where the *issuer* has its registered office.~~

~~In the absence of disclosure by the *issuer* of its *Home State* as defined by (a)(ii) or (b) within a period of three months from the date that the *issuer's* securities are first admitted to trading on a *regulated market*, the *Home State* shall be determined in accordance with *DTR 6.4.4R*.~~

...

- (11) ~~(in *REC*) in relation to an *EEA* market operator, the *EEA State* in which it has its registered office, or if it has no registered office, its head office. [deleted]~~
- (12) (in relation to a person who has received authorisation under article 18 of the *EU auction regulation*) the *EEA state* in

which the person is established and authorised under the EU auction regulation.

...

*Home State regulator*

- (1) ~~(in relation to an EEA firm) (as defined in paragraph 9 of Schedule 3 to the Act (EEA Passport Rights)) the competent authority (under the relevant Single Market Directive or the EU auction regulation) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.~~
- (2) ~~(in relation to a UK firm or UCITS scheme) the FCA or PRA as the case may be. [deleted]~~
- (3) ~~(in relation to a Treaty firm) (as defined in paragraph 1 of Schedule 4 to the Act (Treaty Rights)) the competent authority of the firm's Home State for the purpose of its Home State authorisation. [deleted]~~

...

*Host State*

- (1) ~~(in LR and PR) as defined in Article 2.1(n) of the Prospectus Directive) the EEA State where an offer to the public is made or admission to trading is sought, when different from the Home State. [deleted]~~
- (1A) ~~(in DTR) an EEA State in which securities are admitted to trading on a regulated market, if different from the Home State. [deleted]~~
- (2) ~~(except in LR, PR and DTR and except in relation to MiFID) the EEA State in which an EEA firm, a UK firm, or a Treaty firm is exercising an EEA right or Treaty right to establish a branch or provide cross border services. [deleted]~~

...

- (4) ~~(in relation to the UCITS Directive) the EEA State, other than the UCITS Home State, in which units of a UCITS are marketed in accordance with a notification made under article 93 of that directive. [deleted]~~

...

*Host State regulator*

- (1) ~~(in relation to an EEA firm or a Treaty firm exercising an EEA right or Treaty right in the United Kingdom) the FCA or PRA as the case may be. [deleted]~~
- (2) ~~(in relation to a UK firm) (as defined in paragraph 11 of Schedule 3 to the Act (EEA Passport Rights)) the competent authority (under the relevant Single Market Directive or the auction regulation) of an EEA State (other than the United~~

~~Kingdom) in relation to a UK firm's exercise of EEA rights there. [deleted]~~

(3) ...

(4) ~~(in relation to an EEA UCITS scheme which is a recognised scheme) the FCA. [deleted]~~

(5) ~~(in relation to a UCITS that is the subject of a notification in accordance with article 93 of the UCITS Directive) the competent authority of an EEA State (other than the United Kingdom) in which units of the UCITS may be marketed to the public. [deleted]~~

*ICD claim*

a claim:

(a) against a *MiFID investment firm* (including a *credit institution* which is a *MiFID investment firm*), ~~whether established in the United Kingdom or in another EEA State~~ (or, where applicable, a *successor of such a firm*); and

...

*IDD*

Insurance Distribution Directive, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

[Note: See <http://eur-lex.europa.eu/eli/dir/2016/97/oj>]

*IDD IPID Regulation*

the UK version of Commission Implementing Regulation (EU) 2017/1469 of 11 August laying down a standardised presentation format for the insurance product information document, which is part of UK law by virtue of the EUWA.

[Note: See [http://eur-lex.europa.eu/eli/reg\\_impl/2017/1469/oj](http://eur-lex.europa.eu/eli/reg_impl/2017/1469/oj)]

*IDD POG Regulation*

the UK version of Commission Delegated Regulation (EU) No 2017/2358 of 21 September 2017, supplementing the IDD of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors, which is part of UK law by virtue of the EUWA.

*IDD Regulation*

the UK version of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, supplementing the IDD of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, which is part of UK law by virtue of the EUWA.



*IFPRU investment firm* an *investment firm*, as defined in article 4(1)(2) of the ~~EU CRR~~ UK CRR (including a *collective portfolio management investment firm*), that satisfies the following conditions:

- (a) it is a *firm*;
- (b) its head office is in the *UK* and it is not otherwise excluded under *IFPRU* 1.1.5R; and
- (c) it is not a *designated investment firm*; that is not excluded under *IFPRU* 1.1.5R (Exclusion of certain types of firms).

*IFR* the UK version of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, which is part of UK law by virtue of the EUWA.

*IFR transactions by acquirers operating in the United Kingdom* all transactions subject to the *IFR* acquired by:

- (a) *UK-based acquirers* (or an *operator* acting as such an *acquirer*) resulting in payments to merchants located in the ~~United Kingdom~~ UK, where the *card issuer* is located in the ~~EEA~~ UK;
- (b) *UK-based acquirers* (or an *operator* acting as such an *acquirer*) resulting in payments to merchants located outside the ~~United Kingdom~~ UK, where the *card issuer* is located in the ~~EEA~~ UK; and
- (c) *non-UK-based acquirers* (or an *operator* acting as such an *acquirer*) resulting in payments to merchants located in the ~~United Kingdom~~ UK, where the *card issuer* is located in the ~~EEA~~ UK.

*IFR transactions by card issuers operating in the United Kingdom* all transactions subject to the *IFR* on cards issued by *UK-based card issuers* (or an *operator* acting as such ~~an~~ a *card issuer*), where the *acquirer* is located in the ~~EEA~~ UK.

*injured party* (in *ICOBS*) a resident of the United Kingdom or the EEA entitled to compensation in respect of any loss or injury caused by *vehicles*.

[Note: article 1(2) of Directive 72/166/EC (First Motor Insurance Directive)]

- initial capital*
- (1) [deleted]
  - (2) [deleted]

- (3) [deleted]
- (3A) (in *IPRU(INV)* 11 ~~and in accordance with article 28(1) of the *CRD*~~) the amount of *own funds* referred to in article 26(1)(a) to (e) of the ~~*EU CRR UK CRR*~~ and calculated in line with Part Two of those Regulations (Own funds).  
[Note: article 28(1) of the *CRD*]
- (4) (in the case of a *BIPRU firm*) *capital resources* included in stage A (Core tier one capital) of the *capital resources table* plus *capital resources* included in stage B of the *capital resources table* (Perpetual non-cumulative preference shares);
- (5) ~~(in the case of an *institution* that is an *EEA firm*) capital resources calculated in accordance with the *CRD implementation measures* of its *Home State* for Article 4 of the *Capital Adequacy Directive* (Definition of initial capital) or Article 9 of the *Banking Consolidation Directive* (Initial capital requirements); [deleted]~~
- (6) (for the purposes of the definition of *dealing on own account* in *BIPRU* and in the case of an *undertaking* not falling within (3) or (4)) *capital resources* calculated in accordance with (3) and paragraphs (3) and (4) of the definition of *capital resources*.
- (7) (in *IPRU(INV)* 13) the initial capital of a *firm* calculated in accordance with *IPRU(INV)* 13.1A.6R.
- (8) (for an *IFPRU investment firm* ~~and in accordance with article 28(1) of *CRD*~~) the amount of *own funds* referred to in article 26(1)(a) to (e) of the ~~*EU CRR UK CRR*~~ and calculated in accordance with Part Two of those Regulations (Own funds).  
[Note: article 28(1) of *CRD*]
- (9) (for the purpose of the definition of dealing on own account in *IFPRU*) the amount of *own funds* referred to in article 26(1)(a) to (e) of the ~~*EU CRR UK CRR*~~ and calculated in accordance with Part Two of those Regulations (Own funds).
- institution*
- (1) has the meaning in article 4(1)(3) of the ~~*EU CRR UK CRR*~~.
- (2) (for the purposes of *GENPRU* and *BIPRU*) includes a *CAD investment firm*.
- instrument constituting the fund* ...

- (ba) ~~(in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme; [deleted]~~
- ...
- insurance-based investment product* a contract of insurance which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:
- ...
- (d) officially recognised occupational pension schemes falling under the scope of the UK provisions which implemented Directive 2003/41/EC or the UK provisions which implemented Directive 2009/138/EC;
- ...
- insurance holding company* (1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:
- (a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and
- (b) at least one of those *subsidiary undertakings* is an *insurer* ~~or an EEA firm that is a regulated insurance entity~~ or a *reinsurance undertaking*; a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1)(a) and (b) of this definition is not an *insurance holding company* if:
- (c) it is a *mixed financial holding company*; and
- (d) notice has been given in accordance with ~~Article 4(2) of the Financial Groups Directive~~ Regulation 2 of the Financial Groups Directive Regulations that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.
- insurance sector* a sector composed of one or more of the following entities:
- (a) ~~“Solvency II undertaking”~~ “UK Solvency II firm” as defined in the PRA Rulebook: Glossary;

	...
<i>insurance special purpose vehicle</i>	<p>an <i>undertaking</i> whether incorporated or not, which has received authorisation in accordance with <u>the UK provisions which implemented</u> article 211(1) or (3) of the <i>Solvency II Directive</i> and:</p> <p>(a) which assumes risks from <u>an insurer or a regulated insurance entity</u>; and</p> <p>...</p>
<i>interest-rate contract</i>	interest-rate contracts listed in paragraph 1 of Annex II to the <del>EU CRR</del> <u>UK CRR</u> .
<i>internal approaches</i>	<p>one or more of the following, as referred to in the <del>EU CRR</del> <u>UK CRR</u>:</p> <p>(a) the Internal Ratings Based Approach in article 143(1);</p> <p>(b) the Internal Models Approach in article 221;</p> <p>(c) the own estimates approach in article 225;</p> <p>(d) the Advanced Measurement Approaches in article 312(2);</p> <p>(e) the Internal Model Method and internal models in articles 283 and 363; and</p> <p>(f) the internal assessment approach in article 259(3).</p>
<u>EU-adopted international accounting standards</u>	means the international accounting standards, within the meaning of of EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation.
<u>EU-adopted International Financial Reporting Standards</u>	international financial accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.
<i>intra-group transactions</i>	<p><del>(in accordance with Article 2(18) of the <i>Financial Groups Directive (Definitions)</i>)</del> all transactions by which <i>regulated entities</i> within a <i>financial conglomerate</i> rely either directly or indirectly upon other <i>undertakings</i> within the same <i>financial conglomerate</i> or upon any <i>person</i> linked to the <i>undertakings</i> within that <i>financial conglomerate</i> by <i>close links</i>, for the fulfilment of an obligation whether or not contractual, and whether or not for payment.</p> <p><u>[Note: article 2(18) of the <i>Financial Groups Directive (Definitions)</i>]</u></p>
<i>investment firm</i>	(1) any person whose regular occupation or business is the provision of one or more <i>investment services</i> to third parties

and/or the performance of one or more investment activities on a professional basis.

[Note: article 4(1)(1) of ~~MiFID~~ 2(1A) of MiFIR]

- (2) (in *REC*) a *MiFID investment firm*, or a person who would be a *MiFID investment firm* if it had its head office in the ~~EEA~~ UK.
- (3) (in the definition of *IDD* ancillary insurance intermediary, and *IFPRU* and *BIPRU* 12) has the meaning in article 4(1)(2) of the ~~EU-CRR~~ UK CRR.

[Note: article 2(1)(4) of the *IDD*]

...

*investment management firm*

a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *IFPRU investment firm*, *BIPRU firm*, *collective portfolio management firm*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, or service company, ~~*incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), or *UCITS qualifier* (without a *top-up permission*)~~, whose *permission* does not include a *requirement* that it comply with *IPRU-INV* 3 or *IPRU-INV* 13 (Personal investment firms) and which is within (a), (b) or (c):

...

- (c) a *firm*:

...

- (ii) for which the most substantial part of its gross income (including *commissions*) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the Act):

...

- (D acting as a trustee or depositary of a UK UCITS;
- c)

...

<i>investment service</i>	<p><del>any of the following involving the provision of a service in relation to a <i>financial instrument</i>: any of the services listed in Part 3 of Schedule 2 to the <i>Regulated Activities Order</i>, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:</del></p> <p>...</p> <p>[Note: article 4(1)(2) <u>2(2)</u> of, and section A of Annex 1 to, <i>MiFID</i> and article 6(5) of the <i>auction regulation MiFIR</i>]</p>
<i>investment services and/or activities</i>	<p><del>any of the services and activities listed in Section A of Annex I to MiFID relating to any <i>financial instrument</i> any of the services and activities listed in Part 3 of Schedule 2 to the <i>Regulated Activities Order</i>, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:</del></p> <p>...</p> <p>[Note: article 4(1)(2) <u>2(2)</u> of, and section A of Annex 1 to, <i>MiFID</i> and article 6(5) of the <i>auction regulation MiFIR</i>]</p>
<i>investment trust</i>	<p>a <i>company</i> which:</p> <p>(a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed <i>company</i>, has declared its intention to conduct its affairs so as to obtain such approval); or</p> <p>(b) <u>(for the purposes of the definitions of <i>non-mainstream pooled investment</i> and <i>packaged product</i> only)</u> is resident in an <i>EEA State</i> <del>other than the <i>United Kingdom</i></del> and would qualify for such approval if resident in the <i>United Kingdom</i>.</p>
<i>IRB permission</i>	<p><del>an <i>Article 129 implementing measure</i>, a requirement or a waiver that requires a <i>BIPRU firm</i> or a <i>CAD investment firm</i> to use the <i>IRB approach</i>.</del></p>
<i>key investor information</i>	<p>(1) (for a <i>UCITS</i>) key information for investors on the essential elements of a <i>UCITS scheme</i> <del>or <i>EEA UCITS scheme</i></del>, as detailed <del>in article 78 of the <i>UCITS Directive</i> and in the <i>KII Regulation</i>.</del></p> <p>(2) ...</p>
<i>KII Regulation</i>	<p><u>the <i>UK version</i> of Commission Regulation (EU) No 583/2010, specifying the form and contents of <i>key investor information</i>, the text of which is reproduced in <i>COLL Appendix 1EU Appendix 1UK</i>, which is part of <i>UK law</i> by virtue of the <i>EUWA</i>.</u></p>

<i>KIRB</i>	<p>(for the purposes of <i>BIPRU 9</i> (Securitisation), in relation to a <i>securitisation</i> (within the meaning of paragraph (2) of the definition of securitisation) <del>and in accordance with Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)</del>) 8% of the <i>risk weighted exposure amounts</i> that would be calculated under the <i>IRB approach</i> in respect of the <i>securitised exposures</i>, had they not been <i>securitised</i>, plus the amount of <i>expected losses</i> associated with those <i>exposures</i> calculated under the <i>IRB approach</i>.</p> <p><u>[Note: Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)]</u></p>
<i>large exposure</i>	<p>(1) (in <i>BIPRU</i>) the <i>exposure</i> of a <i>firm</i> to a <i>counterparty</i>, or a <i>group of connected clients</i>, whether in the <i>firm's non-trading book</i> or <i>trading book</i> or both, which in aggregate equals or exceeds 10% of the <i>firm's capital resources</i>.</p> <p>(2) (except in (1)) has the meaning in article 392 of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> (Definition of a large exposure).</p>
<i>lending firm</i>	<p><del>(in accordance with Article 90 of the <i>Banking Consolidation Directive</i> (Credit risk mitigation) and</del> for the purposes of <i>rules</i> in <i>BIPRU</i> about <i>credit risk mitigation</i>) a <i>firm</i> that has an <i>exposure</i>, whether or not deriving from a loan.</p> <p><u>[Note: article 90 of the <i>Banking Consolidation Directive</i> (Credit risk mitigation)]</u></p>
<i>leverage</i>	<p><del>(in accordance with article 4(1)(v) of <i>AIFMD</i>)</del> any method by which an <i>AIFM</i> increases the exposure of an <i>AIF</i> it manages whether through borrowing of cash or <i>securities</i>, or leverage embedded in <i>derivative</i> positions or by any other means.</p> <p><u>[Note: article 4(1)(v) of <i>AIFMD</i>]</u></p>
<i>limited activity firm</i>	has the meaning in article 96(1) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>limited licence firm</i>	has the meaning in article 95(1) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>liquidity facility</i>	<p>(for the purposes of <i>BIPRU 9</i> (Securitisation), in relation to a <i>securitisation</i> (within the meaning of paragraph (2) of the definition of securitisation) <del>and in accordance with Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)</del>) the <i>securitisation position</i> arising from a contractual agreement to provide funding to ensure timeliness of cash-flows to investors.</p> <p><u>[Note: Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)]</u></p>
<i>liquidity risk</i>	<p>(1) (in <i>COLL</i> <del>and in accordance with article 3(8) of the <i>UCITS implementing Directive</i></del>) the risk that a position in a <i>UCITS'</i> portfolio cannot be sold, liquidated or closed out at limited</p>

cost in an adequately short timeframe and that the ability of the *scheme* to comply at any time with *COLL* 6.2.16R (Sale and redemption) ~~or, in the case of an EEA UCITS scheme, article 84(1) of the UCITS Directive~~ is thereby compromised.

[Note: article 3(8) of the UCITS implementing Directive]

...

<i>listed activity</i>	an activity listed in <del>Annex 1 to the CRD</del> <u>the Annex I Activities</u> .
<i>local firm</i>	has the meaning in article 4(1)(4) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>long settlement transaction</i>	<del>(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions))</del> a transaction where a counterparty undertakes to deliver a security, a <i>commodity</i> , or a <i>foreign currency</i> amount against cash, other <i>CRD financial instruments</i> , or <i>commodities</i> , or vice versa, at a settlement or delivery date that is contractually specified as more than the lower of the market standard for this particular transaction and five <i>business days</i> after the date on which the <i>person</i> enters into the transaction.  [ <u>Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)</u> ]
<i>loss</i>	<del>(in accordance with Article 4(26) of the Banking Consolidation Directive (Definitions) and for the purposes of the IRB approach, the standardised approach to credit risk and BIPRU 5 (Credit risk mitigation))</del> economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.  [ <u>Note: article 4(26) of the Banking Consolidation Directive (Definitions)</u> ]
	(1) <del>(in BIPRU and in accordance with Article 4(26) of the Banking Consolidation Directive (Definitions) and for the purposes of the IRB approach, the standardised approach to credit risk and BIPRU 5 (Credit risk mitigation))</del> economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.  [ <u>Note: article 4(26) of the Banking Consolidation Directive (Definitions)</u> ]
	(2) (except in (2)) has the meaning in article 5(1) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>loss given default</i>	<del>(in accordance with Article 4(27) of the Banking Consolidation Directive (Definitions) and in relation to the IRB approach)</del> the ratio of the <i>loss</i> on an <i>exposure</i> due to the <i>default</i> of a counterparty to the amount outstanding at <i>default</i> .



[Note: article 4(27) of the *Banking Consolidation Directive* (Definitions)]

*low frequency  
liquidity reporting  
firm*

...

- (c) a *standard ILAS BIPRU firm* that meets the following conditions:
- (i) it does not have any *annual report and accounts* and it has been too recently established to be required to have produced any;
  - (ii) it has submitted a projected balance sheet to the *FCA* or *PRA* (as the case may be) as part of an application for a *Part 4A permission* or a variation of one; and
  - (iii) the most recent such balance sheet shows that the *firm* will meet the size condition set out in (b) in all periods covered by those projections.

In respect of ~~an incoming EEA firm or a third country BIPRU firm~~ that is also a *standard ILAS BIPRU firm* and which reports on the basis of its branch operation in the *United Kingdom*, if the balance sheet assets attributable to the *UK branch* can be determined from the *firm's* most recent *annual report and accounts* (or, if applicable, the projected balance sheet) or any *data item* submitted by the *firm*, then paragraphs (b) and (c) apply at the level of the *branch* rather than of the *firm*.

*management body*

- (1) (other than in (2)) (in accordance with article ~~3(7) of CRD~~ and article ~~4(1)(36) of MiFID~~ 4(1)(9) of the UK CRR) the *governing body* and *senior personnel* who are empowered to set the *person's* strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:
- (a) a *common platform firm* (in relation to the requirements imposed by or under the UK provisions which implemented MiFID or MiFIR); or
  - (b) a *recognised investment exchange*; or
  - (c) a *data reporting services provider*.

[Note: article 4(1)(36) of *MiFiD*]

- (2) (in *COLL* and in *SYSC 19E* and ~~in accordance with article 2(1)(s) of the UCITS Directive~~), the *governing body* of a *management company* or *depository* of a *UCITS scheme* ~~or an EEA UCITS scheme~~, as applicable, with ultimate decision-making authority comprising the supervisory and the

managerial function or only the managerial function, if the two functions are separated.

[Note: article 2(1)(s) of the UCITS Directive]

*management  
company*

~~(in accordance with article 2(1)(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds (including authorised contractual schemes) or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6(3) of that directive. as defined in section 237(2) of the Act, that is:~~

- (1) a company, the regular business of which is:
  - (a) the management of UK UCITS; or
  - (b) the management of other collective investment undertakings which are not UK UCITS (and whose units cannot be marketed as such) and for which the management company is subject to prudential supervision, where undertaken in addition to the activity in sub-paragraph (a).
- (2) For the purposes of paragraph 1(a) above, the regular business of a management company may include the following services, where permitted by the FCA and where undertaken in addition to the activity in paragraph 1 (a) above:
  - (a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more financial instruments; and
  - (b) the following non-core services, where provided in addition to the services in paragraph 2(a) above:
    - (i) investment advice concerning one or more financial instruments;
    - (ii) safekeeping and administration in relation to units of collective investment undertakings.
- (3) For the purposes of paragraph 1(b) above, the management of other collective investment schemes includes the functions referred to in schedule 6 of the Regulated Activities Order.

*manager*

- (1) (in relation to an AUT) the firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM which is the manager of the AUT in accordance with the trust deed.

(1A) (in relation to an *OEIC* which is ~~an undertaking for collective investment in transferable securities within the meaning of the *UCITS Directive*~~ a *UK UCITS* or which is an *AIF*, and which has appointed a *person* to manage the *scheme*) the *person* appointed to manage the scheme.

...

managing a UK UCITS

the *regulated activity*, specified in article 51ZA of the *Regulated Activities Order* of carrying on collective portfolio management within the meaning of the *UCITS Directive*, in relation to ~~an~~ a UK UCITS.

margin agreement

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ a contractual agreement or provisions to an agreement under which one counterparty must supply collateral to a second counterparty when an *exposure* of that second counterparty to the first counterparty exceeds a specified level.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]

margin lending transaction

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ transactions in which a *person* extends credit in connection with the purchase, sale, carrying or trading of securities; the definition does not include other loans that happen to be secured by securities collateral.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]

margin period of risk

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ the time period from the last exchange of collateral covering a *netting set* of transactions with a defaulting counterpart until that counterpart is closed out and the resulting market risk is re-hedged.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]

margin threshold

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial~~

derivatives, securities financing transactions and long settlement transactions)) the largest amount of an *exposure* that remains outstanding until one party has the right to call for collateral.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*Market Abuse Regulation*

the UK version of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, which is part of UK law by virtue of the EUWA.

*marketing*

- (1) ...
- (2) (except in *COLL*) a direct or indirect offering or placement, at the initiative of the *AIFM* or on behalf of the *AIFM* of *units* or *shares* of an *AIF* it manages, to or with investors domiciled or with a registered office in the ~~EEA~~ UK.

[Note: article 4(1)(x) of *AIFMD*]

*market maker*

- (1) ...
- (2) (in *COBS* ~~and DTR~~) a *person* who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against his ~~his~~ that person's proprietary capital at prices defined by ~~him~~ that person.

[Note: article 4(1)(7) ~~2(1)(6)~~ of *MiFID* MiFIR]

- (3) [deleted]
- (4) (in DTR) a person who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person.

*market making activities*

~~(as defined in article 2(1)(k) of the short selling regulation) the activities of an investment firm, a credit institution, a third country entity, or a firm as referred to in point (1) of article 2(1) of MiFID, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to article 17(2) of the short selling regulation where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:~~

- (a) ~~by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; or~~
- (b) ~~as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or~~
- (c) ~~by hedging positions arising from the fulfilment of tasks under points (a) and (b).~~

(as defined in article 2(1)(k) of the *short selling regulation*) means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (ka), which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the Commission pursuant to Article 17(2) before exit day, or by the Treasury in accordance with that paragraph as amended, or with regulation 16 of the Short Selling (EU Exit) (Amendment) Regulations 2018, where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:

- (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;
- (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or
- (iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii).

[Note: Point 2(1)(ka) of the *short selling regulation* provides: For the purposes of point (k), the firms referred to in this point are firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets.]

*market operator*

*a person or persons who manages and/or operates the business of a regulated market and who may be the regulated market itself.*

[Note: article ~~(4)(1)(18) MiFID~~ 2(1)(10) of *MiFIR*]

<i>master AIF</i>	<p><del>(in accordance with article 4(1)(y) of AIFMD)</del> an <i>AIF</i> in which another <i>AIF</i> (a <i>feeder AIF</i>) invests or has an exposure in accordance with the definition of '<i>feeder AIF</i>'.</p> <p>[<u>Note: article 4(1)(y) of AIFMD</u>]</p>
<i>master UCITS</i>	<p><del>(in accordance with article 58(3) of the UCITS Directive)</del> a <i>UCITS scheme</i>, an <i>EEA UCITS scheme</i> or a <i>sub-fund</i> of such a <i>scheme</i> where:</p> <p>(a) at least one of its <i>Unitholders</i> is a <i>feeder UCITS</i>;</p> <p>(a) it is not itself a <i>feeder UCITS</i>; and</p> <p>(a) it does not hold <i>units</i> of a <i>feeder UCITS</i>.</p> <p>[<u>Note: article 58(3) of the UCITS Directive</u>]</p>
<i>merging UCITS</i>	<p><u>(in COLL and in accordance with regulations 7 and 8 of the UCITS Regulations 2011)</u> in relation to a <i>UCITS merger</i>, the <i>UCITS scheme</i>, <i>EEA UCITS scheme</i> or <i>sub-fund</i> of such a <i>scheme</i>, that under the proposed arrangements will be transferring all its assets and liabilities to the <i>receiving UCITS</i>.</p>
<i>MiFID complaint</i>	<p>any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service or a <i>redress determination</i>:</p> <p>(a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and</p> <p>(b) either:</p> <p>(i) to which article 26 of the <i>MiFID Org Regulation</i> applies; or</p> <p>(ii) which concerns the <i>equivalent business of a third country investment firm</i>.</p> <p>[<u>Note: For the application of article 26 of the MiFID Org Regulation, see the UK provisions which implemented articles 1(1), 1(3), 1(4), 39 and 41 of MiFID, article 1 of the MiFID Org Regulation, DISP 1.1A.3G and DISP 1.1A.4G</u>]</p> <p>[<u>Note: a MiFID complaint which falls within the jurisdiction of the Financial Ombudsman Service is a complaint</u>]</p>
<i>MiFID investment firm</i>	<p>(1) (in summary) <del>(except in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity)</del> a <i>firm</i> to which <u><i>MiFID applies</i> would apply if it had its head office or registered office in the EEA</u> including, for some purposes</p>

only, a *credit institution* and *collective portfolio management investment firm*.

- (2) (in full) a *firm* (~~except in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport* activity~~) which is:
- (a) an *investment firm* with its head office in the ~~EEA~~ UK (or, if it has a registered office, that office);
  - (b) a *CRD credit institution* (only when providing an *investment service or activity* or when selling, or advising *clients* in relation to, *structured deposits*, for the purposes of:
    - (i) the ~~rules implementing~~ corresponding to the articles referred to in article 1(3) and article 1(4) of *MiFID*;
    - (ii) the requirements imposed upon it by and under *MiFIR*; and
    - (iii) the requirements imposed upon it by onshored regulations which were previously EU regulations made under *MiFID*);
  - (ba) *CRD credit institution* (only when providing an *investment service or activity*) in relation to *COMP* or *FEES* 6);
  - (c) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or article 6(3) of the *UCITS Directive* in relation to the rules which implemented ~~implementing~~ the articles of *MiFID* referred to in article 6(6) of *AIFMD* or Article 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM*, where relevant, ~~or the rules implementing which implemented~~ article 12(2)(b) of *AIFMD*);

unless, and to the extent that, it is a person to which Part 1 of Schedule 3 to the *Regulated Activities Order* or regulation 8 of the *MiFI Regulations* applies.

- (3) (~~in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport* activity~~) an *investment firm* with its head office in the ~~EEA~~ (or, if it has a registered office, that office) unless, and to the extent that, *MiFID* does not apply to it as a result of article 2 (*Exemptions*) or article 3 (*Optional exemptions*) of *MiFID*. ~~[deleted]~~

standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to MiFID, which is part of UK law by virtue of the EUWA.

- MiFID ITS 2*      the UK version of Commission Implementing Regulation (EU) No 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID, which is part of UK law by virtue of the EUWA.
- MiFID ITS 3*      the UK version of Commission Implementing Regulation (EU) No 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID, which is part of UK law by virtue of the EUWA.
- MiFID ITS 4*      the UK version of Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators, which is part of UK law by virtue of the EUWA.
- MiFID ITS 4A*      the UK version of Commission Implementing Regulation (EU) No [xxxx/xxx] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID, which is part of UK law by virtue of the EUWA.
- MiFID ITS 5*      the UK version of Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues according to MiFID of the European Parliament and of the Council on markets in financial instruments, which is part of UK law by virtue of the EUWA.
- MiFID/MiFIR requirements*      any of the requirements applicable to an *RIE* or an applicant to become an *RIE* imposed by *MiFIR* and any formerly directly applicable regulation made under *MiFID* or EU MiFIR, which is an onshored regulation.
- MiFID Org Regulation*      the UK version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing *MiFID* of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, which is part of UK law by virtue of the EUWA.
- MiFID RTS 1*      the UK version of Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing *MiFIR* with regard to regulatory



technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser, which is part of UK law by virtue of the EUWA.

- MiFID RTS 2*                    the UK version of Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing *MiFIR* with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, which is part of UK law by virtue of the EUWA.
- MiFID RTS 3*                    the UK version of Commission Delegated Regulation (EU) No 2017/577 of 13 June 2016 supplementing *MiFIR* with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations, which is part of UK law by virtue of the EUWA.
- MiFID RTS 3A*                 the UK version of Commission Delegated Regulation (EU) No 2017/1018 of 29 June 2016 supplementing *MiFID* with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions, which is part of UK law by virtue of the EUWA.
- MiFID RTS 6*                    the UK version of Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 supplementing *MiFID* with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members, which is part of UK law by virtue of the EUWA.
- MiFID RTS 7*                    the UK version of Commission Delegated Regulation (EU) No 2017/584 of 14 July 2016 supplementing *MiFID* with regard to regulatory technical standards specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems, which is part of UK law by virtue of the EUWA.
- MiFID RTS 8*                    the UK version of Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing *MiFID* with regard to regulatory technical standards specifying the requirements on market making agreements and schemes, which is part of UK law by virtue of the EUWA.
- MiFID RTS 9*                    the UK version of Commission Delegated Regulation (EU) No 2017/566 of 18 May 2016 supplementing *MiFID* with regard to regulatory technical standards on the ratio of unexecuted orders to transactions, which is part of UK law by virtue of the EUWA.

- MiFID RTS 10*      the UK version of Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing *MiFID* with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 11*      the UK version of Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing *MiFID* with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 12*      the UK version of Commission Delegated Regulation (EU) No 2017/570 of 26 May 2016 supplementing *MiFID* with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to notifications of a temporary halt in trading, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 13*      the UK version of Commission Delegated Regulation (EU) No 2017/571 of 2 June 2016 supplementing *MiFID* with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 14*      the UK version of Commission Delegated Regulation (EU) No 2017/572 of 2 June 2016 supplementing *MiFIR* with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 17*      the UK version of Commission Delegated Regulation (EU) No 2017/568 of 24 May 2016 supplementing *MiFID* with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 18*      the UK version of Commission Delegated Regulation (EU) No 2017/569 of 24 May 2016 supplementing *MiFID* with regard to regulatory technical standards for the suspension and removal of financial instruments from trading, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 21*      the UK version of Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing *MiFID* with regard to regulatory technical standards for the application of position limits to commodity derivatives, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 22*      the UK version of Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing *MiFIR* with regard to regulatory

technical standards for the reporting of transactions to competent authorities, which is part of UK law by virtue of the EUWA.

- MiFID RTS 23*      the UK version of Commission Delegated Regulation (EU) No 2017/585 of 14 July 2016 supplementing *MiFIR* with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities, which is part of UK law by virtue of the EUWA.
- MiFID RTS 25*      the UK version of Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the level of accuracy of business clocks, which is part of UK law by virtue of the EUWA.
- MiFID RTS 26*      the UK version of Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing *MiFIR* with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing, which is part of UK law by virtue of the EUWA.
- MiFID RTS 27*      the UK version of Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions, which is part of UK law by virtue of the EUWA.
- MiFID RTS 28*      the UK version of Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, which is part of UK law by virtue of the EUWA.
- MiFIR*                the UK version of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the EUWA.
- MiFIR Delegated Regulation*      the UK version of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, which is part of UK law by virtue of the EUWA.
- MiFIR indirect clearing RTS*      the UK version of Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, which is part of UK law by virtue of the EUWA.

<i>mixed-activity holding company</i>	has the meaning given to the definition of “mixed activity holding company” in article 4(1)(22) of the <i>EU CRR UK CRR</i> .
<i>mixed financial holding company</i>	<p><del>in accordance with Article 2(15) of the <i>Financial Groups Directive (Definitions)</i></del> a <i>parent undertaking</i>, other than a <i>regulated entity</i>, which meets the following conditions:</p> <p>(a) it, together with its <i>subsidiary undertakings</i>, at least one of which is an <del>EEA UK</del> <i>regulated entity</i>, and other entities, constitutes a <i>financial conglomerate</i>;</p> <p>(b) it has been notified by its <i>coordinator</i> that its group is a <i>financial conglomerate</i> in accordance with <del>Article 4(2) of the <i>Financial Groups Directive</i></del> <u>Regulation 1(2) of the <i>Financial Groups Directive Regulations</i></u>; and</p> <p>(c) it has not been notified that its <i>coordinator</i> <del>and other relevant competent authorities have</del> <u>has</u> agreed not to treat the group as a <i>financial conglomerate</i> <del>in accordance with Article 3(3) or Article 3(3a) of the <i>Financial Groups Directive</i></del> <u>where such group, in terms of the tests in <i>GENPRU 3 Annex 4</i>:</u></p> <p style="margin-left: 40px;">(i) <u>does not meet Threshold Test 2 but meets Threshold Test 3; or</u></p> <p style="margin-left: 40px;">(ii) <u>meets Threshold Test 2 but not Threshold Test 3.</u></p>
<i>Motor Insurers’ Information Centre</i>	the information centre appointed <del>to meet the <i>United Kingdom’s</i> obligations under the <i>UK provisions which implemented</i></del> article 23 of the <i>Consolidated Motor Insurance Directive</i> (Information Centres).
<i>multilateral system</i>	<p>any system or facility in which multiple third-party buying and selling trading interests in <i>financial instruments</i> are able to interact in the system.</p> <p>[Note: article 4(1)(19) <del>2(1)(11)</del> of <del><i>MiFID</i></del> <i>MiFIR</i>]</p>
<i>mutual society share</i>	<p>a <i>share</i>, excluding a deferred share issued by a <i>credit union</i>, which:</p> <p>(a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and</p> <p>(b) is issued by an institution which is of a type listed in article 27;</p> <p>in each case of <del>Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012</del> the <i>UK CRR</i>.</p>

*near cash*

*money, deposits or investments* which, in each case, fall within any of the following:

- (a) *money* which is deposited with an *eligible institution* or an *approved bank* in:
  - (i) a current account; or
  - (ii) a *deposit* account, if the *money* can be withdrawn immediately and without payment of a penalty exceeding seven days' interest calculated at ordinary commercial rates;
- (b) certificates of *deposit* issued by an *eligible institution* or an *approved bank* if immediately redeemable at the option of the holder;
- (c) *government and public securities*, if redeemable at the option of the holder or bound to be redeemed within two years;
- (d) bills of exchange which are *government and public securities*;
- (e) *deposits* with a *local* authority of a kind which fall within paragraph 9 of Part II of the First Schedule to the Trustee Investments Act 1961, and equivalent *deposits* with any *local* authority in ~~another~~ an EEA State, if the *money* can be withdrawn immediately and without payment of a penalty as described in (a).

*netting set*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and~~ for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting arrangement and for which netting is recognised under *BIPRU* 13.7 (Contractual netting), *BIPRU* 5 (Credit risk mitigation) and, if applicable, *BIPRU* 4.10 (The IRB approach: Credit risk mitigation); each transaction that is not subject to a legally enforceable bilateral netting arrangement, which is recognised under *BIPRU* 13.7 must be interpreted as its own *netting set* for the purpose of *BIPRU* 13. Under the method set out at *BIPRU* 13.6, all *netting sets* with a single counterparty may be treated as a single *netting set* if negative simulated market values of the individual sets are set to zero in the estimation of *expected exposure* (*EE*).

[Note: ~~BCD~~, Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and Annex III, Part 1, point 5 of the *Banking Consolidation Directive*]

*non-core concentration risk group counterparty*

~~(in accordance with Article 113(4)(c) of the *Banking Consolidation Directive*)~~ has the meaning in *BIPRU* 10.9A.4R (Definition of non-core concentration risk group counterparty), which is in summary (in relation to a *firm*) each counterparty which is its *parent undertaking*, its *subsidiary undertaking* or a *subsidiary undertaking* of its *parent undertaking*, provided that (in each case) both the counterparty and the *firm* satisfy the conditions in *BIPRU* 10.9A.4R (Definition of non-core concentration risk group counterparty).

[Note: article 113(4)(c) of the *Banking Consolidation Directive*]

*non-core large exposures group*

(in relation to a *firm*) all counterparties which:

- (1) are listed in the *firm's non-core large exposures group permission*;
- (2) satisfy the conditions in *IFPRU* 8.2.6R (Intra-group exposures: non-core large exposures group); and
- (3) for which *exposures* are exempted, under article 400(2)(c) of the ~~*EU-CRR UK CRR*~~ (*Exemptions*), from the application of article 395(1) of the ~~*EU-CRR UK CRR*~~ (*Limits to large exposures*).

*non-core large exposures group permission*

a permission referred to in *IFPRU* 8.2.6R given by the *FCA* for the purpose of article 400(2)(c) of the ~~*EU-CRR UK CRR*~~ (*Large exposures: exemptions*).

*non-directive firm*

- (1) (in *SUP* 11 (Controllers and close links) and *SUP* 16 (Reporting requirements)) (in accordance with the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)) a *UK domestic firm* other than:
  - (a) a *credit institution* ~~authorised under the *Banking Consolidation Directive*~~ that has permission under Part 4A of the Act to carry on the regulated activity of *accepting deposits*;
  - (b) an *investment firm* ~~authorised under *MIFID*~~ that has permission under Part 4A of the Act to carry on *regulated activities* relating to *investment services* and/or *activities in the UK*;
  - (c) a *management company* as defined in ~~article 2(1)(b) of the *UCITS Directive*~~, authorised under that directive section 237 of the Act which is authorised by the *FCA*;
  - (d) a *Solvency II firm*.

...

<del>non-EEA non-UK</del> bank	a bank which is a <i>body corporate or partnership</i> formed under the law of any country or territory outside the <del>EEA UK</del> .
<del>non-EEA non-UK</del> feeder AIF	a UK AIF <del>or an EEA AIF</del> that is a <i>feeder AIF</i> , the <i>master AIF</i> of which is a <del>non-EEA UK</del> AIF or is managed by a <del>non-EEA UK</del> AIFM.
<del>non-EEA non-UK</del> sub-group	<p>(1) (in <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12)) a group of <i>undertakings</i> identified as a <del>non-EEA non-UK</del> sub-group in <i>BIPRU</i> 8.3.1R (Main consolidation rule for <del>non-EEA non-UK</del> sub-groups); <del>however where the provision in question refers to a non-EEA sub-group in another EEA State it means a group of undertakings identified in Article 73(2) of the Banking Consolidation Directive (Non-EEA subgroups) required to be supervised on a consolidated basis under Article 73(2) of the Banking Consolidation Directive by a competent authority in that EEA State.</del></p> <p>(2) (except in (1)) a group of <i>undertakings</i> identified in article 22 of the <i>EU CRR</i> (Sub-consolidation in cases of entities in third countries).</p>
<i>non-financial entity</i>	<p>(as defined in Article 2(1) of <i>MiFID RTS 21</i>) a natural or legal <del>person</del> <u>person</u> other than:</p> <p>(a) an <i>investment firm</i> authorised <del>in accordance with <i>MIFID</i> as such by means of a Part 4A permission under the Act in accordance with <i>MIFID</i>;</del></p> <p>(b) a credit institution authorised in accordance with <u>Directive 2013/36/EU of the European Parliament and of the Council or a <i>CRD credit institution</i>;</u></p> <p>(c) an insurance undertaking authorised <u>as such by means of a Part 4A permission under the Act</u> or in accordance with Directive 73/ 239/EEC;</p> <p>(d) an assurance undertaking authorised <u>as such by means of a Part 4A permission under the Act</u> or in accordance with Directive 2002/83/EC of the European Parliament and of the Council;</p> <p>(e) a reinsurance undertaking authorised <u>as such by means of a Part 4A permission under the Act</u> or in accordance with Directive 2005/68/EC of the European Parliament and of the Council;</p> <p>(f) a <i>UCITS</i> and, where relevant, its <i>management company</i>, authorised <u>as such by means of a Part 4A permission under the Act</u> or in accordance with the <i>UCITS Directive</i>;</p>

- (g) an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council or an occupational pension scheme;
- (h) an *alternative investment fund* managed by *AIFMs* authorised or registered in accordance with the *AIFMD* or authorised as such by means of a Part 4A permission under the Act or registered as such pursuant to the Alternative Fund Managers Regulations 2013;
- (i) a *CCP* authorised in accordance with *EMIR* Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Act;
- (j) a central securities depository authorised in accordance with ~~CDSR~~ Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Act.

A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the ~~Union~~ United Kingdom and subject to ~~Union~~ UK law

[Note: article 2 of *MiFID RTS 21*]

*non-listed company* ~~(in accordance with article 4(1)(ac) of *AIFMD*)~~ a *company* which has its registered office in the UK or the EEA and the *shares* of which are not admitted to trading on a *regulated market*.

[Note: article 4(1)(ac) of *AIFMD*]

*normally based* (in *ICOB*S) (in relation to a *vehicle*):

- (a) the territory of the ~~EEA State~~ State of which the *vehicle* bears a registration plate; or
- (b) in cases where no registration is required for the type of *vehicle*, but the *vehicle* bears an insurance plate or a distinguishing sign analogous to a registration plate, the territory of the ~~EEA State~~ State in which the insurance plate or the sign is issued; or
- (c) in cases where neither registration plate nor insurance plate nor distinguishing sign is required for the type of *vehicle*, the territory of the ~~EEA State~~ State in which the keeper of the vehicle is permanently resident.



- ODR Regulation* the UK version of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, which is part of UK law by virtue of the EUWA.
- oil market participant* a *firm*:
- (a) whose permission:
    - (i) includes a *requirement* that the *firm* must not carry on any *designated investment business* other than oil market activity; and
    - (ii) does not include a requirement that it comply with *IPRU(INV) 5* (Investment management *firms*) or 13 (Personal *investment firms*); and
  - (b) which is not an *authorised professional firm, bank, BIPRU firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm, service company, insurance intermediary, home finance administrator, mortgage intermediary, or home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission) or regulated benchmark administrator.*
- one-sided credit valuation adjustment* (~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*~~) and for the purposes of *BIPRU* a *credit valuation adjustment* that reflects the market value of the credit risk of the counterparty to a *firm*, but does not reflect the market value of the credit risk of the *firm* to the counterparty.
- [Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]
- operational risk*
- (1) (in *COLL* and *FUND*) the risk of loss for a *UCITS* or *AIF* resulting from inadequate internal processes and failures in relation to the people and systems of the *management company* or *AIFM* or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the *fund*.
  - (2) (in *GENPRU* (except *GENPRU 3* (Cross sector groups) and *BIPRU* (except *BIPRU 12* (Liquidity Standards))) ~~in~~

~~accordance with Article 4(22) of the *Banking Consolidation Directive*)~~ the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

[Note: article 4(22) of the *Banking Consolidation Directive*]

- (3) (except in (1) and (2)) has the meaning in article 4(1)(52) of the ~~*EU CRR*~~ *UK CRR*.

*option*

the *investment*, specified in article 83 of the *Regulated Activities Order* (Options), which is in summary an option to acquire or dispose of:

...

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

*originator*

- (1) (in *GENPRU* (except *GENPRU* 3), *MIPRU* and *BIPRU* (except *BIPRU* 12)) ~~(in accordance with Article 4(41) of the *Banking Consolidation Directive* (Definitions) and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*)~~ either of the following:

- (a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the *exposures* being *securitised*; or
- (b) an entity which purchases a third party's *exposures* onto its balance sheet and then *securitises* them.

[Note: article 4(41) of the *Banking Consolidation Directive* (Definitions)]

- (2) (except in (1)) has the meaning in article 4(1)(13) of the ~~*EU CRR*~~ *UK CRR*.

*OTC derivative transaction*

a derivative financial instrument of a type listed on Annex II to the *UK CRR* that is traded over the counter.

*overseas firm*

- (1) (in relation to *MAR* 5 and *MAR* 5A) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom* ~~excluding an *incoming EEA firm*~~.

- (2) (in any other case) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.
- overseas person* (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a *person* who:
- (a) carries on any of the following *regulated activities*:
- ...
- (xa) *managing a UK UCITS*;
- (xb) *acting as trustee or depositary of a UK UCITS*;
- ...
- ...
- own funds* ...
- (2A) (in *IPRU(INV)* 11) has the meaning in article 4(1)(118) of the ~~*EU CRR*~~ *UK CRR*.
- ...
- (5) (except in (1) to (4)) has the meaning in article 4(1)(118) of the *UK CRR*.
- own funds instruments* has the meaning in article 4(1)(119) of the ~~*EU CRR*~~ *UK CRR*.
- own funds requirements* as defined in article 92 (Own funds requirements) of the ~~*EU CRR*~~ *UK CRR*.
- parent financial holding company in a Member State the UK*
- (1) (in *GENPRU* (except *GENPRU* 3 and *BIPRU* (except *BIPRU* 12)) (~~in accordance with Article 4(15) of the *Banking Consolidation Directive* (Definitions) and Article 3 of the *Capital Adequacy Directive* (Definitions)~~) a *financial holding company* which is not itself a *subsidiary undertaking* of an *institution* authorised in the ~~same *EEA State*~~ *UK*, or of a *financial holding company* or *mixed financial holding company* established in the ~~same *EEA State*~~ *UK*.
- (2) (~~except in (1)~~) has the meaning in article 4(1)(30) of the ~~*EU CRR*~~. ~~[deleted]~~
- parent institution in a Member State the UK*
- (1) (in *GENPRU* (except *GENPRU* 3 and *BIPRU* (except *BIPRU* 12)) (~~in accordance with Article 4(14) of the *Banking Consolidation Directive* and Article 3 of the *Capital Adequacy Directive* (Definitions)~~) an *institution* which has an *institution* or a *financial institution* as a *subsidiary*

*undertaking* or which holds a *participation* in such an institution, and which is not itself a *subsidiary undertaking* of another *institution* authorised in the ~~same EEA State~~ UK, or of a *financial holding company* or *mixed financial holding company* established in the ~~same EEA State~~ UK.

(2) ~~(except in (1)) has the meaning in article 4(1)(28) of the EU CRR.~~ [deleted]

*parent mixed financial holding company in a Member State* the UK

(1) (in *GENPRU* (except *GENPRU* 3 and *BIPRU* (except *BIPRU* 12)) in accordance with Article 4(15a) of the ~~*Banking Consolidation Directive (Definitions)*~~) a *mixed financial holding company* which is not itself a *subsidiary undertaking* of an *institution* authorised in the ~~same EEA State~~ UK, or of a *financial holding company* or *mixed financial holding company* established in the ~~same EEA State~~ UK.

(2) ~~(except in (1)) has the meaning in article 4(1)(32) of the EU CRR.~~ [deleted]

*parent undertaking*

(1) (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section 1162 of the *Companies Act 2006* (Parent and subsidiary undertakings)):

(a) ...

...

(viii) (except in *REC* or for the purposes of *rules* in *GENPRU* and *INSPRU* as they apply to *members* of the *Society* of Lloyd's or to the *Society* or *managing agents* in respect of *members*) it is incorporated in or formed under the law of ~~another~~ an EEA State and is a parent undertaking within the meaning of any rule of law in that State for purposes connected with implementation of the Seventh Company Law Directive;

...

(3) (for the purposes of *GENPRU* 3, *BIPRU* 12, *IFPRU*, *SYSC* 19A (*IFPRU* Remuneration Code) and *SYSC* 19D (Dual-regulated firms Remuneration Code)) has the meaning in article 4(1)(15) of the ~~*EU CRR*~~ *UK CRR* but so that ~~(in accordance with article 2(9) of the *Financial Groups Directive*)~~ article 4(1)(15)(b) applies for the purpose of *GENPRU* 3.

[Note: article 2(9) of the *Financial Groups Directive*]

*participant firm*

(1) a *firm* other than:

- (a) ~~an *incoming EEA firm* to the extent prescribed for the purposes of section 213(10) of the Act (The compensation scheme) under regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons), unless it has *top-up cover*; [deleted]~~

~~[Note: This covers certain *incoming EEA firms*: see COMP 14.1 and 14.2.]~~

...

- (f) ~~a *UCITS qualifier*; [deleted]~~

- (g) ...

- (h) ~~an *AIFM qualifier*; [deleted]~~

...

- (2) a *recognised investment exchange* but only insofar as it is *operating a multilateral trading facility* or *operating an organised trading facility*;

- (3) (except in FEES 6) a *pre-exit incoming EEA firm* but only:

- (a) in relation to acts or omissions before *exit day* that give rise to a *claim* against it; and

- (b) (where necessary for it to have obtained *FSCS* cover) that had, before *exit day*:

- (i) notified the *FSCS* in writing that it had elected to participate in the *compensation scheme* under SI 2001/1783 (as in force and as from time to time amended before *exit day*); and

- (ii) the *FSCS* had notified it that its election had been accepted.

*participation*

- (1) (for the purposes of *GENPRU* (except *GENPRU* 3) and for the purposes of *BIPRU* (except *BIPRU* 12) as they apply on a consolidated basis):

- (a) a participating interest may be defined according to:

- (i) section 421A of the *Act* where applicable; or

- (ii) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups

(Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or

- (iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or
- (iv) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or
- (v) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(b) (otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*; but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.

(2) (except in (1) has the meaning in article 4(1)(35) of the *EU CRR UK CRR*.

*payment institution* an authorised payment institution, ~~an EEA authorised payment institution~~ or a small payment institution.

[Note: articles 4(4) and 32(3) of the *Payment Services Directive*]

*payment service* ...

(b) The following activities do not constitute *payment services*:

...

(xi) services based on specific *payment instruments* that can be used only in a limited way and meet one of the following conditions:

- (A) allow the holder to acquire goods or services only in the issuer's premises; or
- (B) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
- (C) may be used only to acquire a very limited range of goods or services; or

- (D) are valid only in a ~~single EEA state~~ the UK, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

...

...

*payment service provider*

- (1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Services Regulations*) any of the following *persons* when they carry out a *payment service*:
- (a) an *authorised payment institution*;
  - (b) a *small payment institution*;
  - (ba) a *registered account information service provider*;
  - (c) ~~an EEA authorised payment institution;~~ [deleted]
  - (d) a *credit institution*;
  - (e) an *electronic money issuer*;
  - (f) the Post Office Limited;
  - (g) the Bank of England, ~~the European Central Bank and the national central banks of EEA States other than the United Kingdom,~~ other than when acting in their its capacity as a monetary authority or carrying out other functions of a public nature; and
  - (h) government departments and local authorities, other than when carrying out functions of a public nature.

...

*PD Regulation*

the UK version of the Prospectus Directive Regulation (No 2004/809/EC), which is part of UK law by virtue of the EUWA.

*peak exposure*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ a high percentile of the distribution of exposures at any particular future date before the maturity date of the longest transaction in the *netting set*.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)*]

- periodic statement* a report which a *firm* is required to provide to a *client* pursuant to:
- (a) *COBS 16.3 (Periodic reporting)* where the *firm* is carrying on *designated investment business* other than *MiFID, equivalent third country or optional exemption business*;
  - (b) article 60(1) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID business*;
  - (c) *GEN 2.2.22AR* and *COBS 16A.4.1 EUUK* where the *firm* is carrying on the *equivalent business of a third country investment firm*;
  - (d) *COBS 16A.1.2R* and *COBS 16A.4.1 EUUK* where the *firm* is carrying on *optional exemption business*.

[Note: see *COBS 16A.4.1 EUUK* where article 60(1) of the *MiFID Org Regulation* is reproduced]-

*permanent interest bearing shares* any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which are issued as permanent interest-bearing shares and on terms which qualify them as own funds for the purposes of the *EU CRR UK CRR*.

- permission* permission to carry on *regulated activities*; that is, any of the following:
- (a) a *Part 4A permission*;
  - (b) ~~the permission that an *incoming EEA firm* has, under paragraph 15(1) or paragraph 15A(1), (3) or (4) of Schedule 3 to the *Act* (EEA Passport Rights), on qualifying for *authorisation* under paragraph 12 of that Schedule [deleted];~~
  - (c) ~~the permission that an *incoming Treaty firm* has, under paragraph 4(1) of Schedule 4 to the *Act* (Treaty Rights), on qualifying for *authorisation* under paragraph 2 of that Schedule [deleted];~~
  - (d) ~~the permission that a *UCITS qualifier* has, under paragraph 2(1) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes) [deleted];~~
  - (e) the permission that an *ICVC* has, under paragraph 2(2) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes);
  - (f) the permission that the Society of Lloyd's has, under section 315(2) of the *Act* (The Society: authorisation and permission),



which is to be treated as a *Part IV permission* for the purposes of *Part 4A* of the *Act* (Permission to carry on regulated activities) in accordance with section 315(3) of the *Act*.

*personal investment firm*

*a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, IFPRU investment firm, BIPRU firm, building society, collective portfolio management firm, credit union, energy market participant, ICVC, insurer, media firm, oil market participant, or service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission) or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):*

...

*PII capital requirement*

- (1) (in *IPRU(INV)* 11) an amount of *own funds* that a *collective portfolio management firm* must hold in relation to its professional indemnity insurance policy to cover any defined excess (as set out in article 15 of the *AIFMD level 2 regulation* (professional indemnity insurance) (as replicated in *IPRU(INV)* 11.3.15~~EU~~UK) and exclusions to that policy (see *IPRU(INV)* 11.3.16R (Professional negligence)).

[deleted]

*position*

- (1) (in accordance *BIPRU* 1.2.4R (Definition of the trading book: Positions)) includes proprietary positions and positions arising from client servicing and market making.
- (2) (in *IFPRU*) has the meaning which it has, or is used, in the ~~EU~~ CRR UK CRR.

*PRIIPs Regulation*

the UK version of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which is part of UK law by virtue of the EUWA. <http://data.europa.eu/eli/reg/2014/1286/oj>

*probability of default*

~~(in accordance with Article 4(25) of the *Banking Consolidation Directive* (Definitions) and~~ for the purpose of *BIPRU*) the probability of default of a counterparty over a one year period; for the purposes of the *IRB approach*, default has the meaning in the definition of *default*.

[Note: article 4(25) of the *Banking Consolidation Directive* (Definitions)]

*professional negligence capital requirement*

- (1) (in *IPRU(INV)* 11) an amount of *own funds* that a *collective portfolio management firm* must hold professional liability risks as set out in article 14 of the *AIFMD level 2 regulation*

(additional own funds) (as replicated in *IPRU(INV)*  
11.3.14EUUK) (Professional negligence).

[deleted]

*prospectus*

- (1) (in *LR* and *PR*, *FEES* and *FUND 3* (Requirements for managers of alternative investment funds)) a *prospectus* required under the ~~*prospectus directive*~~ the Act.
- (2) ...

*Prospectus Regulation*

the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, which is part of UK law by virtue of the EUWA.

*Prospectus RTS Regulations*

- (1) the UK version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of UK law by virtue of the EUWA; and
- (2) the UK version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of UK law by virtue of the EUWA.

*protection buyer*

(in *BIPRU*) (in relation to a credit derivative ~~and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk))~~ the *person* who transfers credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

*protection seller*

(in *BIPRU*) (in relation to a credit derivative ~~and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk))~~ the *person* who assumes the credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

*public international body*

- (1) (in *PR*) (as defined in the *PD Regulation*) a legal entity of public nature established by an international treaty between sovereign States and of which one or more ~~Member~~ sovereign States are members.

- (2) ...
- public sector entity* (~~in accordance with Article 4(18) of the *Banking Consolidation Directive* (Definitions)~~ and for the purposes of *BIPRU*) any of the following:
- (a) non-commercial administrative bodies responsible to central governments, regional governments or local authorities; or
  - (b) authorities that exercise the same responsibilities as regional and local authorities; or
  - (c) non commercial *undertakings* owned by central governments that have explicit guarantee arrangements; or
  - (d) self administered bodies governed by law that are under public supervision.
- [Note: article 4(18) of the *Banking Consolidation Directive* (Definitions)]
- qualified investor* (in *PR*) (a defined in section 86(7) of the *Act*) in relation to an *offer* of *transferable securities*:
- ...
- [*Editor's note*: In due course, the text reproduced here will be amended in line with any amendments made to section 86(7) of the *Act*.]
- qualifying money market fund* (1) (in ~~*COLL*~~, *CASS 7* and *BSOCS*) a collective investment undertaking authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of the authorising *Member State*, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
  - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
  - (c) it must provide liquidity through same day or next day settlement.

- (2) For the purposes of (1)(b), a money market instrument may be considered to be of high quality if the *AIFM* or *UCITS management company* of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:
- (a) where one or more credit rating agencies registered and supervised by *ESMA* have provided a rating of the instrument, the *AIFM's* or *UCITS management company's* internal assessment must have regard to, inter alia, those credit ratings; and
  - (b) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by *ESMA* that has rated the instrument will lead the *AIFM* or *UCITS management company* to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.
- (3) [deleted]
- (4) (in *COLL*) a collective investment undertaking which is a *UCITS scheme* or authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by either the *FCA* or an authority under the national law of the authorising *Member State*, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
  - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
  - (c) it must provide liquidity through same day or next day settlement.

For the purposes of (b), a money market instrument may be considered to be of high quality if the *AIFM* or *management*

company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:

- (i) where one or more credit rating agencies registered and supervised by the FCA or ESMA have provided a rating of the instrument, the AIFM's or management company's internal assessment must have regard to, inter alia, those credit ratings; and
- (ii) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by the FCA or ESMA that has rated the instrument will lead the AIFM or UCITS management company to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

[Note: article 1(4) of, and recital 4 to, the *MiFID Delegated Directive*]

*rated position*

(for the purposes of *MIPRU* and *BIPRU* 9 (Securitisation), ~~in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~ and in relation to a *securitisation position*) describes a *securitisation position* which has an eligible credit assessment by an *eligible ECAI*.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

*ratings based method*

(for the purposes of *BIPRU* 9 (Securitisation) ~~and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) the method of calculating *risk weighted exposure amounts* for *securitisation positions* set out in *BIPRU* 9.12.10R–*BIPRU* 9.12.19R and *BIPRU* 9.14.2R.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

*readily realisable security*

(except in *COLL* and for the purposes of the definition of *non-readily realisable security*):

- (a) a *government or public security* denominated in the currency of the country of its *issuer*;
- (b) any other *security* which is:
  - (i) admitted to official listing on an exchange in ~~an EEA State~~ the UK; or

- (ii) regularly traded on or under the rules of such an exchange; or
  - (iii) regularly traded on or under the rules of a *recognised investment exchange* or (except in relation to *unsolicited real time financial promotions*) *designated investment exchange*;
- (c) a newly issued *security* which can reasonably be expected to fall within (b) when it begins to be traded.

(in COLL and for the purposes of the definition of *non-readily realisable security*):

- (a) a *government or public security* denominated in the currency of the country of its *issuer*;
- (b) any other *security* which is:
  - (i) admitted to official listing on an exchange in the UK or an EEA State; or
  - (ii) regularly traded on or under the rules of such an exchange; or
  - (iii) regularly traded on or under the rules of a *recognised investment exchange* or (except in relation to *unsolicited real time financial promotions*) *designated investment exchange*;
- (c) a newly issued *security* which can reasonably be expected to fall within (b) when it begins to be traded.

*rebalancing of the portfolio*

~~(in COLL and in accordance with article 2(1) of the UCITS implementing Directive No 2)~~ means a significant modification of the composition of the *scheme property* of a *UCITS scheme* ~~or the portfolio of an EEA UCITS scheme~~.

[Note: article 2(1) of the *UCITS implementing Directive No 2*]

*receiving UCITS*

(in COLL and in accordance with regulations 7 and 8 of the *UCITS Regulations 2011*) in relation to a *UCITS merger*, the *UCITS scheme* ~~or EEA UCITS scheme~~ or *sub-fund* of that *scheme*, whether it is an existing *scheme* (or a *sub-fund* of it) or one that is being formed for the purpose of that merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more *merging UCITS*.

*recognised scheme*

- (1) (other than in LR) a scheme recognised under:
  - (a) section 264 of the Act (Schemes constituted in other EEA States); or [deleted]

- (b) [deleted]
- (c) section 272 of the Act (Individually recognised overseas schemes); or
- (d) (in COBS 14 and for the purposes of the definitions of *non-mainstream pooled investment* and *packaged product*) an *EEA UCITS scheme* recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018.
- (2) (in LR) a *scheme* recognised for the purpose of part XVII of the Act

*recognised third country credit institution*

a *full CRD credit institution* that satisfies the following conditions:

- (a) its head office is outside the ~~EEA~~ UK;
- (b) it is authorised by a *third country competent authority* in the state or territory in which the credit institution's head office is located; and
- (c) that *third country competent authority* applies prudential and supervisory requirements to that credit institution that are at least equivalent to those applied in the ~~EEA~~ UK.

*recognised third country investment firm*

- (1) (in *BIPRU* and *GENPRU* 3.2 (Third-country groups) as it applies to a *BIPRU firm* in relation to a *third-country banking and investment group* and a *banking and investment group*) a *CAD investment firm* that satisfies the following conditions:
  - (a) its head office is outside the ~~EEA~~ UK;
  - (b) it is authorised by a *third country competent authority* in the state or territory in which the *CAD investment firm's* head office is located;
  - (c) that *third country competent authority* is named in Part 2 of *BIPRU* 8 Annex 6 (Non-~~EEA~~ UK investment firm regulators' requirements deemed *CRD*-equivalent for individual risks); and
  - (d) that *investment firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the ~~*Banking Consolidation Directive* and the *Capital Adequacy Directive*~~ as applied under the third paragraph of

~~article 95(2) of the EU CRR~~ for BIPRU firms in GENPRU and BIPRU.

- (2) (except for the purpose in (1)) (in *GENPRU* 3.2 (Third country groups) in relation to a *third-country banking and investment group* and a *banking and investment group*) an *investment firm* that falls within the meaning of “investment firm” in article 4(1)(2) of the ~~EU CRR~~ UK CRR and which satisfies the following conditions:
  - (a) its head office is outside the ~~EEA~~ UK;
  - (b) it is authorised by a *third country competent authority* in the state or territory in which the *investment firm*’s head office is located; and
  - (c) that *investment firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the ~~EU CRR~~ UK CRR.
- (3) (in *GENPRU* 3.1) a *firm* in either (1) or (2), or both.

*regulated activity*

- (A) ...
- (B) in the *FCA Handbook*: (in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:
  - ...
  - (ea) ~~*bidding in emissions auctions* (article 24A) [deleted];~~
  - ...
  - (na) *managing a UK UCITS* (article 51ZA);
  - (nb) *acting as trustee or depositary of a UK UCITS* (article 51ZB);
  - ...

*regulated entity*

- one of the following:
  - (a) a *credit institution*; or
  - (b) a ~~“Solvency II undertaking”~~ “UK Solvency II firm”, “third country insurance undertaking” or “third country reinsurance undertaking”, each as defined in the PRA Rulebook: Glossary; or



- (c) an *investment firm*;

whether or not it is incorporated in, or has its head office in, an ~~EEA State~~ the UK.

An *asset management company* is treated as a regulated entity for the purposes described in GENPRU 3.1.39R (The financial sectors: asset management companies).

An *alternative investment fund manager* is treated as a regulated entity for the purposes described in GENPRU 3.1.39R (The financial sectors: alternative investment fund managers). GENPRU 3.1.39R (The financial sectors: asset management companies).

*regulated information*

all information which an *issuer*, or any other *person* who has applied for the admission of *financial instruments* to trading on a *regulated market* without the *issuer's* consent, is required to disclose under:

- (a) ~~the Transparency Directive~~ DTR; or
- (b) articles 17 to 19 of the *Market Abuse Regulation*; or
- (c) ~~LR, and DTR~~.

*regulated market*

- (1) ~~a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments — in the system and in accordance with its non-discretionary rules — in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the Title III of MiFID~~ a regulated market which is a UK RIE.

[Note: article ~~4(1)(21)~~ 2(1)(13A) of ~~MiFID~~ MiFIR]

- (2) (in addition, in *INSPRU* and *IPRU(INS)* only) a market situated outside the ~~EEA States~~ United Kingdom which is characterised by the fact that:
- (a) it meets comparable requirements to those set out in (1); and
- (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the *United Kingdom*.
- (3) (in *FUND* and *COLL*) as in (1) above or an *EU regulated market*.

- regulated mortgage contract* (a) (in relation to a contract) a contract which:
- (i) (in accordance with article 61(3) of the *Regulated Activities Order*) at the time it is entered into, meets the following conditions:
- (A) a lender provides credit to an individual or to trustees (the ‘borrower’); and
- (B) the obligation of the borrower to repay is secured by a mortgage on land ~~in the EEA~~, at least 40% of which is used, or is intended to be used, in the case of credit provided to an individual, as or in connection with a dwelling; or (in the case of credit provided to a trustee who is not an individual), as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a *related person*;
- where “land” for this purpose means:

(C) in relation to a contract entered into before *exit day*:

(I) land in the *United Kingdom*; or

(II) if the contract was entered into on or after 21 March 2016, land in the *United Kingdom* or within the territory of a State that was an *EEA State* at the time the contract was entered into; and

(D) in relation to a contract entered into on or after *exit day*, land in the *United Kingdom*.

...

*regulatory information service or RIS*

- (a) a *primary information provider*; ~~or~~
- (b) ~~an incoming information society service that has its establishment in an EEA State other than the United Kingdom and that disseminates regulated information in accordance with the minimum standards set out in article 12 of the TD implementing Directive. [deleted]~~

*regulatory system*

the arrangements for regulating a *firm* or other *person* in or under the Act, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the

CCA, and including any relevant ~~directly applicable~~ provisions of a ~~Directive or Regulation~~ an onshored regulation such as those contained in the *MiFID Org Regulation* and the ~~EU~~ UK CRR.

*relevant credit exposures*

~~(in accordance with article 140(4) of CRD)~~ exposures, other than those referred to in article 112(a) to (f) of the ~~EU CRR~~ UK CRR (Exposure classes), that are subject to:

- (a) the *own funds requirements* for credit risk under Part Three, Title II of the ~~EU CRR~~ UK CRR;
- (b) where the *exposure* is held in the *trading book*, *own funds requirements* for specific risk under Part Three, Title IV, Chapter 2 of the ~~EU CRR~~ UK CRR or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the ~~EU CRR~~ UK CRR; or
- (c) where the *exposure* is a *securitisation*, the *own funds requirements* under Part Three, Title II, Chapter 5 of the ~~EU CRR~~ UK CRR.

[Note: article 140(4) of *CRD*]

*Remuneration Code staff*

(for an *IFPRU investment firm* and an overseas firm in SYSC 19A1.1.1R(1)(d) that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) has the meaning given in SYSC 19A.3.4R which is, in summary, an *employee* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with ~~Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers)~~ the *Material Risk Takers Regulation*.

*repurchase transaction*

~~(in accordance with Article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive (Definitions)* and for the purposes of *BIPRU*)~~ any agreement in which an *undertaking* or its counterparty transfers securities or *commodities* or guaranteed rights relating to title to securities or *commodities* where that guarantee is issued by a *designated investment exchange* or *recognised investment exchange* which holds the rights to the securities or *commodities* and the agreement does not allow an *undertaking* to transfer or pledge a particular security or *commodity* to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or *commodities* of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the *undertaking* selling the securities or *commodities* and a *reverse repurchase agreement* for the *undertaking* buying them.

[Note: article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive (Definitions)*]

<i>respondent</i>	(1) (in <i>DISP</i> , <i>FEES</i> 5, <i>CREDS</i> 9 and <i>GEN</i> 7) a firm (except an <i>AIFM</i> qualifier or a <i>UCITS</i> qualifier), payment service provider, electronic money issuer, CBTL firm, designated credit reference agency, designated finance platform, or VJ participant covered by the Compulsory Jurisdiction or Voluntary Jurisdiction of the Financial Ombudsman Service.
	...
<i>retail customer</i>	<del>(in accordance with the meaning of ‘consumer’ in article 2(d) of the <i>Distance Marketing Directive</i>)</del> an individual who is acting for purposes which are outside his trade, business or profession.  [Note: article 2(d) of the <i>Distance Marketing Directive</i> ]
<i>revolving exposure</i>	(for the purpose of <i>BIPRU</i> 9.13 (Securitisations of revolving exposures with early amortisation provisions) <del>and in accordance with Article 100 of the <i>Banking Consolidation Directive</i> (Securitisations of revolving exposures)</del> ) an <i>exposure</i> whereby customers’ outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit.  [Note: article 100 of the <i>Banking Consolidation Directive</i> (Securitisations of revolving exposures)]
<i>risk concentration</i>	<del>(in accordance with Article 2(19) of the <i>Financial Groups Directive</i> (Definitions))</del> all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the <i>regulated entities</i> in the <i>financial conglomerate</i> , whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.  [Note: article 2(19) of the <i>Financial Groups Directive</i> (Definitions)]
<i>risk limit system</i>	<del>(in <i>COLL</i> and in accordance with article 40(2)(d) of the <i>UCITS implementing Directive</i>)</del> a documented system of internal limits concerning the measures used by a <i>management company</i> to manage and control the relevant risks for each <i>UCITS</i> it manages, taking into account all the risks which may be material to the <i>UCITS</i> , <del>as referred to in the second paragraph of article 38(1) of the <i>UCITS implementing Directive</i> and including, but not limited to, <i>liquidity risk</i>, <i>counterparty risk</i>, and <i>operational risk</i></del> , and ensuring consistency with the <i>UCITS</i> ’ risk profile.  [Note: article 38(1) and 40(2)(d) of the <i>UCITS implementing Directive</i> ]
<i>risk of excessive leverage</i>	has the meaning in article 4(1)(94) of <del>EU</del> <u>UK</u> <i>CRR</i> .
<i>risk position</i>	<del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial</del>

derivatives, securities financing transactions and long settlement transactions)) a risk number that is assigned to a transaction under the *CCR standardised method* following a predetermined algorithm.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*rollover risk*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions))~~ and for the purpose of *BIPRU 13* (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the amount by which *expected positive exposure* is understated when future transactions with a counterpart are expected to be conducted on an ongoing basis; the additional *exposure* generated by those future transactions is not included in calculation of *expected positive exposure*.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

*RRD early intervention condition*

the requirements of:

- (a) the ~~*EU CRR*~~ *UK CRR*; or
- (b) the laws, regulations and administrative provisions necessary to comply with the *UK* provisions which implemented the *CRD*; or
- (c) the laws, regulations and administrative provisions necessary to comply with the *UK* provisions which implemented title II of *MiFID II*; or
- (d) articles 3 to 7, 14 to 17, 24, 25 and 26 of *MiFIR*.

[~~Note: article 27(1) of *RRD*~~]

*RRD institution*

- (a) a *credit institution*; or
- (b) ~~an *investment firm* that is subject to the *initial capital requirement* in article 28(2) of the *CRD* (a *€730k investment firm*)~~ an *IFPRU 730K firm*.

[Note: article 2(1)(23) of *RRD*]

*RRD group*

a *group* that:

- (a) includes an *RRD institution*; and
- (b) is headed by ~~an *EEA parent undertaking*~~ a *UK parent undertaking*.

<i>scheme of arrangement</i>	<p>(in <i>COLL</i>) an arrangement relating to an <i>authorised fund</i> (“transferor fund”) or to a <i>sub-fund</i> of a <i>scheme</i> that is an <i>umbrella</i> (“transferor <i>sub-fund</i>”) under which:</p> <p>...</p> <p>This arrangement includes an arrangement that constitutes a <i>domestic UCITS merger</i> <del>or a cross-border UCITS merger</del>.</p>
<i>sectoral rules</i>	<p>(in relation to a <i>financial sector</i>) rules and requirements relating to the prudential supervision of <i>regulated entities</i> applicable to <i>regulated entities</i> in that <i>financial sector</i> as follows:</p> <p>(a) (for the purposes of <i>GENPRU</i> 3.1.12R (Definition of financial conglomerate: Solvency requirement)) <del>EEA UK</del> <u>prudential sectoral legislation regulation</u> for that <i>financial sector</i> together with as appropriate the rules and requirements in (c); or</p> <p>...</p> <p>(h) references to the appropriate regulator’s <i>sectoral rules</i> are to <i>sectoral rules</i> in the form of <i>rules</i> and, as applicable, the <del>EU CRR</del> <u>UK CRR</u>.</p>
<i>secured lending transaction</i>	<p><del>(in accordance with point 2 of Part 1 of Annex VIII of the <i>Banking Consolidation Directive</i> (Eligibility of credit risk mitigation) and for the purposes of <i>BIPRU</i>)</del> any transaction giving rise to an <i>exposure</i> secured by collateral which does not include a provision conferring upon the <i>person</i> with the <i>exposure</i> the right to receive margin frequently.</p> <p><u>[Note: point 2 of Part 1 of Annex VIII of the <i>Banking Consolidation Directive</i> (Eligibility of credit risk mitigation)]</u></p>
<i>securities and futures firm</i>	<p>a <i>firm</i> whose <i>permitted activities</i> include <i>designated investment business</i> or <i>bidding in emissions auctions</i>, which is not an <i>authorised professional firm</i>, <i>bank</i>, <i>BIPRU firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>), <i>IFPRU investment firm</i> (unless it is an <i>exempt IFPRU investment firm</i>), <i>building society</i>, <i>collective portfolio management firm</i>, <i>credit union</i>, <i>friendly society</i>, <i>ICVC</i>, <i>insurer</i>, <i>media firm</i>, <u>or service company</u>, <del><i>incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>) or <i>UCITS qualifier</i> (without a <i>top-up permission</i>)</del>, whose permission does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g), (ga) or (h):</p> <p>...</p>
<i>securities financing transaction</i>	<p>(1) (in <i>COBS</i>) an instance of stock lending or stock borrowing or the lending or borrowing of other <i>financial instruments</i>, a</p>

repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.

(1A) (in *COLL* and *FUND*) a transaction defined in article 3(11) of the *EU Securities Financing Transactions Regulation* as it had effect immediately before *exit day*, as follows:

- (a) a repurchase transaction, as defined in article 3(9) of ~~the *SFTR*~~ that regulation;
- (b) securities or commodities lending and securities or commodities borrowing as defined in article 3(7) of ~~the *SFTR*~~ that regulation;
- (c) a buy-sell back transaction or sell-buy back transaction as defined in article 3(8) of ~~the *SFTR*~~ that regulation; and
- (d) a margin lending transaction as defined in article 3(10) of ~~the *SFTR*~~ that regulation.

(1B) (in *CASS*) a securities financing transaction as defined in article 3(11) of the *SFTR*.

[Note: article 1(3) of the *MiFID Delegated Directive*]

(2) (in any other case) any of the following:

- (a) a *repurchase transaction*; or
- (b) a *securities or commodities lending or borrowing transaction*; or
- (c) a *margin lending transaction*.

*securities or commodities lending or borrowing transaction*

~~(in accordance with Article 4(34) of the *Banking Consolidation Directive* and Article 3(1)(n) of the *Capital Adequacy Directive (Definitions)*)~~ and for the purposes of *BIPRU*) any transaction in which an *undertaking* or its counterparty transfers securities or *commodities* against appropriate collateral subject to a commitment that the borrower will return equivalent securities or *commodities* at some future date or when requested to do so by the transferor, that transaction being *securities or commodities lending* for the *undertaking* transferring the securities or *commodities* and being *securities or commodities borrowing* for the *undertaking* to which they are transferred.

[Note: article 4(34) of the *Banking Consolidation Directive* and Article 3(1)(n) of the *Capital Adequacy Directive (Definitions)*]

- Securities Financing Transactions Regulation* the UK version of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365>), which is part of *UK law by virtue of the EUWA*.
- securitisation*
- (1) (subject to (2) and (3)) a process by which assets are sold to a bankruptcy-remote special purpose vehicle in return for immediate cash payment and that vehicle raises the immediate cash payment through the issue of debt securities in the form of tradable notes or commercial paper.
  - (2) ~~(in accordance with Article 4(36) of the Banking Consolidation Directive (Definitions) and in BIPRU and MIPRU 4)~~ a transaction or scheme whereby the credit risk associated with an *exposure* or pool of *exposures* is tranced having the following characteristics:
    - (a) payments in the transaction or scheme are dependent upon the performance of the *exposure* or pool of *exposures*; and
    - (b) the subordination of *tranches* determines the distribution of *losses* during the ongoing life of the transaction or scheme.

[Note: article 4(36) of the Banking Consolidation Directive (Definitions)]
  - (3) (in *IFPRU*) has the meaning in article 4(1)(61) of the ~~*EU CRR*~~ *UK CRR*.
- securitisation position*
- (1) (in *GENPRU*, *MIPRU* and *BIPRU*) ~~(in accordance with Article 4(40) (Definitions) and Article 96 (Securitisation) of the Banking Consolidation Directive)~~ an *exposure* to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*; and so that:
    - (a) where there is an *exposure* to different *tranches* in a *securitisation*, the *exposure* to each *tranche* must be considered as a separate *securitisation position*;
    - (b) the providers of credit protection to *securitisation positions* must be considered to hold positions in the *securitisation*; and
    - (c) *securitisation positions* include *exposures* to a *securitisation* arising from interest rate or currency derivative contracts.



[Note: article 4(1)(62) and 245(3) of the *UK CRR*]

- (2) (in *IFPRU*) has the meaning in article 4(1)(62) of the ~~*EU CRR*~~ *UK CRR*.
- securitisation special purpose entity* (1) ~~(in accordance with Article 4(44) of the *Banking Consolidation Directive (Definitions)*)~~ and for the purposes of *BIPRU*) a corporation, trust or other entity, other than a *credit institution*, organised for carrying on a *securitisation* or *securitisations* (within the meaning of paragraph (2) of the definition of *securitisation*), the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the *SSPE* from those of the *originator*, and the holders of the beneficial interests in which have the right to pledge or exchange those interests without restriction.

[Note: article 4(44) of the *Banking Consolidation Directive (Definitions)*]

...

- security* (1) (except in *LR* and *CONC*) (in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*) any of the following *investments* specified in that Order:

...

[*Editor's note:* The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

- senior management* (1) (in *BIPRU* 7.10 (Use of a value at risk model) and in relation to a *firm*) the *firm's governing body* and those of the *firm's senior managers* and other senior management who have responsibilities relating to the measurement and control of the risks which the *firm's VaR model* is designed to measure or whose responsibilities require them to take into account those risks.
- (2) (in *SYSC* (except *SYSC* 4.3A) and *IFPRU* and in accordance with article ~~3(9) of *CRD*~~ 4(1)(10) of the *UK CRR*) those *persons* who are a natural person and who exercise executive functions in an *institution* and who are responsible and accountable to the *management body* for the day-to-day management of the *institution*.
- (3) (in *SYSC* 4.3A and *COBS* 2.3B ~~and in accordance with article 4.1(37) of *MiFID*~~) those *persons* who are a natural person,

who exercise executive functions in *common platform firms* and who are responsible and accountable to the *management body* for the day-to-day management of the *firm*, including for the implementation of the policies concerning the distribution of services and products to *clients* by it and its personnel.

[Note: article 4.1(37) of *MiFID*]

- senior personnel*
- (1) ...
  - (2) (in relation to a *management company* ~~and in accordance with article 3(4) of the *UCITS implementing Directive*~~) the person or persons who effectively conduct the business of the *management company*.

[Note: article 3(4) of the *UCITS implementing Directive*]

*short selling regulation*

the UK version of regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, which is part of UK law by virtue of the *EUWA*.

- Single Market Directives*
- (a) the *Banking Consolidation Directive* (to the extent it ~~applies~~ applied to *CAD investment firms*);
  - (aa) the *CRD*;
  - (b) the *Solvency II Directive*;
  - (ba) [deleted]
  - (c) *MiFID*;
  - (d) the *IDD*;
  - (da) *MCD*;
  - (e) the *UCITS Directive*; and
  - (f) *AIFMD*.

- small authorised UK AIFM*
- a *UK AIFM* which:
- (a) is a *small AIFM*; and
  - (b) ~~has not opted in to *AIFMD* in accordance with article 3(4) of *AIFMD* to become a full-scope UK AIFM~~ exercised the option to meet the full requirements applying to a full-scope *AIFM*.

<i>small non-<del>EEA</del> UK AIFM</i>	a non- <del>EEA</del> <u>UK AIFM</u> that is a <i>small AIFM</i> .
<i>small and medium-sized enterprise or <u>SME</u></i>	...  (3) <u>(in IFPRU has the meaning in article 4(1)(128D) of the UK CRR.</u>
<i>SMCR banking firm</i>	any of the following:  ...  (c) <del>a third country</del> <u>an overseas SMCR banking firm.</u>
<i>SMCR financial activities</i>	any of the following:  ...  (e) activities listed in points 2 to 15 of <del>Annex I to the CRD (List of activities subject to mutual recognition)</del> <u>the list of Annex I activities.</u>
<i>SME growth market</i>	a <i>multilateral trading facility</i> that is registered as an SME growth market in accordance with <del>article 33 of MiFID</del> <u>MAR 5.10.</u>  [Note: article 4(1)(12) of <i>MiFID</i> ]
<i>SMF manager</i>	(in relation to an <i>SMCR firm</i> ) a <i>person</i> who has approval under section 59 of the <i>Act</i> (Approval for particular arrangements) to perform a <i>designated senior management function</i> in relation to the carrying on by that <i>SMCR firm</i> of a <i>regulated activity</i> .  <u>A person treated as approved under section 59ZZA of the Act (as treated as being inserted into the Act by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX]) to perform a designated senior manager function is an SMF manager in that capacity.</u>
<i>Solvency II firm</i>	a <i>firm</i> which is any of:  (a) a “UK Solvency II firm” as defined in chapter 2 of the PRA Rulebook: Solvency II Firms: Insurance General Application;  (b) a third-country insurance or reinsurance undertaking, namely an undertaking that would require <del>authorisation</del> <u>Part 4A permission</u> as an insurance or reinsurance undertaking <del>in accordance with article 14 of the Solvency II Directive</del> if its head office was situated in the <del>EEA</del> <u>United Kingdom</u> ;

- (c) ~~an undertaking authorised in accordance with a non-UK EEA State's measures which implement article 14 of the Solvency II Directive; [deleted]~~
- (d) the *Society* and, separately, a *managing agent*; and
- (e) an *insurance special purpose vehicle*;
- (f) in SUP TP 7 and SUP TP 8, SYSC, COCON, SUP 10C and DEPP only, a *large non-directive insurer*;

but excluding any *firm* to the extent that rule 2 of PRA Rulebook: Solvency II Firms: Transitional Measures disappplies relevant rules ~~implementing which implemented the Solvency II Directive.~~

*Solvency II Regulations*

~~directly applicable EU Commission Delegated Regulations adopted in accordance with onshored regulations which were previously EU regulations made under the Solvency II Directive.~~

*sovereign issuer*

(as defined in article 2(1)(d) of the *short selling regulation*) ~~any of the following that issues debt instruments:~~ means the *United Kingdom*, including any government department, or an agency or a special purpose vehicle of the *United Kingdom*.

- (a) ~~the EU; or~~
- (b) ~~a Member State including a government department, an agency, or a special purpose vehicle of the Member State; or~~
- (c) ~~in the case of a federal Member State, a member of the federation; or~~
- (d) ~~a special purpose vehicle for several Member States; or~~
- (e) ~~an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or~~
- (f) ~~the European Investment Bank.~~

*specific risk*

- (1) (in SYSC) unique risk that is due to the individual nature of an asset and can potentially be diversified.
- (2) (in GENPRU and BIPRU ~~and in accordance with paragraph 12 of Annex I of the *Capital Adequacy Directive*~~) the risk of a price change in an *investment* due to factors related to its issuer or, in the case of a *derivative*, the issuer of the underlying *investment*.

[Note: paragraph 12 of Annex I of the *Capital Adequacy Directive*]

<i>specific wrong-way risk</i>	<p>(<del>in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)</del> and for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the risk that arises when the exposure to a particular counterparty is positively correlated with the <i>probability of default</i> of the counterparty due to the nature of the transactions with the counterparty; a <i>firm</i> is exposed to <i>specific wrong-way risk</i> if the future exposure to a specific counterparty is expected to be high when the counterparty's <i>probability of default</i> is also high.</p> <p><u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p>
<i>specified investment</i>	<p>any of the following <i>investments</i> specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments):</p> <p>...</p> <p>[<i>Editor's note:</i> The current policy intention for COLL is to reflect the current scope of this Part of the Regulated Activities Order. If amendments are made to the scope of this Part in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]</p>
<i>sponsor</i>	<p>(1) ...</p> <p>(2) (in <i>BIPRU</i>), <del>in accordance with Article 4(42) of the <i>Banking Consolidation Directive</i> (Definitions)</del> and in <i>MIPRU</i> 4 and in relation to a <i>securitisation</i> within the meaning of paragraph (2) of the definition of <i>securitisation</i>, an <i>undertaking</i> other than an <i>originator</i> that establishes and manages an <i>asset backed commercial paper programme</i> or other <i>securitisation</i> scheme that purchases <i>exposures</i> from third party entities.</p> <p><u>[Note: article 4(42) of the <i>Banking Consolidation Directive</i> (Definitions)]</u></p> <p>(3) in <i>IFPRU</i> and <i>FUND</i>) has the meaning in article 4(1)(14) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u>.</p>
<i>standardised approach</i>	<p>(for the purposes of <i>BIPRU</i>) one of the following:</p> <p>...</p> <p>(e) (where the one of the approaches in (a) to (d) <del>(c)</del> is being applied on a consolidated basis) that approach as applied on a consolidated basis in accordance with <i>BIPRU</i> 8 (Group risk - consolidation), <del>;</del> <del>or</del></p>

- (f) ~~when the reference is to the rules of or administered by a regulatory body other than the appropriate regulator, whatever corresponds to the approach in (a) to (e), as the case may be, under those rules. [deleted]~~

*state finance organisation*

a legal person other than a *company*:

- (a) which is a national of an ~~EEA State~~ a state;

...

- (d) which is financed by means of the resources they have raised and resources provided by the ~~EEA State~~ state; and

- (e) the *debt securities* issued by it are considered by the law of the relevant ~~EEA State~~ state as securities issued or guaranteed by that state.

*state monopoly*

a *company* or other legal person which is a national of an ~~EEA state~~ a state and which:

- (a) in carrying on its business benefits from a monopoly right granted by an ~~EEA state~~ a state; and

- (b) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by an ~~EEA state~~ a state or one of the ~~federated states of an EEA state~~ a state's federated states.

*State of the commitment*

~~(in accordance with paragraph 6(1) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to a commitment entered into at any date):~~

- (a) if the *policyholder* is an individual, the State in which he had his habitual residence at that date;

- (b) if the *policyholder* is not an individual, the State in which the establishment of the *policyholder* to which the commitment relates was established at that date;

in this definition, "commitment" means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in UK provisions which implemented article 2(3) of the *Solvency II Directive*.

*State of the risk*

~~(in accordance with paragraph 6(3) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to the EEA State in which a risk is situated):~~

- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), the ~~EEA State~~ state in which the building is situated;
- (b) if the insurance relates to a vehicle of any type, the ~~EEA State~~ state of registration;
- (ba) if the insurance relates to a *vehicle* dispatched from one ~~EEA State~~ state to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, the ~~EEA State~~ state of destination (and not, as provided by sub-paragraph (b), the ~~EEA State~~ state of registration);

[Note: article 15(1) of the *Consolidated Motor Insurance Directive*]

- (c) in the case of *policies* of a duration of four months or less covering travel or holiday risks (whatever the class concerned), the ~~EEA State~~ state in which the *policyholder* took out the *policy*;
- (d) in a case not covered by (a) to (c):
  - (i) if the *policyholder* is an individual, the ~~EEA State~~ state in which he has his habitual residence at the date when the contract is entered into; and
  - (ii) otherwise, the ~~EEA State~~ state in which the establishment of the *policyholder* to which the *policy* relates is situated at that date.

*sub-consolidated basis*

has the meaning in article 4(1)(49) of the ~~EU CRR~~ UK CRR.

*subsidiary*

- (1) (except in relation to *MiFID business*) (as defined in section 1159(1) of the Companies Act 2006 (Meaning of “subsidiary”, etc)) (in relation to another *body corporate* (“H”)) a *body corporate* of which H is a *holding company*.
- (2) (in relation to *MiFID business*) a subsidiary undertaking within the meaning of article 2(10) and article 22 of the *Accounting Directive*, including any subsidiary of a subsidiary undertaking of an ultimate *parent undertaking*.
- (3) (for the purpose of *IFPRU*) has the meaning in article 4(1)(16) of the ~~EU CRR~~ UK CRR.

[Note: article 4 (1)(33) of *MiFID*]

<i>suitability report</i>	<p>a report which a <i>firm</i> must provide to its <i>client</i> which, among other things, explains why the <i>firm</i> has concluded that a recommended transaction is suitable for the <i>client</i> and which is provided pursuant to:</p> <p>...</p> <p>(c) <del>GEN 2.2.22AR and COBS 9A.3.3EUUK</del> where the <i>firm</i> is carrying on the <i>equivalent business of a third country investment firm</i>;</p> <p>(d) COBS 9A.1.2R and COBS 9A.3.3EUUK where the <i>firm</i> is carrying on <i>MiFID optional exemption business</i>; or</p> <p>...</p>
<i>summary resolution communication</i>	<p>either:</p> <p>(1) in relation to a <i>MiFID complaint</i>, a response in accordance with <del>DISP 1.1A.24EUUK</del>, <del>DISP 1.1A.25EUUK</del> and <del>DISP 1.1A.26R</del>; or</p> <p>(2) in relation to all other <i>complaints</i>, has the meaning given in <i>DISP 1.5.4R</i>.</p>
<i>supervisory authority</i>	<p>(1) <del>(in accordance with article 4(1)(al) of AIFMD)</del> (for a <del>non-EEA UK AIF</del>) the national authority or authorities of the <del>non-EEA State</del> empowered by law or regulation to supervise <i>AIFs</i> in that <del>non-EEA State</del>.</p> <p>[Note: article 4(1)(al) of <i>AIFMD</i>]</p> <p>(2) <del>(in accordance with article 4(1)(am) of AIFMD)</del> (for a <del>non-EEA UK AIFM</del>) the national authority or authorities of the <del>non-EEA State</del> empowered by law or regulation to supervise <i>AIFMs</i> in that <del>non-EEA State</del>.</p> <p>[Note: article 4(1)(am) of <i>AIFMD</i>]</p>
<i>supervisory formula method</i>	<p>(for the purposes of <i>BIPRU 9 (Securitisation)</i>, in relation to a <i>securitisation</i> within the meaning of paragraph (2) of the definition of securitisation <del>and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)</del>) the method of calculating <i>risk weighted exposure amounts</i> for <i>securitisation positions</i> set out in <i>BIPRU 9.12.21R – BIPRU 9.12.23R</i> and <i>BIPRU 9.14.3R</i>.</p> <p>[Note: Part 1 of Annex IX of the <i>Banking Consolidation Directive (Securitisation definitions)</i>]</p>



- supervisory function* (1) any function within a *common platform firm* that is responsible for the supervision of its *senior personnel*.
- (2) (in relation to a *management company* ~~and in accordance with article 3(6) of the UCITS implementing Directive~~) the *relevant persons* or body or bodies responsible for the supervision of its *senior personnel* and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures ~~put in place to comply with its obligations under the UCITS Directive of the firm.~~

[Note: article 3(6) of the UCITS implementing Directive]

*Swiss general insurance company*

(in accordance with article 1(2) of the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 201/2507)) a *person*:

- (a) whose head office is in Switzerland;
- (b) who is authorised by the supervisory authority in Switzerland as mentioned in article 7.1 of the *Swiss Treaty Agreement*; and
- (c) who is seeking to carry on, or is carrying on, from a branch in the *United Kingdom*, a *regulated activity* consisting of the *effecting or carrying out of contracts of insurance* of a kind which is subject to that agreement.

[*Editor's note*: In due course, this definition will be updated to reflect any amendments made to the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 201/2507).]

*Swiss Treaty agreement*

the agreement of 10 October 1989 between the European Economic Community and the Swiss Confederation on direct insurance other than life insurance, approved on behalf of the European Economic Community by the Council Decision of 20 June 1999 (No 91/370/EEC).

[*Editor's note*: In due course, this definition will be updated to reflect any agreement entered into between the United Kingdom and Switzerland.]

*synthetic risk and reward indicator*

(in *COLL* ~~and in accordance with article 2(2) of the UCITS implementing Directive No 2~~) a synthetic indicator within the meaning of article 8 of the *KII Regulation*.

[Note: article 2(2) of the UCITS implementing Directive No 2]

*synthetic securitisation*

(~~in accordance with Article 4(38) of the Banking Consolidation Directive (Definitions)~~ and for the purpose of *BIPRU*) a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) where the *tranching* is achieved by the use of credit derivatives or

guarantees, and the pool of *exposures* is not removed from the balance sheet of the *originator*.

[Note: article 4(38) of the *Banking Consolidation Directive* (Definitions)]

*systematic  
internaliser*

~~(has the meaning in article 4(1)(20) of *MiFID*) (in summary) an *investment firm* which, on an organised, frequent systematic and substantial basis, *deals on own account* by executing client orders outside a *regulated market*, an *MTF* or an *OTF* without operating a *multilateral system*.~~

[Note: article 4(1)(20) of *MiFID*]

an *investment firm* which:

- (a) on an organised, frequent, systemic and substantial basis, deals on own account when executing client orders outside a *UK regulated market*, *UK MTF* or *UK OTF* without operating a *multilateral system*; and
- (b) either:
  - (i) satisfies the criteria set out in Article 12, 13, 14, 15 or 16 of, the *MiFID Org Regulation* assessed in accordance with Article 17 of that Regulation; or
  - (ii) has chosen to opt-in to the systemic internaliser regime;

For these purposes:

- (c) the frequent and systemic basis is to be measured either by the number of OTC trades in the *financial instrument* carried out by the *investment firm* on own account when executing client orders;
- (d) the substantial basis is to be measured either by the size of the OTC trading carried out by the *investment firm* in relation to the total trading of the *investment firm* in a specific financial instrument or by the size of the OTC trading carried out by the *investment firm* in relation to the total trading in the relevant area (within the meaning of article 14(5A) *MiFIR* in a specific *financial instrument*;

[Note: article 2(1)(12) and (12A) of *MiFIR*]

*systemically  
important institution*

~~(in accordance with article 3(30) of *CRD*) an *EEA parent institution* an *EEA parent financial holding company*, an *EEA parent mixed financial holding company* or an *institution* the failure or malfunction of which could lead to systemic risk (in *IFPRU*) has the meaning in article 4(1)(128D) of the *UK CRR*.~~

[Note: article 3(30) of *CRD*]

- third country* a territory or country which is not ~~an EEA State~~ the United Kingdom.
- third-country banking and investment group* a banking and investment group that meets the following conditions:
- (a) it is headed by:
    - (i) a credit institution; or
    - (ii) an asset management company; or
    - (iii) an investment firm; or
    - (iv) a financial holding company;
 that has its head office outside the ~~EEA~~ UK; ~~and~~
  - (b) it is not part of a wider ~~EEA banking and investment group consolidation group~~ that is required by UK prudential sectoral regulation for the banking sector or the investment services sector to be subject to consolidated supervision.
- third country benchmark contributor* a firm which:
- (1) contributes input data to a BMR benchmark administrator;
  - (2) is located ~~in a non-EU state~~ outside the UK; and
  - (3) either
    - (a) is a supervised entity; or
    - (b) would be a supervised entity if it were located in the ~~EU~~ UK.
- third country BIPRU firm* (1) (in BIPRU (except in BIPRU 12) and SYSC 19C) an overseas firm that:
- (a) ~~is not an EEA firm; [deleted]~~
  - (b) ~~has its head office outside the EEA; and [deleted]~~
  - (c) would be a BIPRU firm if it had been a UK domestic firm, it had carried on all its business in the United Kingdom and had obtained whatever authorisations for doing so are required under the Act.
- (2) ~~(in BIPRU 12) an overseas firm that:~~

	(a) <del>is a <i>bank</i>;</del>
	(b) <del>is not an <i>EEA firm</i>; and</del>
	(e) <del>has its head office outside the <i>EEA</i>. <u>[deleted]</u></del>
<i>third country competent authority</i>	a <i>regulatory body</i> of a state or territory <del>that is not an <i>EEA State</i></del> <u>other than the <i>UK</i>.</u>
<i>third-country competent authority</i>	the authority of a country or territory which is not an <del><i>EEA State</i></del> <u>the <i>UK</i></u> that is empowered by law or regulation to supervise (whether on an individual or group-wide basis) <i>regulated entities</i> .
<i>third-country countercyclical buffer authority</i>	(1) the authority of a <i>third country</i> empowered by law or regulation with responsibility for setting the <i>countercyclical buffer rate</i> for that <i>third country</i> ; <u>or</u>  (2) <u>the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an <i>EEA State</i> conferred on it by article 5(2) of Council Regulation (EU) No 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.</u>
<i>third-country financial conglomerate</i>	a <i>financial conglomerate</i> <del>that is of a type that falls under Article 5(3) of the <i>Financial Groups Directive</i>, which in summary is a <i>financial conglomerate</i></del> headed by a <i>regulated entity</i> or a <i>mixed financial holding company</i> that has its head office outside the <del><i>EEA</i></del> <u><i>UK</i></u> .
<i>third country firm</i>	(in SYSC) either:  (a) a <i>third country investment firm</i> ; or  (b) the <i>UK</i> branch of a <del><i>non-EEA bank</i></del> <u><i>non-UK bank</i></u> .
<i>third country IFPRU 730k firm</i>	an <i>overseas firm</i> that:  (a) <del>is not an <i>EEA firm</i>;</del>  (b) <del>has its head office outside the <i>EEA</i>; and</del>  (e) would be an <i>IFPRU 730k firm</i> if it had been a <i>UK domestic firm</i> , had carried on all of its business in the <i>United Kingdom</i> and had obtained whatever authorisations for doing so as are required under the <i>Act</i> .
<i>third country investment firm</i>	a <i>firm</i> which would be a <i>MiFID investment firm</i> if it had its head office in the <del><i>EEA</i></del> <u><i>UK</i></u> .

<i>third country investment services undertaking</i>	(in <i>BIPRU</i> ) a <i>CAD investment firm</i> , a <i>financial institution</i> or an <i>asset management company</i> in a <del>non-EEA state</del> <u>country other than the UK</u> .
<i>tier 2 capital</i>	as defined in article 71 of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>tier 2 instruments</i>	a capital instrument that qualify as tier 2 instruments under article 62 of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>total return swap</i>	(in <i>COLL</i> and <i>FUND</i> ) a derivative contract defined in article 3(18) of the <u>EU Securities Financing Transactions Regulation as it had effect immediately before exit day</u> .
<i>total risk exposure amount</i>	the total risk exposure amount of a <i>firm</i> calculated in accordance with article 92(3) of the <del>EU-CRR</del> <u>UK CRR</u> (Own funds requirements).
<i>trading book</i>	<p>(1) [deleted]</p> <p>(2) (in <i>BIPRU</i> and <i>GENPRU</i> in relation to a <i>BIPRU firm</i>) has the meaning in <i>BIPRU</i> 1.2 (Definition of the trading book) which is in summary, all that <i>firm's positions</i> in <i>CRD financial instruments</i> and <i>commodities</i> held either with trading intent or in order to hedge other elements of the <i>trading book</i>, and which are either free of any restrictive covenants on their tradability or able to be hedged.</p> <p>(3) (in <i>BIPRU</i> and <i>GENPRU</i> and in relation to a <i>person</i> other than a <i>BIPRU firm</i>) has the meaning in (2) with references to a <i>firm</i> replaced by ones to a <i>person</i>.</p> <p>(4) (in <i>IFPRU</i> and in relation to an <i>IFPRU investment firm</i>) has the meaning in article 4(1)(86) of the <del>EU-CRR</del> <u>UK CRR</u>.</p> <p>(5) (in <i>DTR</i>) has the meaning in article 4.1(86) of <del>EU-CRR</del> <u>UK CRR</u>.</p>
<i>trading day</i>	<p>...</p> <p>(3) (in <i>FINMAR</i>) as defined in article 2(1)(p) of the <i>short selling regulation</i>, <del>a trading day as referred to in article 4 of Regulation (EC) No 1287/2006</del> <u>in relation to a trading venue, means a day during which the trading venue concerned is open for trading.</u></p>
<i>trading venue</i>	<p>(1) (except in <i>FINMAR</i>) a <i>regulated market</i>, <u>an EU regulated market</u>, an <i>MTF</i> or an <i>OTF</i>. [Note: article 4(1)(24) of <i>MiFID</i>]</p> <p>(2) (in <i>FINMAR</i>) (as defined in article 2(1)(l) of the <i>short selling regulation</i>) <del>a regulated market or an MTF</del>;</p>

- (i) a UK regulated market within the meaning of point (13B) of article 2(1) of Regulation 2014/600/EU;
- (ii) a UK multilateral trading facility within the meaning of point (14A) of article 2(1) of Regulation 2014/600/EU.

~~[Note: article 4(1)(24) of *MiFID*]~~

- (3) (in *MAR* other than in *MAR 1*) a regulated market or an *MTF*.
- (4) (in *MAR 1*) a regulated market, an EU regulated market or an *MTF*.

*traditional  
securitisation*

~~(in accordance with Article 4(37) of the *Banking Consolidation Directive* (Definitions) and for the purpose of *BIPRU* and *MIPRU*) a securitisation (within the meaning of paragraph (2) of the definition of securitisation) involving the economic transfer of the *exposures* being securitised to a securitisation special purpose entity which issues securities; and so that:~~

- (a) this must be accomplished by the transfer of ownership of the securitised exposures from the *originator* or through sub-participation; and
- (b) the securities issued do not represent payment obligations of the *originator*.

~~[Note: article 4(37) of the *Banking Consolidation Directive* (Definitions)]~~

*tranche*

~~(in accordance with Article 4(39) of the *Banking Consolidation Directive* (Definitions) and in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation and for the purposes of *BIPRU* and *MIPRU*) a contractually established segment of the credit risk associated with an *exposure* or number of *exposures*, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments.~~

~~[Note: article 4(39) of the *Banking Consolidation Directive* (Definitions)]~~

*transferable security*

- (1) (in *PR* and *LR*) (as defined in section 102A of the Act) anything which is a transferable security for the purposes of ~~*MiFID*~~ *MiFIR*, other than money market instruments for the purposes of ~~that directive~~ *MiFIR* which have a maturity of less than 12 months.

- (2) (in *COLL*) an *investment* within *COLL* 5.2.7R (Transferable securities) in relation to *schemes* falling under *COLL* 5.
- (3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
  - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
  - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, *commodities* or other indices or measures.

[Note: article 4(1)(44) 2(24) of ~~*MiFID*~~ *MiFIR*]

*UCITS*

~~undertakings for collective investment in transferable securities that are established in accordance with the *UCITS Directive*~~ a *UCITS scheme* or an *EEA UCITS scheme*.

*UCITS firm*

a firm which:

- (a) is a *management company* (whether or not it is also the *manager* of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) does not have a *Part 4A permission* ~~(or an equivalent permission from its *Home State regulator*)~~ to carry on any *regulated activities* other than those which are in connection with, or for the purpose of, managing collective investment undertakings.

*UCITS investment firm*

a firm which:

- (a) is a *management company* (whether or not it is also the *manager* of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) has a *Part 4A permission* ~~(or an equivalent permission from its *Home State regulator*)~~ to manage investments where:
  - (i) the *investments* managed include one or more of the ~~instruments listed in Section C of Annex 1 to *MiFID*~~ *financial instruments*; and

- (ii) the permission extends to activities ~~permitted by referred to in~~ article 6(3) of the *UCITS Directive* as well as those ~~permitted by referred to in~~ article 6(2).
- UCITS level 2 regulation* ~~the UK version of~~ Commission delegated regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to the obligations of depositaries, which is part of UK law by virtue of the EUWA, as amended by section 8 of the EUWA. (<http://eurlex.europa.eu/legal-content/EN/TXT/?qid=1459519567928&uri=CELEX:32016R0438>)
- UCITS management company* (1) (except in relation to *MiFID business*) a *firm* which is either:
- (a) a *UCITS firm*; or
- (b) a *UCITS investment firm*.
- (2) (in relation to *MiFID business*) a *management company* as defined in the *UCITS Directive*.
- ...
- UCITS marketing notification* (in *COLL*) a notification made before exit day in respect of a *UCITS scheme*, for the purpose of marketing units in another *EEA State*, pursuant to:
- (a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the *Act*; ~~or~~
- (b) ~~article 46 of the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC).~~
- UCITS merger* (in *COLL* and in accordance with ~~article 2(1)(p) of the UCITS Directive~~ regulations 7 and 8 of the UCITS Regulations 2011) a merger between one or more *UCITS schemes* ~~or between one or more UCITS schemes and EEA UCITS schemes~~ being an operation whereby:
- (a) ~~one or more merging UCITS, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing receiving UCITS, in exchange for the issue to its Unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units (a “merger by absorption”); or [deleted]~~
- (b) ~~two or more merging UCITS, on being dissolved without going into liquidation, transfer all of its assets and liabilities to a receiving UCITS which they form, in exchange for the issue to their Unitholders of units of the receiving UCITS and, if~~



applicable, a cash payment not exceeding 10% of the net asset value of those *units* (a “merger by formation of a new *UCITS*”); or ~~[deleted]~~

- (c) one or more *merging UCITS*, which continue to exist until the liabilities have been discharged, transfer its net assets to another *receiving UCITS*, and for this purpose the *merging UCITS* and the *receiving UCITS* may be *sub-funds* of the same *UCITS* (a “merger by *scheme of arrangement*”);~~;~~

~~but at least one of which is established in the *United Kingdom*.~~

*UCITS scheme*

- (a) ~~an *authorised fund* authorised by the *FCA* in accordance with the *UCITS Directive*; means a *UK UCITS*.~~
- (i) ~~with the sole object of collective investment in *transferable securities* or in other liquid financial instruments permitted by *COLL 5.2* (*General investment powers and limits for UCITS schemes*) of capital raised from the public and which operates on the principle of risk spreading; and~~
- (ii) ~~with *units* which are, at the request of *Unitholders*, repurchased or *redeemed*, directly or indirectly, out of the *scheme's* assets; and for this purpose action taken by or on behalf of a *scheme* to ensure that the stock exchange value of its *units* does not significantly vary from their net asset value is to be regarded as equivalent to that repurchase or *redemption*; or~~
- (b) ~~an *umbrella*, each of whose *sub-funds* would be a *UCITS scheme* if it had a separate *authorisation order*;~~

~~unless:~~

- (c) ~~[deleted]~~
- (d) ~~the *scheme's units* under its *instrument constituting the fund*, may be sold only to the public in *non-EEA States*; or~~
- (e) ~~the *scheme* (other than a *master UCITS* which has at least two *feeder UCITS* as *Unitholders*) raises capital without promoting the *sale* of its *units* to the public within the *EEA* or any part of it.~~

~~[Note: article 1 of the *UCITS Directive*]~~

*UK consolidation group*

- (1) (for the purposes of *SYSC* as it applies to a *CRR firm*) the *group of undertakings* which are included in the *consolidated situation* of a *UK parent institution in a Member State, an EEA parent institution, an EEA a UK parent financial holding company* or an *EEA a UK parent mixed financial holding*

*company* (including any *undertaking* which is included in that consolidation because of a *consolidation article 12(1) relationship*, *article 18(5) relationship* or *article 18(6) relationship*).

- (2) (for the purposes of *BIPRU* and *SYSC* as it applies to a *BIPRU firm*) has the meaning in *BIPRU* 8.2.4R (Definition of UK consolidation group), which is in summary the group that is identified as a *UK consolidation group* in accordance with the decision tree in *BIPRU* 8 Annex 1R (Decision tree identifying a UK consolidation group); in each case only *persons* included under *BIPRU* 8.5 (Basis of consolidation) are included in the *UK consolidation group*.

*UK countercyclical buffer authority*

(for the purposes of *IFPRU* 10.3 (Countercyclical capital buffer) and in accordance with article 7 of The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014) the Bank of England, designated for the purpose of article 136(1) of the *CRD* in article 7 of The Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014.

*UK firm*

- (1) (except in *REC*) ~~(as defined in paragraph 10 of Schedule 3 to the Act (EEA Passport Rights))~~ either a *an authorised person*:
- (a) whose head office is in the *United Kingdom* ~~and who has an *EEA right* to carry on activity in an *EEA State* other than the *United Kingdom*~~; or
- (b) whose registered office is in the *United Kingdom* ~~[and who has an *EEA right* which derives from the *IDD* to carry on an activity in an *EEA State* other than the *United Kingdom*].~~
- (2) ~~(in *REC*) means an *investment firm* or *credit institution* which has a *Part 4A permission* to carry on one or more *regulated activities*. [deleted]~~

*UK lead regulated firm*

a *UK firm* that:

- (a) is not part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* or any other *regulatory body*; or
- (b) is part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* and that group is not part of a wider group that is subject to consolidated supervision by a *regulatory body* other than the *FCA* or the *PRA*.

For the purposes of this definition:

- (c) Consolidated supervision of a group of persons means supervision of the adequacy of financial and other resources of that group on a *consolidated basis*.
- (d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* and ~~EU-CRR~~ UK CRR or the *Financial Groups Directive*.
- (e) If the group is a *consolidation group* or *financial conglomerate* of which the *FCA* or the *PRA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a 'UK lead regulated firm'.

This definition is not related to the defined term *lead regulated firm*.

*unauthorised AIFM*

a person who is not an *authorised person* but who is:

- (a) a *small registered UK AIFM*; or
- (b) ~~a small registered EEA AIFM, i.e. an EEA AIFM that is a small AIFM that has not opted in to become a full scope EEA AIFM; or [deleted]~~
- (c) ~~a full scope EEA AIFM that is entitled to market an AIF in the United Kingdom following a notification under regulation 57 of the AIFMD UK regulation; or [deleted]~~
- (d) ~~an a small non-EEA UK AIFM that is entitled to market an AIF in the United Kingdom following a notification under regulation 58 of the AIFMD UK regulation; or~~
- (e) an *above-threshold non-EEA UK AIFM* to which the requirement at regulation 59(3) of the *AIFMD UK regulation* applies; ~~or~~
- (f) ~~a full scope EEA AIFM that is exercising a right to market an AIF in the United Kingdom arising out of the EuSEF regulation or the EuVECA regulation. [deleted]~~

*unfunded credit protection*

- (1) (in *BIPRU* and in accordance with Article 4(32) of the *Banking Consolidation Directive (Definitions)*) a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an *undertaking* derives from the *undertaking* of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

[Note: article 4(32) of the *Banking Consolidation Directive (Definitions)*]

- (2) (in *IFPRU*) has the meaning in article 4(1)(59) of the ~~*EU CRR*~~ *UK CRR*.
- (3) (in *MIPRU*) a way of mitigating credit risk where the reduction of credit risk on the *exposure* of an *undertaking* (the borrower) derives from the enforceable obligation of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

*unrated position* (for the purposes of *BIPRU* 9 (Securitisation), ~~in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) and in relation to a *securitisation position*) describes a *securitisation position* which does not have an eligible credit assessment by an *eligible ECAI*.

[Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]

*VaR model permission* ~~an *Article 129 implementing measure*~~, a requirement or a waiver that requires a *BIPRU firm* or a *CAD investment firm* to use the *VaR model approach* on a solo basis or, if the context requires, a consolidated basis.

*Zone A country*

(a) ~~any *EEA State*~~ [deleted];

(b) ~~all other~~ countries which are full members of the *OECD*; and

(c) those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB),

save that any country falling with (a), (b) or (c) which reschedules its external sovereign debt is precluded from Zone A for a period of five years.

Delete the following definitions. The text is not shown struck through.

*AIFM qualifier* an *EEA AIFM* which is *marketing*, or has *marketed*, an *AIF* in the *UK* by:

- (a) exercising its *EEA right to market* under Schedule 3 of the *Act* (EEA Passport Rights); and
- (b) is not exercising a right to *manage* a *UK AIF* under Schedule 3 of the *Act*.

<i>AIFMD host state requirements</i>	<p>Handbook rules transposing articles 12 and 14 of AIFMD and which fall under the responsibility of the <i>Host State</i> to supervise where an <i>AIFM</i> manages or markets an <i>AIF</i> through a branch in that <i>EEA State</i>, namely:</p> <ul style="list-style-type: none"> <li>(a) <i>FUND</i> 3.8;</li> <li>(b) <i>SYSC</i> 4.1.2CR;</li> <li>(c) <i>SYSC</i> 10.1.22 R to <i>SYSC</i> 10.1.26R; and</li> <li>(d) <i>COBS</i> 2.1.4R.</li> </ul>
<i>applicable provisions</i>	<p>the <i>Host State</i> rules with which:</p> <ul style="list-style-type: none"> <li>(a) an <i>incoming EEA firm</i> is required to comply when carrying on a <i>permitted activity</i> through a <i>branch</i> or by providing services (as applicable) in the <i>United Kingdom</i>, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the <i>Act</i> (Exercise of passport rights by EEA firms); or</li> <li>(b) a <i>UK firm</i> is required to comply when conducting business through a <i>branch</i> (in accordance with paragraph 19(13) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another <i>EEA State</i>.</li> </ul>
<i>Article 129 implementing measure</i>	<p>any:</p> <ul style="list-style-type: none"> <li>(a) measure taken by the <i>appropriate regulator</i> under regulations 7-9 of the <i>Capital Requirements Regulations 2006</i>; or</li> <li>(b) corresponding measure taken by another <i>competent authority</i> to apply an <i>Article 129 permission</i> as referred to in the last paragraph of Article 129(2) of the <i>Banking Consolidation Directive</i>.</li> </ul>
<i>Article 129 permission</i>	<p>a permission of the type referred to in Article 129(2) of the <i>Banking Consolidation Directive</i> (permission to apply the <i>IRB approach</i>, the <i>AMA approach</i> or the <i>CCR internal model method</i> on a consolidated basis) or Article 37(2) of the <i>Capital Adequacy Directive</i> (permission to apply the <i>VaR model approach</i> on a consolidated basis) excluding an <i>Article 129 implementing measure</i>.</p>
<i>Article 129 procedure</i>	<p>the procedure described in Article 129(2) of the <i>Banking Consolidation Directive</i> (permission to apply the <i>IRB approach</i>, the <i>AMA approach</i> or the <i>CCR internal model method</i> on a consolidated basis) or that applies under Article 37(2) of the <i>Capital Adequacy Directive</i> (permission to apply the <i>VaR model approach</i> on a consolidated basis) for the purpose of applying for and granting or refusing an <i>Article 129 permission</i> or the procedure for varying of revoking an <i>Article 129 permission</i> in</p>

accordance with the *Banking Consolidation Directive* or the *Capital Adequacy Directive*.

<i>auction regulation</i>	Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community).
<i>auction regulation bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1)(j).
<i>bidding in emissions auctions</i>	the <i>regulated activity</i> , specified in article 24A of the <i>Regulated Activities Order</i> (Bidding in emissions auctions), which is in summary the reception, transmission or submission of a bid at an auction of an <i>emissions auction product</i> conducted on an <i>auction platform</i> .
<i>branch passport notification</i>	a notification made in accordance article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4A</i> Annex VI.
<i>central competent authority</i>	(in <i>MAR 10</i> ) in respect of a particular <i>commodity derivative</i> traded in significant volumes on <i>trading venues</i> in more than one <i>EEA</i> jurisdiction, the <i>competent authority</i> of the <i>trading venue</i> where the largest volume of trading in the <i>commodity derivative</i> takes place in the <i>EEA</i> .
<i>consent notice</i>	a notice given by the <i>FCA</i> or <i>PRA</i> as the case may be to a <i>Host State regulator</i> under: <ul style="list-style-type: none"> <li>(a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the <i>Act</i> (Exercise of Passport Rights by UK firms); or</li> <li>(b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the <i>Act</i> (Exercise of Passport Rights by UK firms).</li> </ul>
<i>country of origin</i>	in relation to an <i>electronic commerce activity</i> , the <i>EEA State</i> in which the <i>establishment</i> from which the service in question is provided is situated.
<i>cross-border dispute</i>	(as defined in regulation 5 of the <i>ADR Regulations</i> ) a dispute concerning contractual obligations arising from a <i>sales contract</i> or a <i>service contract</i> where, at the time the <i>consumer</i> orders the goods or services, the <i>trader</i> is established in the <i>United Kingdom</i> and the <i>consumer</i> is resident in another Member State.  [Note: article 4(1) of the <i>ADR Directive</i> ]
<i>cross border services</i>	(1) (in relation to a <i>UK firm</i> ) services provided within an <i>EEA State</i> other than the <i>United Kingdom</i> under the freedom to provide services.  (2) (in relation to an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> ) services provided within the <i>United Kingdom</i> under the freedom to provide services.

<i>cross-border dispute</i>	<p>(as defined in regulation 5 of the <i>ADR Regulations</i>) a dispute concerning contractual obligations arising from a <i>sales contract</i> or a <i>service contract</i> where, at the time the <i>consumer</i> orders the goods or services, the <i>trader</i> is established in the <i>United Kingdom</i> and the <i>consumer</i> is resident in another Member State.</p> <p>[Note: article 4(1) of the <i>ADR Directive</i>]</p>
<i>Cross-Border Payments in Euro Regulations</i>	the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89).
<i>cross-border UCITS merger</i>	<p>(in <i>COLL</i> and in accordance with article 2(1)(q) of the <i>UCITS Directive</i>) a <i>UCITS merger</i> of two or more <i>UCITS</i>:</p> <p>(a) at least two of which are established in different <i>EEA States</i>; or</p> <p>(b) established in the same <i>EEA State</i> into a newly constituted <i>UCITS</i> established in another <i>EEA State</i>;</p> <p>but at least one of which is established in the <i>United Kingdom</i>.</p>
<i>EEA approved incoming information society service</i>	an incoming <i>information society service</i> that has its <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> which has been approved in that state as meeting the standards set out in article 21 of the <i>TD</i> and article 12 of the <i>TD implementing Directive</i> .
<i>EEA authorisation</i>	<p>(in accordance with paragraph 6 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)):</p> <p>(a) in relation to an <i>IDD insurance intermediary</i> or an <i>IDD reinsurance intermediary</i>, registration with its <i>Home State regulator</i> under article 3 of the <i>Insurance Distribution Directive</i>;</p> <p>(b) in relation to any other <i>EEA firm</i>, authorisation granted to an <i>EEA firm</i> by its <i>Home State regulator</i> for the purpose of the relevant <i>Single Market Directive</i> or the <i>auction regulation</i>.</p>
<i>EEA authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to issue <i>electronic money</i> and provide <i>payment services</i> in accordance with the <i>Electronic Money Directive</i> .
<i>EEA authorised payment institution</i>	(a) (in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to provide <i>payment services</i> in accordance with the <i>Payment Services Directive</i> or a <i>person</i> entitled to provide <i>payment services</i> of the type described in paragraph 1(g) of Schedule 1 to the <i>Payment Services Regulations 2009</i> under regulation 152(5) of the <i>Payment Services Regulations</i> ; and

- (b) (in accordance with paragraph 1 of Schedule 7 to the *Payment Services Regulations*) a firm which has its head office in Gibraltar, is authorised in Gibraltar to provide *payment services*, and has an entitlement corresponding to its passport right deriving from the *Payment Services Directive*, to establish a *branch* or provide services in the *United Kingdom*.

*EEA bank*

an *incoming EEA firm* which is a *CRD credit institution*.

*EEA branch of an authorised electronic money institution*

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) a branch established by an *authorised electronic money institution*, in the exercise of its *passport rights*, to issue *electronic money*, provide *payment services*, distribute or redeem *electronic money* or carry out other activities in accordance with the *Electronic Money Regulations* in an *EEA State* other than the *United Kingdom*.

*EEA countercyclical buffer authority*

- (1) the authority or body of a *EEA State*, other than the *UK*, designated for the purpose of article 136 of *CRD* with responsibility for setting the *countercyclical buffer rate* for that *EEA State*; or
- (2) the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an *EEA State* conferred on it by article 5(2) of Council Regulation (EU) No. 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

*EEA-deposit insurer*

a *Solvency II firm* that is a third-country insurance undertaking and that has made a deposit in an *EEA State* (other than the *United Kingdom*) under article 162(2)(e) of the *Solvency II Directive* in accordance with article 167 of that Directive.

*EEA ELTIF*

an *ELTIF* authorised by a *competent authority* other than the *FCA* under the *ELTIF regulation*.

*EEA financial conglomerate*

a *financial conglomerate* that is of a type that falls under Article 5(2) of the *Financial Groups Directive* (Scope of supplementary supervision of *regulated entities* referred to in Article 1 of that Directive) which in summary means a *financial conglomerate*:

- (a) that is headed by an *EEA regulated entity*; or
- (b) in which the *parent undertaking* of an *EEA regulated entity* is a *mixed financial holding company* which has its head office in the *EEA*; or
- (c) in which an *EEA regulated entity* is linked with a member of the *financial conglomerate* in the overall *financial sector* by a *consolidation Article 12(1) relationship*.



<i>EEA insurer</i>	<i>an insurer, other than a pure reinsurer, whose head office is in any EEA State except the United Kingdom and which has received authorisation under article 14 of the Solvency II Directive from its Home State Regulator.</i>
<i>EEA market operator</i>	<i>(in REC) a person who is a market operator whose home state is an EEA State other than the United Kingdom.</i>
<i>EEA parent financial holding company</i>	<p>(1) <i>(in accordance with Article 4(17) of the Banking Consolidation Directive (Definitions) and Article 3 of the Capital Adequacy Directive (Definitions)) for the purpose of GENPRU (except GENPRU 3) and BIPRU (except in BIPRU 12) a parent financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in any EEA State.</i></p> <p>(2) <i>(except in (1)) has the meaning as given to EU parent financial holding company in article 4(1)(31) of the EU CRR.</i></p>
<i>EEA parent institution</i>	<p>(1) <i>(in accordance with Article 4(16) of the Banking Consolidation Directive and Article 2 of the Capital Adequacy Directive (Definitions)) for the purpose of BIPRU (except BIPRU 12) a parent institution in a Member State which is not a subsidiary undertaking of another institution authorised in any EEA State, or of a financial holding company or mixed financial holding company established in any EEA State.</i></p> <p>(2) <i>(except in (1)) has the meaning as given to EU parent institution in article 4(1)(29) of the EU CRR .</i></p>
<i>EEA parent mixed financial holding company</i>	<p>(1) <i>(in accordance with Article 4(17a) of the Banking Consolidation Directive (Definitions)) for the purpose of GENPRU (except GENPRU 3) and BIPRU (except in BIPRU 12) a parent mixed financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in any EEA State.</i></p> <p>(2) <i>(except in (1)) has the meaning as given to EU parent mixed financial holding company in article 4(1)(33) of the EU CRR.</i></p>
<i>EEA parent undertaking</i>	<p>(a) <i>an EEA parent institution; or</i></p> <p>(b) <i>an EEA parent financial holding company; or</i></p> <p>(c) <i>an EEA parent mixed financial holding company.</i></p>

[Note: article 2(1)(85) of RRD]

<i>EEA Passport Rights Regulations</i>	the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).
<i>EEA prudential sectoral legislation</i>	(in relation to a <i>financial sector</i> ) requirements applicable to <i>persons</i> in that <i>financial sector</i> in accordance with EEA legislation about prudential supervision of <i>regulated entities</i> in that <i>financial sector</i> and so that: <ul style="list-style-type: none"> <li>(a) (in relation to the <i>banking sector</i> and the <i>investment services sector</i>) in particular this includes the requirements laid down in the <i>EU CRR</i> and (in relation to a <i>CAD investment firm</i>) the <i>Banking Consolidation Directive</i> and the <i>Capital Adequacy Directive</i>; and</li> <li>(b) (in relation to the <i>insurance sector</i>) in particular this includes requirements laid down in the <i>Solvency II Directive</i> and <i>Solvency II Regulations</i>.</li> </ul>
<i>EEA pure reinsurer</i>	a <i>pure reinsurer</i> whose head office is in any <i>EEA State</i> except the <i>United Kingdom</i> and which has received (or is deemed to have received) authorisation under article 14 of the <i>Solvency II Directive</i> from its <i>Home State Regulator</i> .
<i>EEA registered account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>person</i> that is registered as an <i>account information services provider</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> under the <i>Payment Services Directive</i> .
<i>EEA registered tied agent</i>	a <i>tied agent</i> of a <i>UK MiFID investment firm</i> that is not an <i>appointed representative</i> and is not an <i>FCA registered tied agent</i> because it is established in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>EEA regulated entity</i>	a <i>regulated entity</i> that is an <i>EEA firm</i> or a <i>UK firm</i> .
<i>EEA right</i>	(in accordance with paragraph 7 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the entitlement of a <i>person</i> to establish a <i>branch</i> or provide services in an <i>EEA State</i> other than that in which he has his relevant office: <ul style="list-style-type: none"> <li>(a) in accordance with the <i>Treaty</i> as applied in the <i>European Economic Area</i>; and</li> <li>(b) subject to the conditions of the relevant <i>Single Market Directive</i> or the <i>auction regulation</i>.</li> </ul> <p>In this definition, relevant office means:</p> <ul style="list-style-type: none"> <li>(i) in relation to a <i>person</i> who has a registered office and whose entitlement is subject to the conditions of the <i>Insurance Distribution Directive</i>, his registered office; and</li> </ul>

	(ii) in relation to any other <i>person</i> , his head office.
<i>EEA territorial scope rule</i>	<i>COBS</i> 1 Annex 1, Part 2 paragraph 1(1) (which provides that the territorial scope of <i>COBS</i> is modified to the extent necessary to be compatible with European law).
<i>EEA tied agent</i>	a <i>tied agent</i> who is an <i>FCA registered tied agent</i> or an <i>EEA registered tied agent</i> .
<i>ELTIF</i>	a European long-term investment fund (as defined in the <i>ELTIF regulation</i> ) authorised under the <i>ELTIF regulation</i> .
<i>ELTIF regulation</i>	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds ( <a href="http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&amp;from=EN">http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&amp;from=EN</a> ).
<i>establishment conditions</i>	(in relation to the establishment of a <i>branch</i> in the <i>United Kingdom</i> ) the conditions specified in paragraph 13 of Schedule 3 to the <i>Act</i> (EEA Passport Rights), which are that: <ul style="list-style-type: none"> <li>(a) if the <i>firm</i> falls within paragraph (a), (b), (c), (d) or (f) in the definition of “<i>EEA firm</i>”.</li> <li>(b) if the <i>firm</i> falls within paragraph (e) in the definition of “<i>EEA firm</i>”: <ul style="list-style-type: none"> <li>(i) the <i>appropriate regulator</i> has received notice (“a consent notice”) from the <i>firm’s Home State regulator</i> that the <i>firm</i> intends to establish a <i>branch</i> in the <i>United Kingdom</i>;</li> <li>(ii) (A) given in accordance with the <i>IDD</i>;</li> <li>(B) identifies the activities to which the consent relates; and</li> <li>(C) includes such other information as may be prescribed; and</li> <li>(iii) the <i>EEA firm</i> has been informed of the <i>applicable provisions</i> or one <i>month</i> has elapsed, beginning with the date on which the <i>appropriate UK regulator</i> received the consent notice.</li> </ul> </li> <li>(c) the <i>EEA firm</i> has been informed of the <i>applicable provisions</i> or two <i>months</i> have elapsed beginning with the date when the <i>FCA</i> or <i>PRA</i> (as the case may be) received the consent notice.</li> </ul>
<i>EU Cross-Border Regulation</i>	Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community.

<i>EuSEF</i>	a qualifying social entrepreneurship fund (as defined in the <i>EuSEF regulation</i> ).
<i>EuSEF manager</i>	the manager of a qualifying social entrepreneurship fund (as defined in the <i>EuSEF Regulation</i> ) that is registered in accordance with article 15 of the <i>EuSEF Regulation</i> .
<i>EuSEF regulation</i>	Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.
<i>EuVECA</i>	a qualifying venture capital fund (as defined in the <i>EuVECA regulation</i> ).
<i>EuVECA manager</i>	the manager of a qualifying venture capital fund (as defined in the <i>EuVECA Regulation</i> ) that is registered in accordance with article 14 of the <i>EuVECA Regulation</i> .
<i>EuVECA regulation</i>	Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.
<i>fund application rules</i>	(in <i>COLL</i> and <i>SUP</i> ) the <i>rules</i> set out in <i>COLL</i> 12.3.5R ( <i>COLL</i> fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a <i>UCITS scheme</i> and that an <i>EEA UCITS management company</i> must comply with when acting as the <i>operator</i> of the <i>UCITS scheme</i> , whether from a <i>branch</i> in the <i>United Kingdom</i> or under the freedom to provide <i>cross border services</i> , as required by article 19(3) of the <i>UCITS Directive</i> .
<i>Home State authorisation</i>	(as defined in paragraph 3(1)(a) of Schedule 4 to the <i>Act</i> (Treaty Rights)) authorisation of a <i>firm</i> under the law of its <i>Home State</i> to carry on a <i>regulated activity</i> .
<i>incoming ECA provider</i>	a <i>person</i> , other than an <i>exempt person</i> , who: <ul style="list-style-type: none"> <li>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>, with or for an <i>ECA recipient</i> present in the <i>United Kingdom</i>; and</li> <li>(b) is a national of an <i>EEA State</i> or a company or firm mentioned in article 54 of the <i>Treaty</i>.</li> </ul>
<i>incoming EEA AIFM</i>	an <i>incoming EEA firm</i> which is an <i>AIFM</i> and exercising its rights under <i>AIFMD</i> .

<i>incoming EEA AIFM branch</i>	<i>an incoming EEA firm</i> which is an <i>AIFM</i> and exercising its right to establish a <i>branch</i> under <i>AIFMD</i> .
<i>incoming EEA firm</i>	(in accordance with section 193(1)(a) of the <i>Act</i> (Interpretation of this Part)) an <i>EEA firm</i> which is exercising, or has exercised, its right to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> in accordance with Schedule 3 to the <i>Act</i> (EEA Passport Rights).
<i>incoming firm</i>	(in accordance with section 193(1) of the <i>Act</i> (Interpretation of this Part)) an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> .
<i>incoming Treaty firm</i>	(in accordance with section 193(1)(b) of the <i>Act</i> (Interpretation of this Part)) a <i>Treaty firm</i> which is exercising, or has exercised, its right to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> in accordance with Schedule 4 to the <i>Act</i> (Treaty rights).
<i>information centre</i>	a centre established by an <i>EEA State</i> to meet its obligations under article 23 of the <i>Consolidated Motor Insurance Directive</i> (Information Centres).
<i>investment services and activities passport notification</i>	a notification made in accordance with article 34(2) of <i>MiFID</i> and <i>MiFID ITS 4</i> Annex I.
<i>non-EEA firm</i>	a firm that has its registered office (or, if it has no registered office, its head office) in a <i>non-EEA state</i> .
<i>non-EEA insurer</i>	an <i>insurer</i> whose head office is not in an <i>EEA State</i> .
<i>non-EEA state</i>	a country or state that is not an <i>EEA State</i> .
<i>notice of intention</i>	a notice of intention (as described in <i>SUP 13.5</i> ) given by a <i>UK firm</i> to: <ul style="list-style-type: none"> <li>(a) establish a <i>branch</i> in an <i>EEA State</i> under paragraph 19(2) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms); or</li> <li>(b) provide services in an <i>EEA State</i> under paragraph 20(1) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms); or</li> <li>(c) establish a <i>branch</i> or provide services in an <i>EEA state</i> in the exercise of its <i>EEA right</i> under the <i>auction regulation</i>.</li> </ul>
<i>outgoing ECA provider</i>	a <i>firm</i> which: <ul style="list-style-type: none"> <li>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in the <i>United Kingdom</i>, with or for an <i>ECA recipient</i> present in an <i>EEA State</i> other than the <i>United Kingdom</i>; and</li> </ul>

	(b) is a national of an <i>EEA State</i> or a firm or company mentioned in article 54 of the <i>Treaty</i> .
<i>passport activity</i>	an activity carried on by an <i>EEA firm</i> , or by a <i>UK firm</i> , under an <i>EEA right</i> .
<i>passport right</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) the entitlement of a <i>person</i> to establish a branch or provide services in an <i>EEA State</i> other than that in which they are authorised to provide <i>electronic money</i> issuance services: <ul style="list-style-type: none"> <li>(a) in accordance with the Treaty on the Functioning of the European Union as applied in the <i>EEA</i>; and</li> <li>(b) subject to the conditions of the <i>Electronic Money Directive</i>.</li> </ul>
<i>relevant competent authorities</i>	(in relation to a <i>financial conglomerate</i> ) those <i>competent</i> authorities which are, or which have been appointed as, relevant <i>competent</i> authorities in relation to that <i>financial conglomerate</i> under Article 2(17) of the <i>Financial Groups Directive</i> (Definitions).
<i>relevant EEA details</i>	the details listed in regulation 14 of the <i>EEA Passport Rights Regulations</i> and set out in <i>SUP</i> 13 Annex 1 (Requisite details or relevant details: branches).
<i>resolution authority</i>	(a) (in the <i>UK</i> ) the Bank of England; or <ul style="list-style-type: none"> <li>(b) (in another <i>EEA State</i>) an authority designated as a resolution authority by that <i>EEA State</i> under article 3 of <i>RRD</i>.</li> </ul> <p>[Note: article 2(1)(18) of <i>RRD</i>]</p>
<i>service conditions</i>	in accordance with paragraph 14 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the conditions that: <ul style="list-style-type: none"> <li>(a) the <i>firm</i> has given its <i>Home State regulator</i> notice of its intent to provide services in the <i>United Kingdom</i>;</li> <li>(b) if the <i>firm</i> falls within paragraph (a), (d), (e) or (f) in the definition of “<i>EEA firm</i>”, the <i>FCA</i> or the <i>PRA</i> (as the case may be) has received notice from the <i>firm’s Home State regulator</i> containing such information as may be prescribed;</li> <li>(c) if the <i>firm</i> falls within paragraph (d), (e), (h) or (i) of that definition, its <i>Home State regulator</i> has informed it that the regulator’s notice has been sent to the <i>FCA</i> or the <i>PRA</i> (as the case may be); and</li> <li>(d) if the <i>firm</i> falls within paragraph (i) of that definition, one <i>month</i> has elapsed beginning with the date on which the <i>firm’s Home</i></li> </ul>

*State regulator* informed the *firm* that it had sent the regulator's notice to the *FCA* or the *PRA* (as the case may be).

<i>significant branch</i>	a <i>branch</i> that would be considered significant in a <i>Host State</i> under article 51(1) of <i>CRD</i> .  [Note: article 2(1)(340 of <i>RRD</i> )]
<i>third-country SMCR banking firm</i>	a <i>firm</i> identified as a third-country SMCR banking firm in the decision tree in <i>SYSC 23 Annex 1</i> (Definition of SMCR firm and different types of SMCR firms) and Part Four of that Annex.
<i>tied agent passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex VII</i> .
<i>top-up cover</i>	cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> which has elected to participate in accordance with section 214(5) of the <i>Act</i> , regulation 3 of the <i>Electing Participants Regulations</i> (Persons who may elect to participate) and <i>COMP 14</i> (Participation by EEA firms).
<i>top-up permission</i>	a <i>Part 4A permission</i> given to an <i>incoming EEA firm</i> , an <i>incoming Treaty firm</i> or a <i>UCITS qualifier</i> .
<i>Treaty activity</i>	(as defined in section 417(1) of the <i>Act</i> (Definitions)) an activity carried on under a <i>permission</i> obtained in accordance with Schedule 4 to the <i>Act</i> (Treaty Rights).
<i>Treaty firm</i>	(as defined in paragraph 1 of Schedule 4 to the <i>Act</i> (Treaty Rights)) a <i>person</i> :  (a) whose head office is situated in an <i>EEA State</i> (its “ <i>Home State</i> ”) other than the <i>United Kingdom</i> ; and  (b) which is recognised under the law of that State as its national.
<i>Treaty right</i>	the entitlement of a <i>Treaty firm</i> to qualify for <i>authorisation</i> under Schedule 4 to the <i>Act</i> (Treaty Rights).2001/7
<i>Treaty</i>	the Treaty on the Functioning of the European Union.
<i>UCITS Home State</i>	the Home State of a UCITS scheme or EEA UCITS scheme.
<i>UCITS qualifier</i>	a <i>firm</i> (other than an <i>EEA UCITS management company</i> ) which:  (a) for the time being is an <i>operator</i> , <i>trustee</i> or <i>depository</i> of a <i>scheme</i> which is a <i>recognised scheme</i> under section 264 of the <i>Act</i> ; and  (b) is an <i>authorised person</i> as a result of paragraph 1(1) of Schedule 5 to the <i>Act</i> (Persons Concerned in Collective Investment Schemes);

a reference to a *firm* as a *UCITS qualifier* applies in relation to the carrying on by the *firm* of activities for which it has *permission* in that capacity.

<i>UK-deposit insurer</i>	a <i>non-EEA insurer</i> that has made a deposit in the <i>United Kingdom</i> under article 162(2)(e) of the <i>Solvency II Directive</i> in accordance with article 167 of that Directive.
<i>UK ELTIF</i>	an <i>ELTIF</i> authorised by the <i>FCA</i> under the <i>ELTIF regulation</i> .
<i>UK MiFID investment firm</i>	a <i>MiFID investment firm</i> whose <i>Home State</i> is the <i>United Kingdom</i> (this may include a natural <i>person</i> provided the conditions set out in Article 4(1)(1) of <i>MiFID</i> are satisfied).
<i>UK parent mixed financial holding company in a member state</i>	a <i>parent mixed financial holding company</i> in a <i>Member State</i> where the <i>EEA State</i> in question is the <i>UK</i> .
<i>UK regulated EEA financial conglomerate</i>	a <i>financial conglomerate</i> (other than a <i>third-country financial conglomerate</i> ) that satisfies one of the following conditions: <ul style="list-style-type: none"> <li>(a) <i>GENPRU 3.1.29R</i> (Capital adequacy calculations for <i>financial conglomerates</i>) applies with respect to it; or</li> <li>(b) a <i>firm</i> that is a member of that <i>financial conglomerate</i> is subject to obligations imposed through its <i>Part 4A permission</i> to ensure that <i>financial conglomerate</i> meets levels of capital adequacy based or stated to be based on Annex I of the <i>Financial Groups Directive</i>.</li> </ul>

## Part 2: Comes into force on 9 December 2019

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

<i>head of overseas branch function</i>	<i>FCA controlled function</i> SMF19 in the table of <i>FCA-designated senior management functions</i> , described more fully in <i>SUP 10C.5.24R</i> .
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Amend the following definitions as shown.

<i>EEA core SMCR firm</i>	a <i>core SMCR firm</i> that is <del>an incoming EEA firm or incoming Treaty firm</del> a <u><i>TP firm</i></u> .
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*non-SMF board  
director subject to  
competence  
requirements*

(in relation to an *SMCR firm*) a *board director* of the *firm* who meets the following conditions:

- (a) ...
- (b) the *firm* is required to assess their fitness and propriety under the *competent employee rule*, SYSC 28 (Insurance distribution: specific knowledge, ability and good repute requirements) any ~~directly applicable EU legislation~~ onshored regulation or any other requirement of the *regulatory system*.

Delete the following definition. The text is not shown struck through.

*head of third country  
branch function*

*FCA controlled function* SMF19 in the table of *FCA-designated senior management functions*, described more fully in SUP 10C.5.24R.

**EXITING THE EUROPEAN UNION: HIGH LEVEL STANDARDS  
(AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. Part 2 of Annex F comes into force on 1 April 2019.
- C. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Principles for Businesses (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Training and Competence sourcebook (TC)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F

**Citation**

- E. This instrument may be cited as the Exiting the European Union: High Level Standards (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Introduction

### 1.1 Application and purpose

#### Application

- 1.1.1 G The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms* conducting *MiFID business*, ~~*incoming EEA firms*~~, ~~*incoming Treaty firms*~~, ~~*UCITS qualifiers*~~ ~~*AIFM qualifiers*~~, and *Annex II benchmark administrators*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply.

#### Purpose

- 1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. ~~This includes provisions which implement the *Single Market Directives*.~~ They derive their authority from the *FCA*'s rule-making powers as set out in the *Act* and reflect the *statutory objectives*.

...

#### Consequences of breaching the Principles

...

- 1.1.9 G Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the *FCA*'s other *rules* and *guidance* or ~~*EU onshored regulations*~~ should not be viewed as exhausting the implications of the *Principles* themselves.

...

## 3 Rules about application

### 3.1 Who?

- 3.1.1 R *PRIN* applies to every *firm*, ~~except that:~~

- (1) ~~for an incoming EEA firm or an incoming Treaty firm, the Principles apply only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm's Home State regulator;~~
- (2) ~~for an incoming EEA firm which is a CRD credit institution without a top-up permission, Principle 4 does not apply;~~
- (3) ~~for an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, the Principles do not apply;~~
- (4) ~~for a UCITS qualifier and AIFM qualifier, only Principles 1, 2, 3, 7 and 9 apply, and only with respect to the activities in PRIN 3.2.2R (Communication and approval of financial promotions);~~
- (5) ~~PRIN does not apply to an incoming ECA provider acting as such; and~~
- (6) ~~PRIN does not apply to a firm in relation to its carrying on of auction regulation bidding.~~

3.1.2 G ~~COBS 1 Annex 1 contains guidance that is relevant to the reservation of responsibility to a Home State regulator referred to in PRIN 3.1.1R(1). [deleted]~~

...

3.1.4 G ~~PRIN 3.1.1R(3) puts incoming EEA firms on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the Regulated Activities Order. [deleted]~~

3.1.5 G ~~PRIN 3.1.1R(4) reflects section 266 of the Act (Disapplication of rules). [deleted]~~

3.1.6 R A firm will not be subject to a Principle to the extent that it would be contrary to the UK's obligations under an requirements of an EU instrument measure passed or made before exit day, to the extent that those requirements continue to have effect after exit day under the EUWA.

...

### 3.3 Where?

3.3.1 R Territorial application of the Principles

Principle	Territorial application
<i>Principles 1, 2 and 3</i>	in a prudential context, apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the firm (or its

	<i>appointed representative</i> ) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>EU onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU onshored regulation</i> .
...	
<i>Principles 6, 7, 8, 9 and 10</i>	<i>Principle 8</i> , in a prudential context, applies with respect to activities wherever they are carried on; otherwise apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>EU onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU onshored regulation</i> .
...	

...

#### 4 Principles: MiFID business

##### 4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* gives effect to the provisions of the *EUWA* concerning the continuing application of the principle of the supremacy of EU law. It ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with an a relevant EU instrument measure. If a *Principle* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* but only to the extent necessary to ensure compliance with European law compatibility with the relevant EU measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* or *EU onshored regulation* which is relevant to an activity has a wider territorial scope. ~~Under *PRIN 3.1.1R*, the territorial application of a number of *Principles* to an *EEA MiFID investment firm* is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles 1, 2, 3, 6, 7, 8, 9 and 10*. We have added further *guidance* in *PERG* on the ability of a *Host State* to impose conduct of business requirements (see Q67).~~

...

What?

4.1.4 G ...

- (2) Under *PRIN* 3.1.6R, these disapplications may affect *Principles* 1, 2, 6 and 9. *PRIN* 3.1.6R applies only to the extent that the application of a *Principle* would be contrary to the *UK*'s obligations under a ~~*Single Market Directive*~~ relevant *EU* measure in respect of a particular transaction or matter. ...

...

## Annex B

## Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Application and purpose

...

### 1 Annex 1 Detailed application of SYSC 1

...

Part 2		Application of the common platform requirements	
		Who?	
...			
2.6	R	<del>The common platform requirements do not apply to an incoming ECA provider acting as such.</del> [deleted]	
...			
		What	
...			
2.8A	R	...	
		(6)	<i>SYSC 1 Annex 1 2.8R(1A) does not apply to a firm to the extent that articles 3 – 7 of the IDD Regulation <del>are directly applicable</del> <u>apply</u> to the firm (see SYSC 1 Annex 1 3.1AG).</i>
		...	
...			

Part 3		Tables summarising the application of the common platform requirements to different types of firm	
...			
3.1A	G	<i>The IDD Regulation <del>is directly applicable</del> <u>applies</u> to a firm when carrying on insurance distribution in</i>	



		relation to <i>insurance-based investment products</i> . Articles 3 to 7 of the <i>IDD Regulation</i> are reproduced in SYSC 10.1A for information for these <i>firms</i> .
...		

**Table A: Application of the common platform requirements in SYSC 4 to SYSC 10**

...

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 9.1.2 <del>CEU</del> <u>UK</u>	<del>EU</del> <u>UK</u> Directly applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	<del>EU</del> <u>UK</u> Directly applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based</i>	<del>EU</del> <u>UK</u> Directly applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based</i>	<del>EU</del> <u>UK</u> Directly applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-based</i>

		<i>investment products</i>	<i>investment products</i>	<i>investment products</i>
...				

Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 10.1A	<u>EU UK</u>  Directly applicable <u>Applicable</u> to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u>  Directly applicable <u>Applicable</u> to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u>  Directly applicable <u>Applicable</u> to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u>  Directly applicable <u>Applicable</u> to a firm carrying on insurance distribution in relation to insurance-based investment products
...				

**Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms**

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...		
SYSC 9		
...		
SYSC 9.1.2C <del>EU</del> <u>UK</u>	<del>EU</del> <u>UK</u>  Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	<del>EU</del> <u>UK</u>  <del>Directly applicable</del> Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products
...		
SYSC 10		
...		
SYSC 10.1A	<del>EU</del> <u>UK</u>  Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	<del>EU</del> <u>UK</u>  <del>Directly applicable</del> Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products
...		

...

**3 System and Controls**

...

**3.3 Additional requirements for insurance distribution**

...

Effect of provisions marked “EU”

3.3.2 G The *IDD Regulation* ~~is applies~~ directly ~~applicable~~ to an *insurer* when carrying on *insurance distribution* in relation to *insurance-based investment products*. Some of the articles of the *IDD Regulation* (see the provisions marked with the status letters ~~“EU”~~ “UK”) are reproduced in this section for those *insurers* for information only.

3.3.3 R (1) To the extent that the *IDD Regulation* does not ~~directly~~ apply, provisions in this section marked with the status letters ~~“EU”~~ “UK” apply to the *insurer* as if they were *rules*.

(2) References in Column (1) to a word or phrase used in the *IDD Regulation* have, for the purpose of SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

(1)	(2)
<del>“article 27”</del>	<del>SYSC 3.3.8R and SYSC 3.3.9R</del>
<del>“article 28”</del>	<del>SYSC 3.3.5R and SYSC 3.3.13R</del>
<del>“competent authority”</del>	<del>FCA</del>
<del>“customer”</del>	<del>Client</del>
<del>“Directive (EU) 2016/97”</del>	<del>IDD</del>
...	

3.3.4 G The effect of SYSC 3.3.3R is that:

- (1) the provisions marked ~~“EU”~~ “UK” apply as *rules* to an *insurer* when carrying on *insurance distribution activities* other than *insurance distribution* in relation to *insurance-based investment products*;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked ~~“EU”~~ “UK” as though the application of those provisions (~~and articles 27 and 28 of the *IDD*~~) is not limited to the distribution of *insurance-based investment products*; and

- (3) the scope of the application of the *IDD Regulation* is extended from *insurance distribution* to *insurance distribution activities*.

#### Identifying conflicts

...

- 3.3.6 EU  
U  
K 3(1) For the purposes of identifying, in accordance with ~~Article 28 of Directive (EU) 2016/97~~ rules 3.3.5, 3.3.13, 10.1.3 and 10.1.8 of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

...

...

#### Conflicts policy

- 3.3.10 EU  
U  
K 4(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.
- Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

#### Contents of policy

- 3.3.11 EU  
UK ...

[**Note:** article 4(2) of the *IDD Regulation*]

3.3.12 EU ...  
UK

[**Note:** article 5 of the *IDD Regulation*]

Disclosure of conflicts

...

3.3.14 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid  
U over-reliance on disclosure to ensure that disclosure to  
K customers, pursuant to Article 28(2) of Directive (EU) 2016/97  
rules 3.3.13 and 10.1.8 of the Senior Management Arrangements,  
Systems and Controls sourcebook, in so far as those rules apply  
to insurance-based investment products, is a measure of last  
resort that can be used only where the effective organisational  
and administrative arrangements established by the insurance  
intermediary or insurance undertaking to prevent or manage  
conflicts of interest in accordance with Article 27 of Directive  
(EU) 2016/97 rules 3.3.8, 3.3.9, 10.1.3, 10.1.7, 10.1.7A of the  
Senior Management Arrangements, Systems and Controls  
sourcebook, in so far as these rules apply to insurance-based  
investment products are not sufficient to ensure, with reasonable  
confidence, that risks of damage to the interests of the customer  
will be prevented.

...

[**Note:** article 6 of the *IDD Regulation*]

Review of conflicts policy

3.3.15 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97 3.3.8,  
U 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management  
K Arrangements, Systems and Controls sourcebook, in so far as  
those rules apply to insurance-based investment products,  
insurance intermediaries and insurance undertakings shall assess  
and periodically review, on an at least annual basis, the conflicts  
of interest policy established in accordance with Article 4 and  
take all appropriate measures to address any deficiencies.

[**Note:** article 7(1) of the *IDD Regulation*]

Record keeping

3.3.16 EU ...  
U  
K

[**Note:** article 7(2) of the *IDD Regulation*]

...

3.3.18 G ...

(2) For the purposes of SYSC 3.3.17R, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in COBS 9A.4.3~~EUUK~~ or 10A.7.2~~EUUK~~ for any *firm* to whom the *IDD Regulation* is ~~not directly applicable~~ does not apply) means that a record needs to be retained for longer than five years.

3.3.19 ~~EU~~  
U  
K

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the ~~competent authority~~ FCA. The ~~competent authority~~ FCA shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[**Note:** article 19(4) of the *IDD Regulation*]

...

## 9 Record-keeping

### 9.1 General rules on record-keeping

...

Specific requirements for the distribution of insurance-based investment products

...

9.1.2B G ...

(2) For the purposes of SYSC 9.1.2AR, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in COBS 9A.4.3~~EUUK~~ or COBS 10A.7.2~~EUUK~~ for any *firm* to whom the *IDD Regulation* is ~~not directly applicable~~ does not apply) means that a record needs to be retained for longer than five years.

9.1.2C ~~EU~~  
U  
K

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the ~~competent authority~~ Financial Conduct Authority. The ~~competent authority~~ Financial Conduct Authority shall be able to access them readily, to reconstitute each element in a clear and accurate

manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[**Note:** article 19(4) of the *IDD Regulation*]

- 9.1.2D R (1) *SYSC 9.1.2CEUUK* applies as if it was a *rule* to *firms* doing *insurance distribution activities* to which the *IDD Regulation* does not apply, in relation to the records for an *insurance-based investment product* required in *COBS 9A.4* and *COBS 10A.7*.
- (2) ~~Firms to whom (1) applies must read references in SYSC 9.1.2CEU to “the competent authority” as meaning “the FCA”.~~  
[deleted]

...

## 10 Conflicts of interest

### 10.1 Application

Application to insurance intermediaries

- 10.1.-4 G (1) Subject to *SYSC 10.1.-3R*, this section applies to a *firm* carrying on *insurance distribution activities* in accordance with the tables in Part 3 of *SYSC 1 Annex 1*. Certain *rules* are disapplied where the *firm* is subject to ~~directly applicable~~ the provisions in the *IDD Regulation* (see *SYSC 10.1.-3R*).

...

...

### 10.1A *IDD Regulation* – Conflicts of interest

Application

- 10.1A.1 G The *IDD Regulation* ~~is applies~~ applies directly ~~applicable~~ to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products*. The relevant articles relating to conflicts of interest are set out in this section for information only.

Identifying conflicts

- 10.1A.2 ~~EU~~  
UK 3(1) For the purposes of identifying, in accordance with ~~Article 28 of Directive (EU) 2016/97~~ rules 3.3.5, 3.3.13, 10.1.3 and 10.1.8 of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a



risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

...

...

[**Note:** article 3 of the *IDD Regulation*]

#### Conflicts policy

10.1A.3 EU 4(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

#### Contents of policy

10.1A.4 EU ...  
UK

[**Note:** article 4(2) of the *IDD Regulation*]

10.1A.5 EU ...  
UK

[**Note:** article 5 of the *IDD Regulation*]

#### Disclosure of conflicts

10.1A.6 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to ~~Article 28(2) of Directive (EU) 2016/97~~ rules 3.3.13 and 10.1.8 of the Senior Management Arrangements, Systems

and Controls sourcebook, in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

...

[**Note:** article 6 of the *IDD Regulation*]

#### Review of conflicts policy

- 10.1A.7 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97 rules 3.3.8, 3.3.9, 10.1.3, 10.1.7 and 10.1.7A of the Senior Management Arrangements, Systems and Controls sourcebook, in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[**Note:** article 7(1) of the *IDD Regulation*]

#### Record keeping

- 10.1A.8 EU ...  
UK

[**Note:** article 7(2) of the *IDD Regulation*]

...

## **10A Recording telephone conversations and electronic communications**

### **10A.1 Application**

#### Application

- 10A.1.1 R Subject to the exemptions in *SYSC* 10A.1.4R, this chapter applies to a *firm*:

- (1) that is a:

...

- (a) ~~UK~~ *MiFID investment firm*; or
- (d) ~~incoming EEA AIFM~~; or [deleted]
- ...
- (g) ~~EEA MiFID investment firm~~; or [deleted]
- ...
- (2) ...
- ...
- (e) *managing a UK UCITS* to the extent that this comprises the function of investment management referred to in Annex II of the *UCITS Directive*;
- ...

[**Note:** article 16(7) and 16(11) of *MiFID*]

10A.1.2 G Where this chapter applies to a *third country investment firm*, it applies in conjunction with *GEN 2.2.22AR*, to ensure that such *firms* are not treated in a more favourable way than ~~an EEA~~ a *UK firm*.

10A.1.3 R For a *firm* in *SYSC 10A.1.1R(1)* (other than a *MiFID investment firm* or a *third country investment firm*) *MiFIR*, and any *EU Regulation* adopted under *MiFIR* or *MiFID* which is an *onshored regulation*, apply to the extent relevant to the subject matter of this chapter as if ~~it~~ the *firm* were a *MiFID investment firm* providing *investment services* or performing *investment activities* in accordance with article 16(7) of *MiFID*.

...

## 12 Group risk systems and controls requirements

### 12.1 Application

12.1.1 R Subject to *SYSC 12.1.2R* to *SYSC 12.1.4R*, this section applies to each of the following which is a member of a *group*:

- (1) a *firm* that falls into any one or more of the following categories:
  - (a) a *regulated entity* that is:
    - (i) an *investment firm*, except a *designated investment firm* unless (ii) applies; or
    - (ii) a *credit institution* or *designated investment firm* that is a *subsidiary undertaking* of a *UK parent*

~~institution in a Member State~~ that is an *IFPRU investment firm*;

- (b) [deleted]
  - (c) an *insurer*;
  - (d) a *BIPRU firm*;
  - (e) a *parent financial holding company in a Member State the UK* or a *UK parent financial holding company* that is a member of one of the following:
    - (i) a *UK consolidation group*; or
    - (ii) an *FCA consolidation group*; and
  - (f) a *firm* subject to the *rules* in *IPRU(INV)* Chapter 14.
- (2) a *UCITS firm*, but only if its *group* contains a *firm* falling into (1); and
  - (3) the *Society*.

12.1.2 R Except as set out in SYSC 12.1.4R, this section applies with respect to different types of *group* as follows:

- (1) SYSC 12.1.8R and SYSC 12.1.10R apply with respect to all *groups*, including ~~UK-regulated EEA financial conglomerates, other financial conglomerates~~ and *groups* dealt with in SYSC 12.1.13R to SYSC 12.1.15R; and
- (2) ~~the additional requirements set out in SYSC 12.1.11R and SYSC 12.1.12R only apply with respect to UK-regulated EEA financial conglomerates; and [deleted]~~
- (3) the additional requirements set out in SYSC 12.1.13R to SYSC 12.1.1R only apply with respect to *groups* of the kind dealt with by whichever of those *rules* apply.

12.1.3 R This section does not apply to:

- (1) ~~an incoming EEA firm; or~~
- (2) ~~an incoming Treaty firm; or~~
- (3) ~~a UCITS qualifier; or~~
- (4) ~~an ICVC; or~~
- (5) ~~an incoming ECA provider acting as such.~~

- 12.1.4 R (1) This *rule* applies in respect of the following *rules*:
- (a) SYSC 12.1.8R(2);
  - (b) SYSC 12.1.10R(1), so far as it relates to SYSC 12.1.8R(2);
  - (c) SYSC 12.1.10R(2); and
  - (d) SYSC 12.1.11R to SYSC 12.1.15R.
- (2) The *rules* referred to in (1):
- (a) ~~only apply with respect to a *financial conglomerate* if it is a UK-regulated *EEA financial conglomerate*; [deleted]~~
  - (b) ~~(so far as they apply with respect to a *group* that is not a *financial conglomerate*) do not apply with respect to a *group* for which a *competent authority* in another *EEA state* is lead regulator; [deleted]~~
  - (c) (so far as they apply with respect to a *financial conglomerate*) do not apply to a *firm* with respect to a *financial conglomerate* of which it is a member if the interest of the *financial conglomerate* in that *firm* is no more than a *participation*;
  - (d) (so far as they apply with respect to other *groups*) do not apply to a *firm* with respect to a *group* of which it is a member if the only relationship of the kind set out in paragraph (3) of the definition of *group* between it and the other members of the *group* is nothing more than a *participation*; and
  - (e) do not apply with respect to a *third-country group*.

...

Purpose

...

- 12.1.7 G ~~This section implements article 109(2) of the *CRD* and article 9 of the *Financial Groups Directive* (Internal control mechanisms and risk management processes). [deleted]~~

...

CRR firms and non-CRR firms that are parent financial holding companies in a ~~Member State~~ the UK or UK parent financial holding companies

- 12.1.13 R If this *rule* applies under SYSC 12.1.14R to a *firm*, the *firm* must:
- (1) comply with SYSC 12.1.8R(2) in relation to any *UK consolidation group* or, if applicable, non-EEA non-UK sub-group of which it is a member, as well as in relation to its *group*; and
  - (2) ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* or, if applicable, non-EEA UK sub-group of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:
    - (a) SYSC 4.1.1R and SYSC 4.1.2R;
    - (b) SYSC 4.1.7R;
    - (bA) SYSC 4.3A;
    - (c) SYSC 5.1.7R;
    - (d) SYSC 7;
    - (dA) the *Remuneration Code*; or the *dual-regulated firms Remuneration Code*, whichever is applicable;
    - (e) *BIPRU 12.3.4R, BIPRU 12.3.5R, BIPRU 12.3.7AR, BIPRU 12.3.8R, BIPRU 12.3.22AR, BIPRU 12.3.22BR, BIPRU 12.3.27R, BIPRU 12.4.-2R, BIPRU 12.4.-1R, BIPRU 12.4.5AR, BIPRU 12.4.10R, BIPRU 12.4.11R and BIPRU 12.4.11AR*;
    - (f) [deleted];
    - (g) [deleted];
    - (h) [deleted];

[**Note:** article 109(2) of *CRD*]
  - (3) ensure that compliance with the obligations in (2) enables the consolidation group or, if applicable, the non-EEA non-UK sub-group to have arrangements, processes and mechanisms that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[**Note:** article 109(2) of *CRD*]

- 12.1.14 R SYSC 12.1.13R applies to a *firm* that is:

- (1) [deleted]

- (2) a *CRR firm*; or
- (3) a non-*CRR firm* that is a *parent financial holding company in a Member State the UK* or ~~and is a member of a UK consolidation group~~ a UK parent financial holding company.

...

## 19F Remuneration and performance management

...

### 19F.2 IDD remuneration incentives

Application

...

19F.2.1 R This section does not apply to an *authorised professional firm* with  
A respect to its *non-mainstream regulated activities* if:

- (1) the *firm's designated professional body* has made rules which ~~implement~~ implemented article 17(3) of the *IDD*;

...

...

## 28 Insurance distribution: specific knowledge, ability and good repute requirements

...

### 28.2 Knowledge and ability requirements

Knowledge and ability requirements

...

28.2.3 R A *firm* must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

...

- (2) for ~~insurance based investment products~~ *insurance-based investment products* as defined at article 2(1)(17) of the *IDD* (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or

~~indirectly, to market fluctuations. This excludes products such as non-investment insurance and certain life insurance):~~

...

(3) for *long-term insurance contracts*:

...

(b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant ~~Member State~~ state;

...

...



## Annex C

### Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Introduction

#### 1.1A Application

...

To what extent does COND apply to incoming EEA firms and incoming Treaty firms?

1.1A.4 G ~~COND applies to incoming EEA firms and incoming Treaty firms as set out below:~~

- (1) ~~for an incoming EEA firm or an incoming Treaty firm which does not carry on any PRA-regulated activities, FCA threshold conditions 2C to 2F apply; and~~
- (2) ~~for an incoming EEA firm or an incoming Treaty firm which carries on a PRA-regulated activity, FCA threshold conditions 3B to 3E apply.~~

~~FCA threshold conditions apply to incoming EEA firms and incoming Treaty firms only in as far as relevant to the discharge by the FCA of its relevant functions in relation to an application for, or the exercise of its own initiative powers in relation to, a top-up permission or the functions relating to the FCA's consent or consultation rights relating to the exercise by the PRA of its powers in relation to an application for, or use of its own initiative powers relating to, a top-up permission. [deleted].~~

...

Where does COND apply?

1.1A.7 G ~~COND applies in relation to all of the regulated activities wherever they are carried on, except as stated in COND 1.1A.4G.~~

#### 1.2 Purpose

...

Applications for a Part 4A permission or variation of Part 4A permission

1.2.2 R ...

- (2) ~~If, however, the applicant for permission is an incoming firm seeking top-up permission, or variation of top-up permission, under~~

~~Part 4A of the Act (Permission to carry on regulated activities), then under paragraphs 6A and 7A of Schedule 6 to the Act (Threshold conditions), the FCA will have regard only to satisfaction of the FCA threshold conditions specified as applicable in COND 1.1A.4G, as relevant to the regulated activities for which the applicant has, or will have, Part 4A permission. [deleted]~~

Exercise of the FCA's own initiative powers

1.2.3 R ...

- (3) ~~The FCA can also exercise its own initiative powers under section 55J or section 55L of the Act in relation to the top-up permission of an incoming firm. But this is only on the grounds that the incoming firm is failing, or likely to fail, to satisfy the FCA threshold conditions specified as applying to incoming firms under COND 1.1A.4G. [deleted]~~

...

## 2 The threshold conditions

...

### 2.3 Effective supervision

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-

...

(f) if A has close links with another person ("CL")-

- (i) the nature of the relationship between A and CL;
- (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and
- (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not ~~[an EEA State the UK]~~ ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.

...

...

Paragraph 3B of Schedule 6 to the Act

- 2.3.1C UK (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- ...
- (f) if B has close links with another person (“CL”)-
- (i) the nature of the relationship between B and CL;
  - (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of B; and
  - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not ~~[an EEA State~~ the UK ](“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of B.
- ...

...

- 2.3.7 G (1) For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, and except in relation to an *incorporated friendly society*, an *undertaking* is a *parent undertaking* of another *undertaking* (a subsidiary undertaking) if any of the following apply to it:

...

- (g) it is an individual and would be a *parent undertaking* of the *subsidiary undertaking*; ~~or~~
- (h) ~~it is incorporated in or formed under the law of another EEA State and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the *Seventh Company Law Directive*.~~  
[deleted]

...

## Annex D

### Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and Purpose

##### 1.1 Who, what and where?

Who and what?

...

- 1.1.1B G *ESMA* has issued guidelines specifying criteria for the assessment of knowledge and competence (EMSA 2015/1886 dated 3 January 2017). ~~The *ESMA* guidelines can be found at <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>~~

...

#### 2 Competence

##### 2.1 Assessing and maintaining competence

Assessment of competence and supervision

###### 2.1.1 R ...

- (2) ~~A firm may assess an *employee* who is subject to, but has not satisfied, an appropriate qualification requirement as competent to the extent that:~~
- (a) ~~that *employee* works in a *branch* in an *EEA State* other than the *United Kingdom*;~~
  - (b) ~~the *employee* is engaging in *MiFID business*; and~~
  - (c) ~~there is no appropriate qualification or equivalent in that *EEA State*. [deleted]~~

...

#### 4 Specified modified requirements

##### 4.1 Specified requirements for MiFID investment firms and for third country investment firms

...

4.1.3 R References in *TC* 4.1.4R to a relevant individual’s knowledge and competence are to the knowledge and competence necessary to ensure that the *firm*, on behalf of which the relevant individual acts, is able to meet its obligations under:

- (1) those *rules* which ~~implement~~ implemented articles 24 and 25 of *MiFID* (including those *rules* which ~~implement~~ implemented related provisions under the *MiFID Delegated Directive*); and
- (2) related provisions of the *MiFID Org Regulation*.

4.1.4 R Unless the context requires otherwise the *rules* in column 1 of the table are amended as set out in column 2:

Column 1	Column 2
Relevant rule	Amendments
TC 2.1.1R(1)	<p>Insert the following at the end of <i>TC</i> 2.1.1R(1):</p> <p>“In addition, a <i>firm</i> must not assess a relevant individual as competent unless the <i>firm</i> has satisfied itself that the relevant individual possesses the knowledge and competence to enable the <i>firm</i> to meet its obligations under <i>SYSC</i> 5.1.5ABR. This means that the relevant individual has also:</p> <p>(a) obtained appropriate experience which means that the relevant individual has successfully demonstrated the ability to carry on the activities through previous work experience. This work must have been performed, on a full-time equivalent basis, for a minimum period of 6 <i>months</i>; and</p> <p>(b) attained an appropriate qualification which means a qualification or other test or training course that meets the criteria set out by the <i>ESMA</i> guidelines <u>referred to in <i>TC</i> 1.1.1BG</u>.</p> <p>The level of knowledge and competence needed to fulfil the <i>firm’s</i> obligations reflects the scope and degree of the activities, as described in <i>TC</i> 4.1.2R above, carried out by the relevant individual.”</p>
...	...

...

**App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3**

1.1.1	R	Activity	Products/Sectors	Is there an appropriate qualification requirement?
		...		
		...		
		<i>MiFID business bidding</i> [deleted]	13C [deleted]	<i>Emissions auction products that are financial instruments</i> [deleted] No [deleted]
		...		

**App 2.1 TCs Territorial Scope subject to the limitation in TC Appendix 3**

2.1.1	R		<i>UK domestic firm</i>	<i>Incoming EEA firm</i> [deleted]	<i>Overseas firm (other than an incoming EEA firm)</i>
		<i>MiFID business and equivalent third country business</i>	<i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom and if an activity is carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in, and within the territory of,</i>	<i>TC does not apply</i>	...

	<p><del>another EEA State, TC applies although matters which would otherwise be covered by SYSC 5.1.5ABR are matters reserved for the Host State regulator</del></p>		
<p><i>Insurance distribution activities</i></p>	<p><i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i></p> <p><i>and</i></p> <p><del><i>TC also applies in respect of employees who engage in or oversee activities from a branch established in another EEA state</i></del></p>	<p><del><i>TC does not apply</i></del></p>	<p>...</p>
<p>Mortgage activities and reversion activities numbers 20, 20A, 21, 21A, 21B, 22 and 23 in TC App 1.1.1R; and</p> <p><i>MCD credit agreement activities numbers 23A to</i></p>	<p><i>TC applies if the customer is resident in the United Kingdom at the time the activity is carried on</i></p> <p><i>and</i></p> <p><del><i>TC also applies if the customer is resident in another EEA</i></del></p>	<p><del><i>Same as for UK domestic firm except that:</i></del></p> <p><del><i>(1) if the firm carries on the activity from an establishment maintained by the firm or its appointed representative in the United Kingdom and</i></del></p>	<p>...</p>

<p>23E in <i>TC</i> App 1.1.1R</p>	<p><i>State</i> (at the time that the activity is carried on) but only if the activity is carried on from an establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i></p>	<p>the <i>customer</i> is resident in another <i>EEA State</i> when the activity is carried on, <i>TC</i> does not apply; and                  (2) if the <i>firm</i> carries on the activity from an establishment maintained by the <i>firm</i> in another <i>EEA State</i> (and the customer is resident in the <i>United Kingdom</i> when the activity is carried on), the following provisions of <i>TC</i> apply: <i>TC</i> 2.1.5AR; <i>TC</i> 2.1.5BR(2), (3), (5) and (6); <i>TC</i> 2.1.5CR; <i>TC</i> 2.1.5DG; <i>TC</i> 2.1.5ER; and <i>TC</i> 2.1.5FG.                  [Note: article 9(3) of the <i>MCD</i>]</p>	
<p>Any other activity in Appendix 1</p>	<p>...</p>	<p><i>TC</i> applies in respect of its <i>employees</i> who carry on activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>	<p>...</p>



### 3.1 Circumstances in which TC does not apply

3.1.1

Type of firm/activity	Application
<i>Incoming EEA firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>
<i>Incoming Treaty firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>
<i>UCITS qualifier</i>	This sourcebook only applies where it is relevant to the manner in which a <i>firm communicates or approves a financial promotion</i>
...	
<i>Incoming ECA provider</i>	<i>TC does not apply to an incoming ECA provider acting as such.</i>

...

### TP 1 Designated Investment Business: Assessments of competence before commencement

TC TP 1.1

...			
1.1A	G	Notwithstanding TC TP 1 1.1R:	
		(1)	a <i>firm</i> is subject to SYSC 5.1.5ABR in respect of such an <i>employee</i> and should have regard to the guidelines ESMA has issued specifying the criteria for the assessment of knowledge and competence ( <u>ESMA 2015/1886 dated 3 January 2017</u> ). The ESMA guidelines can be found at: <a href="https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence">https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence</a> ; and
		...	

...

## Annex E

### Amendments to the General Provisions sourcebook (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 FCA approval and emergencies

##### 1.1 Application

...

##### 1.1.1 R ...

- (2) ~~For a *UCITS* qualifier, this chapter applies only with respect to the *communication* and *approval of financial promotions* to which *COBS 4 (Communicating with clients, including financial promotion)* applies and to the maintenance of facilities to which *COLL 9.4 (Facilities in the United Kingdom)* applies. [deleted]~~

...

##### 1.2 Referring to approval by the FCA

...

##### 1.2.2A R ...

- (1A) Paragraph 1 does not apply to a *firm* to the extent that it is incompatible with ~~the *United Kingdom's*~~ obligations under article 44(8) of the *MiFID Org Regulation*.

...

...

##### 1.2.4 G *A firm that carries on MiFID, equivalent third country or optional exemption business* should have regard to the requirement in article 44(8) of the *MiFID Org Regulation* which is reproduced at ~~*COBS 4.5A.16EU*~~ *COBS 4.5A.16UK*.

#### 1.3 Emergency

...

##### 1.3.5 *GEN 1.3.2R* operates on the *FCA's rules*. It does not affect the *FCA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FCA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part 4A permission* based on a failure or potential failure to satisfy the *threshold conditions* (see *SUP 7 (Individual requirements)* and *EG 8 (Variation and*

cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms)).

## 2 Interpreting the Handbook

...

### 2.2 Interpreting the Handbook

...

European Economic Area (EEA)

- 2.2.21 G The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* which are not Member States of the *EU*, namely Norway, Iceland and Liechtenstein. References in the *Handbook* concerning the territorial scope of *EU* law should therefore be read as extending throughout the *EEA* where the context requires. [deleted]

Treaty of Lisbon

- 2.2.22 G As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires. ~~In particular, references which are copied out directly from *EU* or *UK* legislation may contain references to the Community which should be read in conjunction with section 3 of the European Union (Amendment) Act 2008.~~

...

## 4 Statutory status disclosure

### 4.1 Application

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:
- (1) ~~for an *incoming ECA provider*, this chapter does not apply when the *firm* is acting as such; [deleted]~~
  - (2) ~~for an *incoming EEA firm* which has *permission* only for *cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, this chapter does not apply; [deleted]~~
  - (3) ~~for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*; [deleted]~~

- (4) ~~for a UCITS qualifier, this chapter does not apply; [deleted]~~
- (5) only *GEN 4.1* (Application) and *GEN 4.5* (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of *COBS 1 Annex 1*; and
- (6) only *GEN 4.1* (Application) and *GEN 4.5* (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *administering a benchmark*.

...

- 4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, ~~provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.~~

...

### 4.3 Letter disclosure

...

- 4.3.1B G An example for *GEN 4.3.1AG* would be where a letter covers business for which the *FCA* is the *competent authority* under the *UK provisions which implemented the IDD* and under the *UK provisions which implemented MiFID*.

...

Exception: insurers

- 4.3.4 R *GEN 4.3.1R* (Disclosure in letters to retail clients) does not apply in relation to:
- (1) *general insurance business* if:
- (a) ~~the *State of the risk* is an *EEA State* other than the *United Kingdom*; or~~
- (b) the *State of the risk* is outside the ~~*EEA*~~ *United Kingdom* and the *client* is not in the *United Kingdom* when the *contract of insurance* is entered into; or

- (2) *long-term insurance business if:*
- (a) ~~the client is habitually resident in an EEA State other than the United Kingdom; or~~
  - (b) the client is habitually resident outside the ~~EEA~~ United Kingdom and is not present in the United Kingdom when the *contract of insurance* is entered into.

...

Exception: credit firms

- 4.3.7 R *GEN 4.3.1R (Disclosure in letters to retail clients) does not apply to a credit firm (other than a firm with a limited permission) with respect to the activity of entering into a regulated credit agreement as lender to which the Consumer Credit Directive applies, to the extent it would be contrary to the United Kingdom's obligations under an EU instrument would have applied if the activity had been carried on immediately before exit day.*
- 4.3.8 G *A credit firm which carries on the activity of entering into a regulated credit agreement as lender, in respect of an agreement to which ~~articles 5 and 6 of the Consumer Credit Directive~~ apply GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of GEN 4.3.7R is under an obligation to disclose pre-contract information in the form and to the extent required by the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013). Firms which carry on *credit broking* may take on the same obligation. A *credit firm* must also ensure specified information is included in *credit agreements* to which ~~the Consumer Credit Directive~~ applies GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of GEN 4.3.7R in the form and to the extent required by the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014).*
- 4.3.9 G *The effect of GEN 4.3.7R is that a credit firm in relation to a regulated credit agreement which would have been covered by the Consumer Credit Directive if the activity had been carried on immediately before exit day does not need to comply with GEN 4.3.1R in relation to those letters (or electronic equivalents) that accompany the information required under the Regulations referred to in GEN 4.3.8G.*
- 4.3.10 G *GEN 4.3.7R and the guidance related to it are not relevant to Regulated regulated activities covered by a limited permission (see the “relevant credit activities” set out in paragraph 2G of Schedule 6 to the Act) ~~do not fall within the scope of articles 5 and 6 of the Consumer Credit Directive,~~ therefore ~~GEN 4.3.7R and the guidance related to it are not relevant to those activities.~~*

...

## 4.5 Statements about authorisation and regulation by the appropriate regulator

...

4.5.5 G *SUP 13A Annex 1 provides guidance on the application of the Handbook to an incoming EEA firm. [deleted]*

4.5.6 G (1) ~~Neither an incoming EEA firm nor an incoming Treaty firm is authorised by the FCA or PRA when acting as such.~~

(2) It is likely to be misleading for a firm that is not authorised by the FCA or PRA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have recourse to the Financial Ombudsman Service or the FSCS where this is not the case.

...

#### 4 Annex Statutory status disclosure 1R

This rule applies to firms that are not PRA-authorised persons:

	Type of firm	Required disclosure (Note 5)
(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	<b>“Authorised and regulated by the Financial Conduct Authority” (Note 1)</b>
(2)	<i>Incoming firm without a top-up permission [deleted]</i>	(a) <del>“Authorised by [name of Home State regulator]</del> <b>or</b> (b) <del>“Authorised by [name of Home State regulator] and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our regulation by the Financial Conduct Authority are available from us on request”</del> <b>(Notes 1, 2, 2a and 3)</b>
(3)	<i>Incoming firm with a top-up permission [deleted]</i>	<del>“Authorised by [name of Home State regulator] and authorised and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our authorisation and regulation by the Financial Conduct Authority are available from us on request”</del> <b>(Notes 1, 2 and 3)</b>

(4)	...	...
<p>...</p> <p><b>Note 2 = <del>An incoming firm is free to translate the name of its Home State regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.</del> [deleted]</b></p> <p><b>Note 2a = <del>An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the customer that it is regulated or supervised by the FCA, in which case it must make disclosure (b).</del> [deleted]</b></p> <p>...</p>		

#### 4 Annex 1AR Statutory status disclosure (PRA-authorized persons)

This rule applies to firms that are PRA-authorized persons:

	Type of firm	Required disclosure (Note 5)
(1)	...	...
(2)	overseas firm (which is not an incoming firm)	...
(3)	Incoming firm without a top-up permission [deleted]	(a) “Authorised by [name of <i>Home State regulator</i> ]” or (b) “Authorised by [name of <i>Home State regulator</i> ] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request” (Notes 1, 2, 2a and 3)
(4)	Incoming firm with a top-up permission [deleted]	“Authorised by [name of <i>Home State regulator</i> ] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request” (Notes 1, 2 and 3)

...	...	...
<p>...</p> <p>Note 2 = An <del>incoming firm</del> or overseas firm is free to translate the name of its <i>Home State regulator</i> or <i>overseas regulator</i> into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.</p> <p>Note 2a = <del>An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the customer that it is regulated or supervised by the FCA or PRA, in which case it must make disclosure (b).</del> <u>[deleted]</u></p> <p>...</p> <p>Note 3a = An overseas firm <del>that is not an incoming firm</del> is only required to disclose its authorisation and/or regulated by an <i>overseas regulator</i> if it is so authorised and/or regulated.</p> <p>...</p>		

...

**Sch 4 Powers exercised**

...

4.2G Powers to make rules

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the <i>rules</i> in <i>GEN</i> :	
	...
	<del>Paragraphs 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of Schedule 3 (EEA Passport Rights)</del>
	...

...

4.7G Powers to direct, require or specify

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> in <i>GEN</i> to direct, require or specify:	
	...
	<del>Section 293A (Information: compliance with EU requirements)</del>
	...



	Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)
	...

After GEN TP 4 (Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook) insert a new TP 5. The text is not underlined.

**TP 5 Transitional provisions applying across the FCA Handbook and relating to the UK's exit from the EU**

Table: 1 Transitional provisions applying across the Handbook

(1)	The purpose of these transitional provisions is to assist a smooth transition on <i>exit day</i> . They comprise various technical provisions that will apply across the whole <i>FCA Handbook</i> and achieve results that most people would probably expect to apply in any event.
(2)	These transitional provisions consist of general transitional provisions, which apply at a high level of generality, and more specific transitional provisions in relation to record keeping and <i>notification rules</i> .
(3)	The more specific transitional provisions relating to record keeping and <i>notification rules</i> override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the <i>FCA Handbook</i> relating to the matter.
(4)	Definitions for these transitional provisions, additional to those in the <i>Glossary</i> , are provided at row [13] of Table 2.

Table 2: Transitional provisions applying across the FCA Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
1	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<b>Acts under pre-exit day provisions</b>  Anything done, or having effect as done, under or for the purposes of any pre- <i>exit day</i> provision has effect	From <i>exit day</i>	<i>exit day</i>

			as if done under or for the purposes of any substantially similar provision in the <i>FCA Handbook</i> .		
2	Row 1 of this table	G	For example, a <i>firm</i> may continue to treat a <i>client</i> as an <i>elective eligible counterparty</i> pursuant to <i>COBS 3.6.4R</i> where prior to <i>exit day</i> it had categorised that <i>client</i> as such in deference to the status of that undertaking under the law or measures of the <i>EEA State</i> of that <i>client's establishment</i> in accordance with <i>COBS 3.6.7R</i> .	From <i>exit day</i>	<i>exit day</i>
3	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<b>Series of events</b> If the application of any provision in the <i>FCA Handbook</i> is dependent on the occurrence of a series of events, some of which occur before, and some of which occur after, <i>exit day</i> , the provision applies with respect to the events that occur after <i>exit day</i> .	From <i>exit day</i>	<i>exit day</i>
4	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific	R	<b>Deemed references to pre-exit day provisions</b>	From <i>exit day</i>	<i>exit day</i>

	transitional provision relating to the matter		Any reference (express or implied) in a provision in the <i>FCA Handbook</i> to a provision of or made under the <i>Act</i> or of retained EU law is to be read (so far as the context permits and according to the context) as being or including, in relation to times, circumstances and purposes before <i>exit day</i> , a reference to any substantially similar pre- <i>exit day</i> provision.		
5	Row 4 of this table	G	For example, <i>BIPRU 2.1.11R</i> requires a <i>firm</i> to notify the <i>FCA</i> immediately of any breach, or expected breach, of the <i>main BIPRU firm Pillar 1 rules (GENPRU 2.1.40R (Variable capital requirement for BIPRU firms), GENPRU 2.1.41R (Base capital resources requirement for BIPRU firms) and GENPRU 2.1.48R (Table: Base capital resources requirement for a BIPRU firm)</i> . This includes breaches of the <i>main BIPRU firm Pillar 1 rules</i> as they applied before <i>exit day</i> .	From <i>exit day</i>	<i>exit day</i>

6	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p><b>Time starting before exit day</b></p> <p>If, at <i>exit day</i>, time has begun to run for any purpose under any pre-<i>exit day</i> provision applicable to a <i>firm</i> or other person, then:</p> <p>(1) time will be regarded as having started to run, for the purposes of any substantially similar provision in the <i>FCA Handbook</i>, when it started to run for that other purpose; and</p> <p>(2) the <i>firm</i> or other person will be relieved of its obligation to comply with the relevant pre-<i>exit day</i> provision if and to the extent that it complies with the substantially similar provision as extended by this transitional provision.</p>	From <i>exit day</i>	<i>exit day</i>
7	Every <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p><b>Record keeping</b></p> <p>A <i>firm</i> or other person will not contravene a <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained to the</p>	From <i>exit day</i>	<i>exit day</i>

			<p>extent that the <i>firm</i> or other person:</p> <p>(1) made a record of the matter before <i>exit day</i> in accordance with the <i>rule</i> or with a substantially similar pre-<i>exit day</i> provision applicable to the <i>firm</i> or other person; and</p> <p>(2) retains that record as if the <i>rule</i> was in force when the record was made.</p>		
8	Every <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	This transitional provision makes specific provision, in relation to record keeping, for the matters covered by row 1 of this table. It is included for clarity and overrides those general transitional provisions.	From <i>exit day</i>	<i>exit day</i>
9	Every <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	A <i>firm</i> or other person must retain a record in accordance with a <i>rule</i> in the <i>FCA Handbook</i> requiring a record of that sort to be retained, if the <i>firm</i> or other person was required to make and retain that record before <i>exit day</i> under a substantially similar pre- <i>exit day</i> provision	From <i>exit day</i>	<i>exit day</i>

			applicable to the <i>firm</i> or other person.		
10	Row 7 of this table	G	This transitional provision makes specific provision, in relation to records, for the matters covered by rows 4 and 6 of this table. It is included for clarity and overrides those general transitional provisions.		
11	Every <i>notification rule</i> in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p><b>Notification</b></p> <p>A <i>firm</i> (or its auditor, appointed actuary or <i>appropriate actuary</i>) or other person will not contravene a <i>notification rule</i> in the <i>FCA Handbook</i> to the extent that notice of the relevant matter was given to the <i>FCA</i> before <i>exit day</i> in accordance with:</p> <p>(1) the <i>notification rule</i>; or</p> <p>(2) a substantially similar pre-<i>exit day</i> provision applicable to the <i>firm</i> or other person.</p>	From <i>exit day</i>	<i>exit day</i>
12	Row 11 of this table	G	This transitional provision makes specific provision, in relation to notifications, for the matters covered by rows 1 and 3 of	From <i>exit day</i>	<i>exit day</i>

			this table. It is included for clarity and overrides those general transitional provisions.		
13	As rows 1 to 12 of this table	R	<p><b>Definitions</b></p> <p>In these transitional provisions:</p> <p>(1) “pre-<i>exit day</i> provision” means a provision [in force on the day preceding <i>exit day</i>];</p>	From <i>exit day</i>	<i>exit day</i>
			(2) “substantially similar” means substantially similar in purpose and effect; and		
			(3) a reference to a “provision” in the <i>FCA Handbook</i> means every type of provision, including <i>rules</i> , <i>guidance</i> , provisions in codes, and so on.		
14	Rows 15 and 16 of this table	G	<p><b>Application for provisions which are not rules</b></p> <p>The purpose of row 15 of this table is to ensure that the transitional provisions in rows 1 to 13 apply throughout the <i>FCA Handbook</i>. The purpose of row 16 is to ensure that the transitional provisions in rows 1 to 13 apply throughout Technical</p>	From <i>exit day</i>	<i>exit day</i>

			Standards made by the Board of the <i>FCA</i> .		
15	Directions, requirements, guidance, evidential provisions and other provisions in the <i>FCA Handbook</i> (that is, provisions with the status letter “D” or “G” or “E” in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	The provisions in rows 1 to 13 apply to every <i>person</i> to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those rows were part of those provisions.	From <i>exit day</i>	<i>exit day</i>
16	Technical Standards (that is, provisions with the status letter “TS” in the margin or heading) made by the Board of the <i>FCA</i> under The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	TS	The provisions in rows 1 to 13 of this table apply to every person to whom the provisions referred to in column (2) apply as if references to the <i>Handbook</i> were to Technical Standards made by the Board of the <i>FCA</i> . References in this table and in headings to the <i>FCA Handbook</i> should be read as referring to Technical Standards made by the Board of the <i>FCA</i> , where the context requires.	From <i>exit day</i>	<i>exit day</i>





## Annex F

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

[*Editor's note:* the text in this Part takes account of the changes proposed in CP18/10 'FCA regulated fees and levies: Rates proposals 2018/19' (April 2018) as if they were made.]

#### Part 1: comes into force on exit day

### 1 Fees Manual

#### 1.1 Application and Purpose

...

##### 1.1.2 ...

(2) *FEES* 1, 2 and 4 apply to:

(a) every firm (~~except an AIFM qualifier, ICVC or UCITS qualifier~~);

...

(da) every AIFM UK AIFM of a ~~UK ELTIF~~ an LTIF;

...

(m) every ~~AIFM applying to become a small registered UK AIFM and every small registered UK AIFM~~;

(n) every AIFM notifying the FCA under regulation 57, 58 and 59 of the AIFMD UK regulation and every AIFM which has made such a notification;

(p) a data reporting services provider (~~FEES 4 does not apply to an incoming data reporting services provider~~).

...

(5) *FEES 1, 2, 7 and 7A* (in relation to the *SFGB money advice levy* and *SFGB debt advice levy* only) apply to:

(a) every *person* having a *Part 4A permission*;

(b) ~~an *incoming EEA firm*; [deleted]~~

(c) ~~an *incoming Treaty firm*; [deleted]~~

...

~~*FEES 1, 2, 7 and 7A* do not apply to an *incoming EEA firm* or an *incoming Treaty firm* that has not established a branch in the United Kingdom.~~

...

...

### **3 Application, Notification and Vetting Fees**

#### **3.1 Introduction**

...

3.1.2 G This chapter does not apply to:

(1) ~~an *EEA firm* that wishes to exercise an *EEA right* unless it is:~~

(a) ~~an *incoming data reporting services provider* connecting to the market data processor system; or~~

(b) ~~an *EEA firm* connecting to the *market data processor system*; or~~

(2) ~~a *EEA authorised payment institution*; or~~

(3) ~~an *EEA authorised electronic money institution*. [deleted]~~

...

3.1.5 G (1) ~~The rates set for authorisation fees represent an appropriate proportion of the costs of the FCA in processing the application or exercise of Treaty rights. [deleted]~~

(2) ~~[deleted]~~

(3) ~~[deleted]~~

3.1.6 G Applications for *Part 4A permission* ~~(and exercises of Treaty rights)~~ other than in respect of *credit-related regulated activities* are categorised by the FCA for the purpose of fee raising as straightforward, moderately complex and complex as identified in *FEES 3 Annex 1*. This differentiation is based on the permitted activities sought and does not reflect the FCA's risk assessment of the applicant ~~(or Treaty firm)~~.

...

3.1.7 G A potential applicant for *Part 4A permission* ~~(or Treaty firm)~~ has the opportunity to discuss its proposed application ~~(or exercise of Treaty rights)~~ with the FCA before submitting it formally. If an applicant for *Part 4A permission* ~~(or Treaty firm)~~ does so, the FCA will be able to use that dialogue to make an initial assessment of the fee categorisation and therefore indicate the authorisation fee that should be paid.

...

## 3.2 **Obligation to pay fees**

3.2.1 R A person in column (1) of the table in *FEES 3.2.7R* as the relevant fee payer for a particular activity must pay to the FCA (in its own capacity or, if the fee is payable to the PRA, in its capacity as collection agent for the PRA) a fee for each application or request for vetting, or request for support relating to compatibility of its systems with FCA systems, or admission approval made, or notification ~~or notice of exercise of a Treaty right given~~, or other matter as is applicable to it, as set out or calculated in accordance with the provisions referred to in column (2) of the appropriate table:

...

...

3.2.2 G If an application for a *Part 4A permission* ~~(or exercise of a Treaty right)~~ falls within more than one category set out in *FEES 3 Annex 1*, other than where one of the applications is an application under the *benchmarks regulation*, only one fee is payable. That fee is the one for the category to which the highest fee tariff

applies. Where applications are made under the *benchmarks regulation*, a separate fee will be payable for this application. The relevant fee is set out in *FEES 3.2.7R*.

...

### 3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	(3) Due date
...	...	...
<p>(b) <del>Any Treaty firm that wishes to exercise a Treaty right to qualify for authorisation under Schedule 4 to the Act (Treaty rights) in respect of regulated activities for which it does not have an EEA right, except for a firm providing cross border services only</del></p> <p>[deleted]</p>	<p>(1) <del>Where no certificate has been issued under paragraph 3(4) of Schedule 4 to the Act the fee payable is, in respect of a particular exercise, set out in FEES 3 Annex 1, part 4</del></p> <p>(2) <del>Where a certificate in (i) has been issued no fee is payable</del></p>	<p><del>On or before the notice of exercise is given</del></p>
...		
<p>(ea)</p> <p>(i) <del>An non-UK AIFM (other than a UK AIFM or an EEA AIFM with a branch in the UK) notifying the FCA of its intention to market an AIF in the UK under regulation 579 of the AIFMD UK regulation</del></p> <p>...</p>	<p><i>FEES 3 Annex 2 R, part 4</i></p>	<p>On or before the notice of exercise is given</p>
...		
<p>(o) In relation to a <i>BIPRU firm</i>, <del>either:</del></p> <p><del>(i) a firm applying to the FCA for permission to use one of the advanced prudential calculation approaches listed in FEES 3 Annex 6R (or guidance on its</del></p>	<p>(1) Unless (2) applies, <i>FEES 3 Annex 6</i>.</p> <p>(2) (a) Unless (b) applies a firm submitting a second application for the permission or guidance described in column (1) within 12 months of the first</p>	<p>Where the <i>firm</i> has made an application directly to the <i>FCA</i>, on or before the date the application is made, otherwise within 30 days after the <i>FCA</i> notifies the <i>firm</i> that its <i>EEA parent's Home State regulator</i> has requested assistance</p>

<p>availability), including any future proposed amendments to those approaches <del>or (in the case of any application being made for such permission to the FCA as EEA consolidated supervisor under the (transposing parts of the BCD and CAD, as applicable under article 95(2) of the EUCRR))</del> any firm making such an application; or</p> <p>(ii) in the case of an application to a Home State regulator other than the FCA for the use of the Internal Ratings Based approach and the Home State regulator requesting the FCA's assistance in accordance with the Capital Requirements Regulations 2006 (transposing parts of the BCD and CAD, as applicable under article 95(2) of the EU CRR), any firm to which the FCA would have to apply any decision to permit the use of that approach.</p>	<p>application (where the fee was paid in accordance with (1)) must pay 50% of the fee applicable to it under FEES 3 Annex 6, but only in respect of that second application</p> <p>(b) No fee is payable by a firm in relation to a successful application for a permission based on a minded to grant decision in respect of the same matter following a complete application for guidance in accordance with prescribed submission requirements.</p> <p>(c) No fee is payable where the Home State regulator has requested the assistance described in paragraph (c)(ii) of column 1 except in the cases specified in FEES 3 Annex 6.</p>	
<p>(oa) Either:</p> <p>(i) a firm applying to the FCA</p> <p>for permission to use one of the internal approaches listed in FEES 3 Annex 6A (or guidance on its availability), including any future proposed amendments to those approaches or (in the case of any application being made for such permission to the FCA)</p> <p>as consolidating supervisor under the <del>EU CRR</del> UK CRR) any firm making such an application; or</p>		

<p>(ii) in the case of an application to the consolidating supervisor other than the <i>FCA</i> for the use of the IRB approach and the consolidating supervisor requesting the <i>FCA's</i> assistance in accordance with the <del>EU CRR</del> <i>UK CRR</i>, any <i>firm</i> to which the <i>FCA</i> would have to apply any decision to permit the use of that approach.</p>		
<p>...</p>		
<p>(zy) (1) Subject to (2) and (3) below, any <i>person</i> applying to connect to the <i>market data processor system</i> to provide <i>markets data (other than transaction reports)</i> under <del>MiFID and MiFIR</del> <i>MAR 10</i>.</p> <p>(2) If a <i>person</i> has previously applied as stated in (zy)(1) above and has been connected then no further fee is payable for any further such applications in relation to reporting the same data.</p> <p>(3) If a <i>person</i> has previously applied as stated in (zy)(1) above and makes a further application in relation to the provision of different data then a separate fee is payable for such application.</p>	<p>(1) <del>Unless (2) applies,</del> 10,000.</p> <p>(2) <del>Any incoming data reporting services provider authorised by another EEA State will pay 80% of the fee at (1). [deleted]</del></p>	<p>On the date the application is made.</p>
<p>...</p>		

**3 Annex 1** ~~Part 4—~~ Authorisation Fees for Treaty Firms R

~~If the *Treaty firm* wishes to undertake the permitted activities in question through its branch in the *United Kingdom*, the fee is 50% of the fee that would be payable under *FEES 3.2.7R* for an applicant for *Part 4A permission*.~~

If the *Treaty firm* wishes to undertake the permitted activities in question by providing services in the *United Kingdom*, the fee is 25% of the fee which would be payable under *FEES 3.2.7R* for an applicant for *Part 4A permission*.

...

## 3 Annex 2

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee (£)	Umbrella factor (note 1)
...				
Section 272 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be recognised where the <i>scheme</i> is:	An applicant		
	<del>an EEA AIF equivalent to a non-UCITS retail scheme</del>		1500	2
	<del>an EEA AIF equivalent to a qualified investor scheme</del>		2400	2
	<del>an non-EEA UK AIF or AIF equivalent to a non-UCITS retail scheme or a qualified investor scheme</del>		8000	2
	Where funds of any kind set out in Part 2 exist prior to 21 July 2018, a flat fee will be payable on an application for authorisation under the		300	



	<i>Money Market Funds Regulation</i>			
...				
Part 2B Application fees payable for <del>UK or non-EEA</del> firms applying for authorisation under article 5 of the <i>Money Market Funds Regulation</i>				
Article 5 of the <i>Money Market Funds Regulation</i>	<i>UK AIF</i> (apart from those authorised as a <i>non-UCITS retail scheme</i> or a <i>qualified investor scheme</i> )		500	
	<del>Non-EEA Non-UK AIF</del> which is marketed in the <i>UK/EEA</i> without a passport		750	
	<del>Non-EEA Non-UK AIF</del> which is marketed in the <i>UK/EEA</i> with a passport or is not marketed in the <i>UK/EEA</i>		500	
	<del>Non-EEA Non-UK AIF</del> which is not managed by an <i>EU AIFM</i> but is marketed in the <i>UK/EEA</i> with a passport		750	
...				

**3 Annex 6A Fees payable for a permission or guidance on its availability in connection with the ~~EU CRR~~ UK CRR**

Part 1

Fees payable in relation to internal approaches that require permission under Part Three of the ~~EU CRR~~ UK CRR other than the internal model method for counterparty credit risk.

- (1) Subject to (3), for applications made to the *FCA* to authorise a new internal approach:
- (i) where the application relates to *IFPRU* investment firm and to five or more significant overseas entities within the same group (Group 1) and the application is for a permission to use one of the internal approaches in Tables 1 or 2 or guidance on the availability of such a permission, the fees in Table 1 are applicable; and
- (ii) for all other *IFPRU* investment firms the fees in Table 2 are applicable.
- (2) [deleted]
- (3) If however the application or request for assistance is in relation to the use of the Advanced IRB approach and the *FCA* (in the case of (1)) has already granted permission for the use of the Foundation IRB approach then Table 3 applies.
- (4) References to the internal approaches in Tables 1, 2 and 3 are to be construed as follows:
- (i) Foundation IRB means the internal approach for credit risk referred to in article 143(1) of the ~~EU CRR~~ UK CRR;
- (ii) Advanced IRB means the internal approach for credit risk referred to in article 151(4) and (9) of the ~~EU CRR~~ UK CRR; and
- (iii) AMA means the internal approach for operational risk referred to in article 312(2) of the ~~EU CRR~~ UK CRR.
- (5) All fees are shown in £.

...

- 4.1.4 G (3) The periodic fees for *fee-paying payment service providers, fee-paying electronic money issuers and TA-EMIs, CBTL firms, data reporting service providers* (other than *incoming data reporting services providers and issuers of regulated covered bonds*) are set out in *FEES 4 Annex 11R*. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

...

- 4.2.7E R (1) (a) A *firm* (other than an ~~*AIFM-qualifier*~~, an *ICVC*, a ~~*UCITS-qualifier*~~, or an *issuer of regulated covered bonds*) which becomes authorised or registered, or whose *permission* and/or activities is extended, during the course of the *fee year* must pay a fee based on its projected valuation for the first twelve *months* of its new business.

- (b) This is the valuation provided by the *firm* in the course of its application or if not provided at that time, the valuation provided subsequently.

(2) The calculation for the first year of authorisation or registration for:

- (a) ~~an AIFM qualifier, an ICVC and a UCITS qualifier~~ is in FEES 4 Annex 4R Part 1; and

...

...

4.2.8 R ~~In relation to an incoming EEA firm or an incoming Treaty firm the modification provisions of FEES 4.2.7R apply only in relation to the relevant regulated activities of the firm, which are passported activities or Treaty activities and which are carried on in the United Kingdom, and which are not provided on a cross border services basis. For payment services and electronic money issuance, the adjustment only applies to the business to which the calculation made in FEES 4.3.12AR relates.~~

...

4.2.11 R Table of Periodic fees payable to the FCA

1. Fee payer	2. Fee payable	3. Due date	4. Events occurring during the period leading to the modified periodic fee
Any <i>firm</i> (except an <del>AIFM</del> <i>qualifier</i> , <del>ICVC or a UCITS</del> <i>qualifier</i> )	...	...	...
...			
<del>AIFM UK</del> <i>AIFM</i> of a <del>UK ELTIF</del> <i>an LTIF</i>	In relation to each <del>ELTIF</del> <i>LTIF</i> the amount specified in part 1 of <i>FEES 4 Annex 4</i>	...	The <del>ELTIF</del> <i>LTIF</i> is authorised by the FCA under the <del>ELTIF regulation</del> <i>LTIF Regulation</i>

...			
<p>(i) A <del>non-</del> <u>UK AIFM</u> (<del>other than a</del> <del>UK AIFM or</del> <del>an EEA</del> <del>AIFM with a</del> <del>branch in the</del> <del>UK</del>) which has notified the <i>FCA</i> of its intention to market an <i>AIF</i> in the <i>UK</i> under regulation 57<del>9</del> of the <i>AIFMD UK regulation</i> and which has not ceased to market that <i>AIF</i> in the <i>UK</i> as at 1 April of the current <i>fee year</i>.</p> <p>(ii) A <del>non-</del> <u>UK AIFM</u> which has notified the <i>FCA</i> of its intention to market an <i>AIF</i> in the <i>UK</i> under regulation 58 or 59 of the <i>AIFMD UK regulation</i> and which has not ceased to market that <i>AIF</i> in the <i>UK</i> as at 1 April of the</p>	<p>For each notification made by the <i>AIFM</i> of the kind specified in part 2 of <i>FEES</i> 4 Annex 4, the amount specified in part 2 of <i>FEES</i> 4 Annex 4</p>	<p>...</p>	<p>...</p>

current fee year.			
...			

4.3.2 G ...

- (2) ~~Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions receive a discount to reflect the reduced scope of the appropriate regulator's responsibilities in respect of them. The level of the discount varies from fee block to fee block, according to the division of responsibilities between the appropriate regulator and Home state regulators for firms in each fee block (see FEES 4.3.11G, FEES 4.3.12R and FEES 4.3.12AR). [deleted]~~

...

Calculation of periodic fee for fee-paying payment service providers, CBTL firms, data reporting services providers (other than incoming data reporting services providers) and fee-paying electronic money issuers

4.3.3A R The periodic fee referred to in FEES 4.3.1R in relation to *fee-paying payment service providers, CBTL firms, data reporting services providers (other than incoming data reporting services providers) and fee-paying electronic money issuers* is calculated in accordance with FEES 4 Annex 11R.

Modification for firms with new or extended permissions

4.3.4 G ...

- (3) ~~These provisions apply (with some changes) to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions. [deleted]~~

...

...

~~Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions~~

4.3.11 G (1) The FCA recognises that its responsibilities in respect of an *incoming EEA firm, an incoming Treaty firm, an EEA authorised payment institution or*

~~an EEA authorised electronic money institution are reduced compared with a firm which is incorporated in the United Kingdom.~~

- (2) ~~Accordingly the periodic fees which would otherwise be applicable to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions are reduced. [deleted]~~

4.3.12 R For an ~~incoming EEA firm, (excluding MTF and OTF operators), or an incoming Treaty firm,~~ the calculation required by FEES 4.3.3R is modified as follows:

- (1) ~~the tariffs set out in Part 1 of FEES 4 Annex 2AR are applied only to the regulated activities of the firm which are carried on in the United Kingdom; and~~
- (2) ~~those tariffs are modified in accordance with Part 3 of FEES 4 Annex 2AR. [deleted]~~

4.3.12A R For:

- (1) (a) ~~a full credit institution which is a fee paying payment service provider and an EEA firm; or~~
- (b) ~~a full credit institution which is a fee paying electronic money issuer and an EEA firm; or~~
- (c) ~~an EEA authorised payment institution; or~~
- (d) ~~an EEA authorised electronic money institution;~~

~~the calculation required by FEES 4.3.3AR is modified as follows:~~

- (1) ~~the tariffs set out in Part 5 of FEES 4 Annex 11 are only applied to the payment services or electronic money issuance of the firm carried on from an establishment in the United Kingdom, including any payment services carried on through any of its agents established in the United Kingdom; and~~
- (2) ~~those tariffs are modified in accordance with Part 7 of FEES 4 Annex 11. [deleted]~~

...

**4.4 Information on which fees are calculated**

...

4.4.2A R If a *firm* is a UK Solvency II firm, an ~~incoming EEA firm or an incoming Treaty firm~~ in activity group A.3 or A.4 and the *PRA* or the *FCA* has either:

- (1) not received the necessary tariff data on a timely basis in line with Part 3 and 5 of *FEES* 4 Annex 1AR; or
- (2) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *firm* or across all or part of the activity group,

the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation.

...

4.4.5 R For an ~~incoming EEA firm or an incoming Treaty firm~~, the information required under *FEES* 4.4 is limited to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*, except those provided on a *cross border services* basis. [deleted]

**4 Annex 1AR FCA Activity groups, tariff bases and valuation dates**

...

<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>	
Activity group	Tariff base
...	...
A3	(1) for UK Solvency II firms, a <i>firm</i> 's gross written premium as reported to the <i>PRA</i> , being the total of items entered under row codes R0110, R0120 and R0130, as expressed in column code C0200 where this column is completed for those row codes of the annual quantitative reporting template S.05.01.01; <u>and</u>

	<p>(2) <del>for incoming EEA firms or incoming Treaty firms, a firm's gross written premium as reported to their Home State regulator, being the total of items entered under row codes R0110, R0120 and R0130, as expressed in column code C0200 where this column is completed for those row codes, of the annual quantitative reporting template S.05.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, (except those provided on a cross border services basis); and [deleted]</del></p> <p>(3) ...</p> <p><b>AND</b></p> <p>Best estimate liabilities for fees purposes means:</p> <p>(1) for UK Solvency II firms, a firm's best estimate liabilities as reported to the PRA, being the sum of items entered under row codes R0010, R0370, R0380, R0410 and R0420, column code C0180, of the annual quantitative reporting template S17.01.01; plus the sum of items entered under row codes R0010, R0030, column codes C0090, C0140 and C0190, of the annual quantitative reporting template S12.01.01; <u>and</u></p> <p>(2) <del>for incoming EEA firms or incoming Treaty firms, a firm's best estimate liabilities as reported to their Home State regulator, being the sum of items entered under row codes R0010, R0370, R0380, R0410 and R0420, column code C0180, of the annual quantitative reporting template S17.01.01; plus the sum of items entered under row codes R0010, R0030, column codes C0090, C0140 and C0190, of the annual quantitative reporting template S12.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, except those provided on a cross border services basis; and [deleted]</del></p> <p>(3) ...</p>
...	...
A4	<p><b>GROSS WRITTEN PREMIUM FOR FEES PURPOSES AND BEST ESTIMATE LIABILITIES FOR FEES PURPOSES</b> (see FEES 4 Annex 12G)</p> <p>Gross written premium for fees purposes means:</p>



(1) for UK Solvency II firms, a *firm's* gross written premium as reported to the *PRA*, being the item entered under row code R1410, column code C0300 of the annual quantitative reporting template S05.01.01 minus corporate pension business as reported to the *PRA* under the annual quantitative reporting template S14.01.01; ~~and~~

~~(2) for incoming EEA firms or incoming Treaty firms, a firm's gross written premium as reported to their Home State regulator, being the item entered under row code R1410, column code C0300 of the annual quantitative reporting template S05.01.01 minus corporate pension business as reported to the PRA under the annual quantitative reporting template S14.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, except those provided on a cross border services basis [deleted]~~

**AND**

Best estimate liabilities for fees purposes means:

(1) for UK Solvency II firms, a *firm's* best estimate liabilities as reported to the *PRA*, being the sum of items entered under row codes R0010 and R0030, column codes C0150 and C0210 minus the sum of items entered under row codes R0010 and R0030, column codes C0090, C0140 and C0190 of the annual quantitative reporting template S12.01.01; minus corporate pension business reported under the annual quantitative reporting template S14.01.01; ~~and~~

~~(2) for incoming EEA firms or incoming Treaty firms, a firm's best estimate liabilities as reported to their Home State regulator, being the sum of items entered under row codes R0010 and R0030, column codes C0150 and C0210 minus the sum of items entered under row codes R0010 and R0030, column codes C0090, C0140 and C0190 of the annual quantitative reporting template S12.01.01; minus corporate pension business reported under the annual quantitative reporting template S14.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, except those provided on a cross border services basis. [deleted]~~

	...
...	...

**4 Annex 2AR FCA Fee rates and ~~EEA/Treaty firm modifications~~ for the period from 1 April 2018 to 31 March 2019**

<u>[deleted]</u>	
...	
Part 3	
This table shows the modifications to fee tariffs that apply in respect of the FCA to incoming EEA firms and incoming Treaty firms which have established branches in the UK.	
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the firm
A.1	10%
A.3	10%
A.4	10%
A.7	10%
A.9	10%
A.10	In relation to each trader that carries on auction regulation bidding but not MiFID business bidding or dealing in investments as principal, 100%. In relation to all other traders, 10%.
A.13	10%
A.18	10%
A.19	50%
B. MTF and OTF operators	Not applicable
AP.0	100%
Note 1	The modifications to fee tariffs payable by an incoming EEA firm or an incoming Treaty firm which has established a branch in the UK apply only in relation to the relevant regulated activities of the firm

	<del>which are passported activities or Treaty activities and which are carried on in the UK.</del>
Note 2	<del>The FCA minimum fee described in Part 2 of FEES 4 Annex 2A R applies in full and the modifications in this Part do not apply to it.</del>
[deleted]	

...

**4 Annex 4R Periodic fees in relation to collective investment schemes, AIFs marketed in the UK, small registered UK AIFMs and money market funds payable for the period 1 April 2018 to 31 March 2019**

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC,</i>	386	1-2	1	386
<i>AUT,</i>		3-6	2.5	965
<i>ACS,</i>		7-15	5	1,930
<i>LTIFs UK</i> <i>ELTIFs,</i>		16-50	11	4,246
Money market funds with effect from 21 July 2018 <del>Section 264 of the Act,</del> <del>schemes other than non-EEA AIFs recognised under section 272 of the Act,</del>		>50	22	8,492
<del>Non-EEAUK</del> <del>AIFs recognised under section 272 of the Act</del>	1,570	1-2	1	1,570
		3-6	2.5	3,925

		7-15	5	7,850
		16-50	11	17,270
		>50	22	34,540

...

**4 Annex 10R Periodic fees for MTF operators payable in relation to the period 1 April 2018 to 31 March 2019**

...

...	...	...
<i>An EEA firm</i>	0	
...		

...

**4 Annex 11R Periodic fees in respect of payment services, electronic money issuance, regulated covered bonds, CBTL business and data reporting services in relation to the period 1 April 2018 to 31 March 2019**

...

Part 2 - Activity groups relevant to fee-paying payment service providers	
...	
Activity group	Fee payer falls into this activity group if:
...	...
G.3 Large payment institutions and registered account information service providers	it is a <i>fee-paying payment service provider</i> that is an <i>authorised payment institution</i> , <del>an EEA authorised payment institution</del> , a <i>registered account information service provider</i> , <del>an EEA registered account information service provider</del> , the Post Office Limited or a <i>fee-paying electronic money issuer</i> (except if it is a <i>small electronic money institution</i> )
...	...

...

Part 7—This table shows the modifications to fee tariffs that apply to *EEA authorised payment institutions*, *EEA authorised electronic money institutions*, and *full credit institutions* that are *EEA firms*.

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable
G.2	40%	
G.3	40%	
G.10	40%	
[deleted]		

## 5 Financial Ombudsman Service Funding

...

### 5.4 Information requirement

...

5.4.1-A R ...

- (2) If a *firm* is a UK Solvency II firm, ~~an *incoming EEA firm* or an *incoming Treaty firm*~~ in industry blocks 2 and 4 in FEES 5 Annex 1R, the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation if the *PRA* or the *FCA* has either:

...

...

## 5 Financial Ombudsman Service Funding

...

### 5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2018/19

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For <i>authorised payment institutions, registered account information service providers, electronic money issuers</i> (except for <i>small electronic money institutions</i> ), the Post Office Limited, the Bank of England, government departments and local authorities, <del>and EEA authorised payment institutions</del> relevant income as described in FEES 4 Annex 11 Part 3	£0.0003 per £1,000 of relevant income subject to a minimum levy of £75
	For <i>small payment institutions</i> and <i>small electronic money institutions</i> a flat fee	Levy of £35
...		

...

## 7A SFGB levies

### 7A.1 Application and purpose

...

7A.1.2 R The *SFGB pensions guidance levy* applies to a *firm* that:

(1)

- (a) has a *Part 4A Permission*; ~~or~~
- (b) is an *incoming EEA firm* with a *branch* in the *United Kingdom*; ~~or~~
- (c) is an *incoming Treaty firm* with a *branch* in the *United Kingdom*; and

...

...

**7A.3 The SFGB money advice levy and debt advice levy**

...

7A.3.10 R Table of rules in FEES 4 that also apply to FEES 7A to the extent that in FEES 4 they apply to fees payable to the FCA

FEES 4 rules incorporated into FEES 7A	Description
...	...
FEES 4.2.8R	<del>How FEES 4.2.7R applies in relation to an incoming EEA firm or an incoming Treaty firm</del>
...	...

...

**7A FGB debt advice levy for the period from 1 April 2018 to 31 March 2019...**  
**Annex 2R**

...

Part 2

...

Activity Group	Tariff base
...	...
Notes <u>Note</u>	
(1) ...	
(2) The tariff base for an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> is the same as set out above but limited to the <i>regulated activities</i> of the <i>firm</i> which are carried out in the <i>United Kingdom</i> , except those provided on a <i>cross border services</i> basis, and should be reported to the <i>FCA</i> as required by <i>FEES 4.4.1R</i> and <i>FEES 4.4.2R</i> . The <i>valuation date</i> is in accordance with the <i>CC.3 valuation date</i> in <i>Part 3</i> .	

...

10.1.1 R This chapter applies to a *firm* that:

- (1) (a) has a *Part 4A Permission*; ~~or~~
- (b) ~~is an incoming EEA firm with a branch in the United Kingdom; or~~
- (c) ~~is an incoming Treaty firm with a branch in the United Kingdom;~~  
and

...

...

10.5.4 R Table of rules in FEES 4 that also apply in FEES 10.

FEES 4 incorporated into FEES 10	Description	Modification
...	...	...
<del>FEES 4.2.7R</del>	<del>How FEES 4.2.7R applies to an incoming EEA firm or an incoming Treaty firm</del>	None.
...	...	...

...

### 13 Illegal money lending levy

#### 13.2 The IML levy

13.2.6 R ~~The modifications:~~

- (1) ~~for incoming EEA firms and incoming Treaty firms which have established branches in the UK in Part 3 of FEES 4 Annex 2AR apply; and~~
- (2) ~~for EEA authorised payment institutions, EEA authorised electronic money institutions, and full credit institutions that are EEA firms in Part 7 of FEES 4 Annex 11R apply. [deleted]~~

...



- 13.2.9 R Table of rules in *FEES* 4 that also apply to *FEES* 13 to the extent that in *FEES* 4 they apply to fees payable to the *FCA*.

FEES 4 rules incorporated into FEES 13	Description
...	...
<del>FEES 4.2.8R</del>	<del>How FEES 4.2.7R applies in relation to an incoming EEA firm or an incoming Treaty firm</del>
...	...

...

## Part 2: comes into force on 1 April 2019

[*Editor's note*: the text in this Part takes into account the changes made by FCA 2018/22 which come into effect on 1 April 2019.]

### 6 Financial Services Compensation Scheme Funding

#### 6.1 Application

...

- 6.1.2 G (1) ~~Firms which are not participant firms (such as certain types of incoming EEA firms, service companies, and ICVCs and, for the purposes of FEES 6, pre-exit incoming EEA firms) are not required to contribute towards the funding of the compensation scheme.~~

...

...

#### Incoming EEA firms

- 6.1.17 G ~~Incoming EEA firms which obtain cover or “top up” under the provisions of COMP 14 are firms whose Home State scheme provides no or limited compensation cover in the event that they are determined to be in default. Under FEES 6.6, the FSCS is required to consider whether incoming EEA firms should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their Home State cover. The amount of any discount is recoverable from the other members of the incoming EEA firm’s class. [deleted]~~

...

#### 6.3 The FSCS’s power to impose levies

...

Adjustments to calculation of levy shares

6.3.22 R The *FSCS* may adjust the calculation of a *participant firm's* share of any levy to take proper account of:

...

(5) *FEES 2.3* (Relieving Provisions), *FEES 6.4.8R* (New participant firms), *FEES 6.5.9R* (New participant firms); or *FEES 6.3.23R* (Remission of levy or additional administrative fee) or ~~*FEES 6.6* (Incoming EEA firms)~~; or

...

...

**6.6 Incoming EEA firms** ~~[deleted]~~

6.6.1 R ~~If an *incoming EEA firm*, which is an *IDD insurance intermediary*, an *MCD mortgage credit intermediary* or a *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the *firm's Home State scheme*. [deleted]~~

...

**6 Annex 3AR Financial Services Compensation Scheme – classes and categories**

This table belongs to *FEES 6.5.6AR*

...

...	
<b>Class 2</b>	<b>Investment Intermediation Claims</b>
...	
<b>Category 2.3</b>	Investment provision
<b>Firms with permission for:</b>	any of the following:
	...
	<i>managing a <u>UK UCITS</u></i> ;
	...

...	
-----	--

Insert the following new TP 21 after FEES TP 20 (Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2019/20). The text is not underlined.

**TP 21 Transitional provisions relating to FSCS levy arrangements after 1 April 2019**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions coming into force
21.1	The changes made to <i>FEES</i> 6 by the Exiting the European Union: High Level Standards (Amendments) Instrument 201[X]	R	The changes in column (2) apply to any levy made after 1 April 2019. This is even if:  (1) the <i>claim</i> against the <i>relevant person</i> or <i>successor in default</i> arose or relates to circumstances arising before that date; or  (2) the <i>relevant person</i> or <i>successor</i> was <i>in default</i> before that date.	From 1 April 2019, indefinitely	1 April 2019

**EXITING THE EUROPEAN UNION: MISCELLANEOUS (AMENDMENTS)  
INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
General Prudential sourcebook (GENPRU)	Annex A
Prudential sourcebook for Investment Firms (IFPRU)	Annex B
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex C
Interim Prudential sourcebook for Investment Businesses (IPRU-INV)	Annex D
Compensation sourcebook (COMP)	Annex E
Cross-cutting definitional changes	Annex F

**Amendments to material outside the Handbook**

- D. The General Guidance on Benchmark Submission and Administration (BENCH) is amended in accordance with Annex G to this instrument.

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

## Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

### 3 Cross sector groups

#### 3.1 Application

3.1.1 R (1) Unless otherwise stated, *GENPRU* 3.1 applies to every *firm* that is a member of a *financial conglomerate* other than:

(a) ~~an incoming EEA firm;~~ [deleted]

(b) ~~an incoming Treaty firm;~~ [deleted]

(c) ~~a UCITS qualifier;~~ [deleted]

...

(1A) *GENPRU* 3.1 (except *GENPRU* 3.1.5R to *GENPRU* 3.1.132G) applies to each of the following *firms* that is a member of a *financial conglomerate*:

...

#### Purpose

3.1.2 G *GENPRU* 3.1 implements requirements that correspond to the *Financial Groups Directive*. However, material on the following topics is to be found elsewhere in the *Handbook* as follows:

...

#### Introduction: identifying a financial conglomerate

3.1.3 G (1) In general the process in (2) to (8) applies for identifying *financial conglomerates*.

(2) The relevant *Competent authorities* *competent authority* that ~~have~~ has authorised *regulated entities* should try to identify any *consolidation group* that is a *financial conglomerate*. If a *competent authority* is of the opinion that a *regulated entity* authorised by that *competent authority* is a member of a *consolidation group* which may be a *financial conglomerate* it should communicate its view to the other *competent authorities* authority ~~concerned~~.

...

(10) If a *mixed financial holding company* is subject to equivalent provisions under the ~~EEA UK~~ *prudential sectoral legislation* in relation to the *banking and investment services sector* and under GENPRU 3 (Cross sector groups) and the FCA is the *coordinator*, the FCA may, on application by a *firm* and after consulting the other competent ~~authorities~~ authority responsible for the supervision of subsidiaries, disapply such provisions of the ~~EEA UK~~ *prudential sectoral legislation* in relation to the *banking and investment services sector* with regard to the *mixed financial holding company* and apply only the relevant provisions of GENPRU 3 to the *mixed financial holding company*.

3.1.3 G A If a *mixed financial holding company* is subject to equivalent provisions under this Chapter and under ~~EEA UK~~ *prudential sectoral legislation* in relation to the *insurance sector* ~~as implemented in the United Kingdom~~ and the FCA is the *coordinator*, the FCA may, on application by the *firm* ~~and after consulting other relevant competent authorities~~, disapply such provisions of the ~~EEA UK~~ *prudential sectoral legislation* ~~as implemented in the United Kingdom~~ with regard to that undertaking which are considered by the FCA as equivalent to those applying to the *firm* under GENPRU 3.1.

[Note: article 120(2) of CRD]

Introduction: The role of other competent authorities

3.1.4 G A A lead supervisor (called the *coordinator*) is appointed for each *financial conglomerate*. ~~Article 10 of the Financial Groups Directive~~ The definition of coordinator in the Financial Groups Directive Regulations describes the criteria for deciding which *competent authority* is appointed as *coordinator*. ~~Article 11 of the Financial Groups Directive sets out the tasks of the coordinator.~~

[Note: Article 10 and 11 of the *Financial Groups Directive*]

...

...

Definition of financial conglomerate: adjustment of the percentages

3.1.9 R Once a *financial conglomerate* has become a *financial conglomerate* and subject to supervision in accordance with ~~the Financial Groups Directive~~ this chapter, the figures in the *financial conglomerate definition decision tree* are altered as follows:

...

...

Definition of financial conglomerate: discretionary changes to the definition

3.1.1 G ~~Articles 3(3) to 3(6), Article 5(4) and Article 6(5) of the *Financial Groups Directive* Regulation [x] to [x] of the *financial groups directive regulations*~~ allow *competent authorities*, on a case by case basis, to:

- (1) change the definition of *financial conglomerate* and the obligations applying with respect to a *financial conglomerate* (which would include, where the *appropriate regulator* would be the *coordinator* under *GENPRU* 3.1.3G (6), permitting *firms* to apply, on an annual basis and subject to publication and notification to the ~~*relevant competent authorities*~~ *competent authority*, for a group of which it is a member not to be regarded as a *financial conglomerate* on the basis of ~~Article 3(3) of the *Financial Groups Directive*~~ (regulation [x] of the *financial groups directive regulations* for a group that, in terms of the tests in *GENPRU* 3 Annex 4R, does not meet Threshold Test 2 but meets Threshold Test 3) or ~~Article 3(3a) of the *Financial Groups Directive*~~ regulation [x] of the *financial groups directive regulations* (for a group that, in terms of the tests in *GENPRU* 3 Annex 4R, meets Threshold Test 2 but not Threshold Test 3);
- (2) apply the scheme in the ~~*Financial Groups Directive*~~ *financial groups directive regulations* to ~~EEA UK~~ *regulated entities* in specified kinds of group structures that do not come within the definition of *financial conglomerate*; and
- (3) exclude a particular entity in the scope of capital adequacy requirements that apply with respect to a *financial conglomerate*.

[*Editor's note*: In due course, the text here shall be amended to reflect the appropriate provisions in the *financial groups directive regulations*, when the *Financial Conglomerates and Other Financial Groups (Amendments etc.) (EU Exit) Regulations 2019* which amend these is published.]

Capital adequacy requirements: introduction

...

3.1.1 G ~~*GENPRU* 3.1.29R to *GENPRU* 3.1.31R and *GENPRU* 3 Annex 1R~~ implement apply the detailed capital adequacy requirements ~~of that correspond with the *Financial Groups Directive*~~. They only deal with a *financial conglomerate* for which the *FCA* is the *coordinator*. If another *competent authority* is *coordinator* of a *financial conglomerate*, those *rules* do not apply with respect to that *financial conglomerate* and instead that *coordinator* will be responsible for implementing those detailed requirements.

3.1.1 G Annex I of the *Financial Groups Directive* ~~lays laid~~ lays laid down three methods for calculating capital adequacy at the level of a *financial conglomerate*. Those three methods ~~are~~ were implemented as follows:

...



(4) Method 3 consists of a combination of Methods 1 and 2 ~~from Annex I of the *Financial Groups Directive*~~ and would be implemented by means of a *requirement*.

3.1.1 G [deleted]  
8

3.1.1 G Paragraph 5.7 of *GENPRU 3 Annex 1R* (Capital adequacy calculations for financial conglomerates) deals with a case in which there are no capital ties between entities in a *financial conglomerate*. In particular, the *FCA*, after consultation with the other ~~relevant competent authorities~~ *authority* and in accordance with ~~Annex I of the *Financial Groups Directive*~~ this chapter, will determine which proportional share of a solvency deficit in such an entity will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

3.1.2 G (1) [deleted]  
0 (2) [deleted]

3.1.2 G The ~~Annex I~~ method to be applied may be decided by the *coordinator* after consultation with the ~~other relevant competent authorities~~ *authority* and the *financial conglomerate* itself. Where the *FCA* acts as *coordinator*, the *financial conglomerate* itself may choose which of Method 1 or Method 2 ~~from Annex I~~ it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a particular method.

3.1.2 G [deleted]  
2

3.1.2 G [deleted]  
3

3.1.2 G [deleted]  
4

#### Capital adequacy requirements: high level requirement

3.1.2 R (1) A *firm* that is a member of a *financial conglomerate* must at all times  
5 have capital resources of such an amount and type that results in the capital resources of the *financial conglomerate* taken as a whole being adequate.

(2) This *rule* does not apply with respect to any *financial conglomerate* until notification has been made that it has been identified as a *financial conglomerate* as contemplated by ~~Article 4(2) of the *Financial Groups Directive*~~ regulation 2 of the *Financial Groups Directive Regulations*.

3.1.2 R [deleted]  
6

3.1.2 R [deleted]  
7

3.1.2 R (1) [deleted]  
8  
(2) [deleted]

Capital adequacy requirements: application of Method 1 or 2 ~~from Annex I of the Financial Groups Directive~~

3.1.2 R If, with respect to a *firm* and a *financial conglomerate* of which it is a  
9 member, this *rule* applies under *GENPRU* 3.1.29AR to the *firm* with respect to that *financial conglomerate* as described in *GENPRU* 3.1.30R, the *firm* must at all times have capital resources of an amount and type that ensures that the *conglomerate capital resources* of that *financial conglomerate* at all times equal or exceed its *conglomerate capital resources requirement*.

3.1.2 R *GENPRU* 3.1.29R applies to a *firm* with respect to the *financial*  
9A *conglomerate* of which it is a member if notification has been made in accordance with regulation 2 of the *Financial Groups Directive Regulations* that the *financial conglomerate* is a *financial conglomerate* and that the *FCA* is *coordinator* of that *financial conglomerate*.

Capital adequacy requirements: use of requirement to apply ~~Annex I of the Financial Groups Directive~~ Method 1 or 2 for calculating capital adequacy

3.1.3 R If *GENPRU* 3.1.29R (application of Method 1 or 2 ~~from Annex I of the~~  
0 ~~Financial Groups Directive~~) applies to a *firm* with respect to the *financial conglomerate* of which it is a member, then with respect to the *firm* and the *financial conglomerate*:

(1) the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of *GENPRU* 3 Annex 1R the *firm* has indicated to the *FCA* it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of *GENPRU* 3 Annex 1R, in which case *GENPRU* 3.1.31R will apply; and

(2) the *firm* must indicate to the *FCA* in advance which Part of *GENPRU* 3 Annex 1R the *firm* intends to apply.

3.1.3 R If *GENPRU* 3.1.29R (application of Method 1 or 2 ~~from Annex I of the~~  
1 ~~Financial Groups Directive~~) applies to a *firm* with respect to a *financial conglomerate* of which it is a member, and the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of *GENPRU* 3 Annex 1R, the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of *GENPRU* 3 Annex 1R is specified in the *requirement*.

## Risk concentration and intra-group transactions: introduction

- 3.1.3 G *GENPRU 3.1.35R implements requirements that correspond to Article 7(4) and Article 8(4) of the Financial Groups Directive, which provide that where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding risk concentration and intra-group transactions of the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.*  
2
- 3.1.3 G ~~Articles 7(3) (Risk concentration) and 8(3) (Intra-group transactions) and Annex II (Technical application of the provisions on intra-group transactions and risk concentration) of the Financial Groups Directive say that Member States The FCA may, on a case by case basis, require the application apply at the level of the financial conglomerate of the provisions of the sectoral rules on risk concentrations and intra-group transactions. GENPRU 3.1 does not take up that option, although the FCA may impose such obligations on a case by case basis.~~  
3
- [Note: Article 7(3), Article 8(3) and Annex II of the Financial Groups Directive]

## Risk concentration and intra-group transactions: application

- 3.1.3 R *GENPRU 3.1.35R applies to a firm with respect to a financial conglomerate of which it is a member if the financial conglomerate is headed by a mixed financial holding company;*  
4
- (1) ~~the condition in Articles 7(4) and 8(4) of the Financial Groups Directive is satisfied (the financial conglomerate is headed by a mixed financial holding company); and~~
- (2) ~~that financial conglomerate is a UK regulated EEA financial conglomerate.~~

## Risk concentration and intra group transactions: the main rule

- 3.1.3 R *A firm must ensure that the sectoral rules regarding risk concentration and intra-group transactions of the most important financial sector in the financial conglomerate referred to in GENPRU 3.1.34R are complied with with respect to that financial sector as a whole, including the mixed financial holding company. The sectoral rules for these purposes are those identified in the table in GENPRU 3.1.36R.*  
5
- ...
- 3.1.3 R [deleted]  
7
- R (1) [deleted]

- 3.1.3  
8
- (2) [deleted]
  - (3) [deleted]
  - (4) [deleted]

The financial sectors: asset management companies and alternative investment fund managers

- 3.1.3  
9
- R (1) ~~In accordance with Articles 30 and 30a of the *Financial Groups Directive* (Asset management companies and Alternative investment fund managers), this~~ This rule deals with the inclusion of an *asset management company* or an *alternative investment fund manager* that is a member of a *financial conglomerate* in the scope of regulation of *financial conglomerates*.
- [Note: Articles 30 and 30a of the *Financial Groups Directive*]
- (2) An *asset management company* or an *alternative investment fund manager* is in the overall *financial sector* and is a *regulated entity* for the purpose of:
    - (a) *GENPRU 3.1.29R to GENPRU 3.1.36R*;
    - (b) *GENPRU 3 Annex 1R* (Capital adequacy calculations for financial conglomerates) and *GENPRU 3 Annex 2R* (Prudential rules for third country groups); and
    - (c) any other provision of the *Handbook* relating to the supervision of *financial conglomerates*.
  - (3) In the case of a *financial conglomerate* for which the *FCA* is the *coordinator*, all *asset management companies* and all *alternative investment fund managers* must be allocated to one *financial sector* to which they belong for the purposes in (2), being either the *investment services sector* or the *insurance sector*. But if that choice has not been made in accordance with (4) and notified to the *FCA* in accordance with (4)(d), an *asset management company* or an *alternative investment fund manager* must be allocated to the smallest *financial sector*.
  - (4) The choice in (3):
    - (a) must be made by the *undertaking* in the *financial conglomerate* ~~holding the position referred to in Article 4(2) of the *Financial Groups Directive* (group member to whom notice must be given that the group has been found to be a *financial conglomerate*);~~ that is:
      - (i) the *parent undertaking* at the head of the group or,

(ii) in the absence of a *parent undertaking*, the *regulated entity* with the largest balance sheet total in the *most important financial sector*;

- (b) applies to all *asset management companies* and all *alternative investment fund managers* that are members of the *financial conglomerate* from time to time;
- (c) cannot be changed; and
- (d) must be notified to the *FCA* as soon as reasonably practicable after the notification in (4)(a).

[Note: Article 4(2) of the *Financial Groups Directive*]

- (5) This *rule* applies even if:
  - (a) a *UCITS management company* is an *IFPRU investment firm*; or
  - (b) an *asset management company* or *alternative investment fund manager* is an *investment firm*.

## 3.2 Third-country groups

### Application

3.2.1 R *GENPRU* 3.2 applies to every *firm* that is a member of a *third-country group*. But it does not apply to:

- (1) ~~an *incoming EEA firm*; or [deleted]~~
- (2) ~~an *incoming Treaty firm*; or [deleted]~~
- (3) ~~a *UCITS qualifier*; or [deleted]~~
- (4) an *ICVC*; or
- (5) a *bank*; or
- (6) a *designated investment firm*; or
- (7) an *insurer*.

...

### Purpose

3.2.2 G *GENPRU* 3.2 implements requirements that correspond in part to article 18 of the *Financial Groups Directive*, article 127 of the *CRD* and (in relation to *BIPRU firms*) article 143 of the *BCD*.

## Equivalence

- 3.2.3 G The first question that must be asked about a *third-country financial group* is whether the *EEA UK regulated entities* in that *third-country group* are subject to supervision by a *third-country competent authority*, which is equivalent to that provided for by the *Financial Groups Directive* in *GENPRU 3* (in the case of a *financial conglomerate*) or the *EEA UK prudential sectoral legislation* for the *banking sector* or the *investment services sector* (in the case of a *banking and investment group*). Article 18(1) of the *Financial Groups Directive* sets out the process for establishing equivalence with respect to *third-country financial conglomerates* and article 127(1) and (2) of the *CRD* does so with respect to *third-country banking and investment groups*, except where the *investment firms* in the group are *CAD investment firms* only, in which case article 143 of the *BCD* applies.

## Other methods: General

- 3.2.4 G If the supervision of a *third-country group* by a *third-country competent authority* does not meet the equivalence test referred to in *GENPRU 3.2.3G*, the methods set out in the *UK provisions which implemented the CRD* and *EU CRR UK CRR* will apply or *competent authorities* the *FCA* may apply other methods that ensure appropriate supervision of the *EEA UK regulated entities* in that *third-country group* in accordance with the aims of supplementary supervision under the *Financial Groups Directive* in *GENPRU 3* or consolidated supervision under the applicable *EEA UK prudential sectoral legislation*.

## Supervision by analogy: introduction

- 3.2.5 G If the supervision of a *third-country group* by a *third-country competent authority* does not meet the equivalence test referred to in *GENPRU 3.2.3G*, a *competent authority* the *FCA* may, rather than take the measures described in *GENPRU 3.2.4G*, apply, by analogy, the provisions concerning supplementary supervision under the *Financial Groups Directive* in *GENPRU 3* or, as applicable, consolidated supervision under the applicable *EEA UK prudential sectoral legislation*, to the *EEA UK regulated entities* in the *banking sector*, *investment services sector* and (in the case of a *financial conglomerate*) *insurance sector*.
- 3.2.6 G The *FCA* believes that it will only be right to adopt the option in *GENPRU 3.2.5G* in response to very unusual group structures.
- 3.2.7 G *GENPRU 3.2.8R* and *GENPRU 3.2.9R* and *GENPRU 3 Annex 2R* set out rules to deal with the situation covered in *GENPRU 3.2.5G*. Those rules do not apply automatically. Instead, they can only be applied with respect to a particular *third-country group* through the *Part 4A permission* of a firm in that *third-country group*.

## Supervision by analogy: rules for third-country conglomerates

- 3.2.8 R If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country financial conglomerate* of which it is a member, it must comply, with respect to that *third-country financial conglomerate*, with the *rules* in Part 1 of *GENPRU 3 Annex 2R*, as adjusted by Part 3 of that annex.

Supervision by analogy: rules for third-country banking and investment groups

- 3.2.9 R If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country banking and investment group* of which it is a member, it must comply, with respect to that *third-country banking and investment group*, with the *rules* in Part 2 of *GENPRU 3 Annex 2R*, as adjusted by Part 3 of that annex.

**3** **Capital adequacy calculations for financial conglomerates (~~GENPRU 3.1.26R~~  
and GENPRU 3.1.29R)**  
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1 Table: PART 1: Method 1 of Annex I of the Financial Groups Directive  
(Accounting Consolidation Method)

Capital resources	1.1	The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are the capital of that <i>financial conglomerate</i> , calculated on an accounting consolidation basis, that qualifies under paragraph 1.2.	
	1.2	The elements of capital that qualify for the purposes of paragraph 1.1 are those that qualify in accordance with the <i>applicable sectoral rules</i> , in accordance with the following:	
		(1)	the <i>conglomerate capital resources requirement</i> is divided up in accordance with the contribution of each <i>financial sector</i> to it; and
		(2)	the portion of the <i>conglomerate capital resources requirement</i> attributable to a particular <i>financial sector</i> must be met by capital resources that are eligible in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .
Capital resources requirement	1.3	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the capital adequacy and solvency requirements for each <i>financial sector</i> calculated in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .	
Consolidation	1.4	The information required for the purpose of establishing whether or not a <i>firm</i> is complying with <i>GENPRU 3.1.29R</i> (insofar as the definitions in this Part are applied for the purpose of that <i>rule</i> ) must be based on the consolidated	

		accounts of the <i>financial conglomerate</i> , together with such other sources of information as appropriate.
	1.5	The <i>applicable sectoral rules</i> that are applied under this Part are the <i>applicable sectoral consolidation rules</i> . Other <i>applicable sectoral rules</i> must be applied if required.

2 Table: PART 2: Method 2 of Annex I of the Financial Groups Directive (Deduction and aggregation Method)

Capital resources	2.1	<p>The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are equal to the sum of the following amounts (so far as they qualify under paragraph 2.3) for each member of the <i>overall financial sector</i>:</p> <p>(1) (for the <i>person</i> at the head of the <i>financial conglomerate</i>) its <i>solo capital resources</i>;</p> <p>(2) (for any other member):</p> <p>(a) its <i>solo capital resources</i>; less</p> <p>(b) the book value of the <i>financial conglomerate's</i> investment in that member, to the extent not already deducted in the calculation of the <i>solo capital resources</i> for:</p> <p>(i) the <i>person</i> at the head of the <i>financial conglomerate</i>; or</p> <p>(ii) any other member.</p>
	2.2	The deduction in paragraph 2.1(2) must be carried out separately for each type of capital represented by the <i>financial conglomerate's</i> investment in the member concerned.
	2.3	The elements of capital that qualify for the purposes of paragraph 2.1 are those that qualify in accordance with the <i>applicable sectoral rules</i> . In particular, the portion of the <i>conglomerate capital resources requirement</i> attributable to a particular member of a <i>financial sector</i> must be met by capital resources that would be eligible under the <i>sectoral rules</i> that apply to the calculation of its <i>solo capital resources</i> .
Capital resources requirement	2.4	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the <i>solo capital resources requirement</i> for each member of the <i>financial conglomerate</i> that is in the <i>overall financial sector</i> .
Partial inclusion	2.5	The capital resources and capital resources requirements of a member of the <i>financial conglomerate</i> in the <i>overall financial sector</i> must be included proportionally. If however the member is a <i>subsidiary undertaking</i> and it has a <i>solvency deficit</i> , they must be included in full.



Accounts	2.6	The information required for the purpose of establishing whether or not a <i>firm</i> is complying with <i>GENPRU</i> 3.1.29R (insofar as the definitions in this Part are applied for the purpose of that <i>rule</i> ) must be based on the individual accounts of members of the <i>financial conglomerate</i> , together with such other sources of information as appropriate.
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## 6 Table

Types of financial conglomerate	4.3	<p>(1) This paragraph sets out how to determine the category of <i>financial conglomerate</i>.</p> <p>(2) If there is <del>an EEA</del> a <u>UK</u> regulated entity at the head of the <i>financial conglomerate</i>, then:</p> <p>(a) if that entity is in the <i>banking sector</i> or the <i>investment services sector</i>, the <i>financial conglomerate</i> is a <i>banking and investment services conglomerate</i>; or</p> <p>(b) if that entity is in the <i>insurance sector</i>, the <i>financial conglomerate</i> is an <i>insurance conglomerate</i>.</p> <p>(3) If (2) does not apply and the <i>most important financial sector</i> is the <i>banking and investment services sector</i>, it is a <i>banking and investment services conglomerate</i>.</p> <p>(4) If (2) and (3) does not apply, it is an <i>insurance conglomerate</i>.</p>
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## 7 Table

A mixed financial holding company	4.4	<p>A <i>mixed financial holding company</i> must be treated in the same way as:</p> <p>(1) a <i>financial holding company</i> (if Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and the <i>PRA</i> Rulebook: Groups Part) are applied; or</p> <p>(2) an <i>insurance holding company</i> (if the rules in <i>PRA</i> Rulebook: Solvency II Firms: Group Supervision are applied).</p>
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## 8 Table: PART 5: Principles applicable to all methods

Transfer-ability of capital	5.1	<p>Capital may not be included in</p> <p>(1) a <i>firm's conglomerate capital resources</i> under <i>GENPRU</i> 3.1.29R</p>
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		<p>if the effectiveness of the transferability and availability of the capital across the different members of the <i>financial conglomerate</i> is insufficient, given the objectives (as referred to in the <del>third unnumbered sub-paragraph of paragraph 2(ii) of Annex I of the <i>Financial Groups Directive</i> (Technical principles)</del>) of the capital adequacy rules for <i>financial conglomerates</i>.</p> <p><u>[Note: third unnumbered sub-paragraph of paragraph 2(ii) of Annex I of the <i>Financial Groups Directive</i> (Technical principles)]</u></p>
Double counting	5.2	<p>Capital must not be included in a <i>firm's conglomerate capital resources</i> under GENPRU 3.1.29R if:</p> <p>(1) it would involve double counting or multiple use of the same capital; or</p> <p>(2) it results from any inappropriate intra-group creation of capital.</p>
Cross sectoral capital	5.3	<p><del>In accordance with the second sub-paragraph of paragraph 2(ii) of Section I of Annex I of the <i>Financial Groups Directive</i> (Other technical principles and insofar as not already required in Parts 1-2):</del></p> <p>(1) <del>the</del> <u>The</u> solvency requirements for each different <i>financial sector</i> represented in a <i>financial conglomerate</i> required by GENPRU 3.1.29R must be covered by own funds elements in accordance with the corresponding <i>applicable sectoral rules</i>; <del>and</del></p> <p>(2) <del>if</del> <u>If</u> there is a deficit of own funds at the <i>financial conglomerate</i> level, only cross sectoral capital (as referred to in that sub-paragraph) shall qualify for verification of compliance with the additional solvency requirement required by GENPRU 3.1.29R.</p> <p><u>[Note: second sub-paragraph of paragraph 2(ii) of Section I of Annex I of the <i>Financial Groups Directive</i>]</u></p>
Application of sectoral rules: General	5.4	<p>The following adjustments apply to the <i>applicable sectoral rules</i> as they are applied by the <i>rules</i> in this annex.</p> <p>(1) [deleted]</p> <p>(2) If any of those <i>rules</i> would otherwise not apply to a situation in which they are applied by GENPRU 3 Annex 1R, those <i>rules</i> nevertheless still apply (and in particular, any of those <i>rules</i> that would otherwise have the effect of disapplying consolidated supervision do not apply).</p>

		<p>(3) (If it would not otherwise have been included) an <i>ancillary insurance services undertaking</i> is included in the <i>insurance sector</i>.</p> <p>(4) The scope of those <i>rules</i> is amended so as to remove restrictions relating to where members of the <i>financial conglomerate</i> are incorporated or have their head office, so that the scope covers every member of the <i>financial conglomerate</i> that would have been included in the scope of those <i>rules</i> if those members had their head offices in <del>an EEA State</del> <u>the UK</u>.</p> <p>(5) (For the purposes of Parts 1 and 2) those <i>rules</i> must be adjusted, if necessary, when calculating the capital resources, capital resources requirements or solvency requirements for a particular <i>financial sector</i> to exclude those for a member of another <i>financial sector</i>.</p> <p>(6) Any <i>waiver</i>, approval or permission granted to a member of the <i>financial conglomerate</i> under those <i>rules</i> does not apply for the purposes of this annex.</p>
Application of sectoral rules: Insurance sector	5.5	[deleted]
Application of sectoral rules: Banking sector and investment services sector	5.6	<p>In relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i>, the following adjustments apply to the <i>applicable sectoral rules</i> for the <i>banking sector</i> and the <i>investment services sector</i> as they are applied by the <i>rules</i> in this annex.</p> <p>(1) References in those <i>rules</i> to <del>non-EEA UK sub-groups</del> <u>–if applicable–</u> do not apply.</p> <p>[deleted]</p> <p>(3) Any <i>investment firm consolidation waivers</i> granted to members of the <i>financial conglomerate</i> do not apply.</p> <p>(4) (For the purposes of Parts 1 and 2), without prejudice to the application of requirements in <i>BIPRU 8</i> preventing the use of an <i>advanced prudential calculation approach</i> on a consolidated basis, any <i>advanced prudential calculation approach permission</i> that applies for the purpose of <i>BIPRU 8</i> does not apply.</p> <p>(5) (For the purposes of Parts 1 and 2), <i>BIPRU 8.5.9R</i> and <i>BIPRU 8.5.10R</i> do not apply.</p> <p>(6) (For the purposes of Part 3), where the <i>financial conglomerate</i> does not include a <i>credit institution</i>, the method in <i>GENPRU 2 Annex 4</i> must be used for</p>

		<p>calculating the capital resources and <i>BIPRU</i> 8.6.8R does not apply.</p> <p>(Other than as above) the <i>UK CRR</i> and the provisions which implemented the <i>CRD</i> and <i>EU CRR</i> apply for the <i>banking sector</i> and the <i>investment services sector</i>.</p>
No capital ties	5.7	<p>(1) This <i>rule</i> deals with a <i>financial conglomerate</i> in which some of the members are not linked by capital ties at the time of the notification referred to in <i>GENPRU</i> 3.1.29AR (Capital adequacy requirements: Application of Method 1 or 2 <del>from Annex I of the Financial Groups Directive</del>).</p> <p>[deleted]</p> <p>[deleted]</p> <p>(4) If:</p> <p>[deleted]</p> <p>(b) <i>GENPRU</i> 3.1.29R (Capital adequacy requirements: Application of Method 1 or 2 <del>from Annex I of the Financial Groups Directive</del>) applies with respect to a <i>financial conglomerate</i> falling into (1);</p> <p>then:</p> <p>(c) the treatment of the links in (1) (including the treatment of any <i>solvency deficit</i>) is as provided for in whichever of Part 1 or Part 2 of <i>GENPRU</i> 3 Annex 1R the <i>firm</i> has, under <i>GENPRU</i> 3.1.30R, indicated to the <i>FCA</i> it will apply or, if applicable, in the <i>requirement</i> referred to in <i>GENPRU</i> 3.1.31R; and</p> <p>(d) <i>GENPRU</i> 3.1.29R applies even if the <i>applicable sectoral rules</i> do not deal with how <i>undertakings</i> not linked by capital ties are to be dealt with for the purposes of consolidated supervision.</p> <p>[deleted]</p>

9 Table: PART 6: Definitions used in this Annex

Defining the financial sectors	6.1	<p>For the purposes of Parts 1 and 2 of this annex:</p> <p>(1) an <i>asset management company</i> is allocated in accordance with <i>GENPRU</i> 3.1.39R; an <i>alternative investment fund manager</i> is allocated in accordance with <i>GENPRU</i> 3.1.39R; and</p> <p>(3) a <i>mixed financial holding company</i> must be treated as being a member of the <i>most important financial sector</i>.</p>
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<p>Solo capital resources requirement: Banking sector and investment service sector</p>	<p>6.2</p>	<p>(1) The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> must be calculated in accordance with this <i>rule</i>, subject to <del>paragraphs</del> <u>paragraph 6.5</u> and 6.6.</p> <p>(2) The <i>solo capital resources requirement</i> of a <i>building society</i> is its <i>own funds requirements</i>.</p> <p>(3) The <i>solo capital resources requirement</i> of an <i>electronic money institution</i> is the capital resources requirement that applies to it under the <i>Electronic Money Regulations</i>.</p> <p>(4) If there is a <i>credit institution</i> in the <i>financial conglomerate</i>, the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is, subject to (2) and (3), calculated in accordance with the <del>EU CRR</del> <u>UK CRR</u> for calculating the <i>own funds requirements</i> of a <i>bank</i>.</p> <p>(5) If:</p> <p>(a) the <i>financial conglomerate</i> does not include a <i>credit institution</i>;</p> <p>(b) there is at least one <i>investment firm</i> in the <i>financial conglomerate</i>; and (c) all the <i>investment firms</i> in the <i>financial conglomerate</i> are <i>limited licence firms</i> or <i>limited activity firms</i>;</p> <p>the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is calculated in accordance with the <del>EU CRR</del> <u>UK CRR</u> for calculating the <i>own funds requirements</i> of:</p> <p>(i) (if there is a <i>limited activity firm</i> in the <i>financial conglomerate</i>), an <i>IFPRU limited activity firm</i>; or</p> <p>(ii) (in any other case), an <i>IFPRU limited licence firm</i>.</p> <p>(6) If:</p> <p>(a) the <i>financial conglomerate</i> does not include a <i>credit institution</i>; and</p> <p>(b) (5) does not apply;</p> <p>the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is calculated in accordance with the <del>EU CRR</del> <u>UK CRR</u> for calculating the <i>own funds requirements</i> of a <i>full-scope IFPRU investment firm</i>.</p> <p>(7) In relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i>, any <i>capital resources</i></p>
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		<i>requirements</i> calculated under a <i>BIPRU TP</i> may be used for the purposes of the <i>solo capital resources requirement</i> in this rule in the same way that the <i>capital resources requirements</i> can be used under <i>BIPRU 8</i> .
Solo capital resources requirement: application of rules	6.3	Any exemption that would otherwise apply under any <i>rules</i> applied by paragraph 6.2 do not apply for the purposes of this Annex.
Solo capital resources requirement: Insurance sector	6.4	<p>(1) The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>insurance sector</i> must be calculated in accordance with this rule. The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>insurance sector</i> is:</p> <p>(a) in respect of a UK Solvency II firm, the <i>SCR</i>;</p> <p>(b) <del>in respect of a Solvency II undertaking other than a UK Solvency II firm, the equivalent <i>SCR</i> as calculated in accordance with the Solvency II EEA implementing measures in the <i>EEA State</i> in which it has received authorisation in accordance with article 14 of the <i>Solvency II Directive</i>; [deleted]</del></p> <p>(c) in respect of a third country insurance undertaking or third country reinsurance undertaking to which the PRA Rulebook: Solvency II Firms: Group Supervision, 10.4(2) applies, the equivalent of the <i>SCR</i> as calculated in accordance with the applicable requirements in that <i>third country</i>; and</p> <p>(d) in respect of any <i>undertaking</i> which is not within (a) to (c), the capital resources requirement calculated according to the rules for the calculation of the solo capital resources requirement applicable to that <i>undertaking</i> for the purposes of the calculation referred to in the PRA Rulebook: Solvency II Firms: Group Supervision and Chapter 1 of Title II of the delegated acts, or if no rules are applicable for that calculation under Group Supervision and Chapter 1 of Title II of the delegated acts, in accordance with the <i>SCR Rules</i>.</p> <p>For the purpose of this Part as it applies in relation to <i>GENPRU 3.1</i>, the following expressions bear the same meaning as defined in the PRA Rulebook: Glossary:</p> <p>(i) “UK Solvency II firm”;</p> <p>(ii) <del>“Solvency II undertaking” [deleted]</del></p> <p>(iii) “delegated acts”;</p> <p>(iv) “third country insurance undertaking”;</p>

		(v) “third country reinsurance undertaking”; and (vi) “SCR Rules”.
Solo capital resources requirement: EEA firms in the banking sector or investment services sector	6.5	<del>The solo capital resources requirement for an EEA regulated entity (other than a bank, building society, designated investment firm, IFPRU investment firm, BIPRU firm, an insurer or an EEA insurer) that is subject to the solo capital adequacy sectoral rules for its financial sector of competent authority that authorised it is equal to the amount of capital it is obliged to hold under those sectoral rules provided that the following conditions are satisfied:</del>  <del>(1) (for the purposes of the banking sector and the investment services sector) those sectoral rules must correspond to the FCA’s sectoral rules identified in paragraph 6.2 as applying to that financial sector;</del>  <del>(2) the entity must be subject to those sectoral rules in (1); and</del>  <del>(3) paragraph 6.3 applies to the entity and those sectoral rules. [deleted]</del>
Solo capital resources requirement: non-EEA UK firms subject to equivalent regimes in the banking sector or investment services sector	6.6	The solo capital resources requirement for a recognised third country credit institution or a recognised third country investment firm is the amount of capital resources that it is obliged to hold under the sectoral rules for its financial sector that apply to it in the state or territory in which it has its head office provided that:  (1) there is no reason for the firm applying the rules in this annex to believe that the use of those sectoral rules would produce a lower figure than would be produced under paragraph 6.2; and  (2) paragraph 6.3 applies to the entity and those sectoral rules.
Solo capital resources requirement: mixed financial holding company	6.7	The solo capital resources requirement of a mixed financial holding company is a notional capital requirement. It is the capital adequacy requirement that applies to regulated entities in the most important financial sector under the table in paragraph 6.10.
Reference to “rules”	6.7A	A reference to “rules” in this annex includes any directly applicable Community regulation legislation <u>onshored regulations</u> that is <u>are</u> relevant to the purpose of which “rules” as used refers to.

10 Table

Solo capital resources requirement: the insurance sector	6.8	References to capital requirements in the provisions of <i>GENPRU 3 Annex 1R</i> defining <i>solo capital resources requirement</i> must be interpreted in accordance with paragraph 5.4.
Applicable sectoral consolidation rules	6.9	The <i>applicable sectoral consolidation rules</i> for a <i>financial sector</i> are the <i>sectoral rules</i> about capital adequacy and solvency on a consolidated basis that are applied in the table in paragraph 6.10.

11 Table: Paragraph 6.10: Application of sectoral consolidation rules

Financial sector	Sectoral rules
<b>Banking sector</b>	Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and <i>IFPRU 8.1</i> .
<b>Insurance sector</b>	PRA Rulebook: Solvency II Firms: Group Supervision.
<b>Investment services sector</b>	(in relation to an <i>IFPRU investment firm</i> which is a member of a <i>financial conglomerate</i> for which the <i>PRA</i> is the <i>coordinator</i> ) Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and the <i>PRA</i> Rulebook;  (in relation to a <i>designated investment firm</i> or an <i>IFPRU investment firm</i> which is a member of a <i>financial conglomerate</i> for which the <i>FCA</i> is the <i>coordinator</i> ) Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and <i>IFPRU 8.1</i> ;  (in relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i> for which the <i>FCA</i> is the <i>coordinator</i> ) <i>BIPRU 8</i> and <u><i>BIPRU TP</i></u> .

12 Table:

Part 5	1	This Part 6 is subject to Part 5 of this Annex.
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### 3 Prudential rules for third country groups (GENPRU 3.2.8R to GENPRU 3.2.9R)

#### Annex 2R

1 Table: PART 1: Third-country financial conglomerates

1.1	This Part of this annex sets out the <i>rules</i> with which a <i>firm</i> must comply under <i>GENPRU 3.2.8R</i> with respect to a <i>financial conglomerate</i> of which it is a member.
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1.2	A <i>firm</i> must comply, with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1, with <i>GENPRU</i> 3.1.29R as applied under paragraph 1.3.
1.3	For the purposes of paragraph 1.2: [deleted] the definitions of <i>conglomerate capital resources</i> and <i>conglomerate capital resources requirement</i> that apply for the purposes of that <i>rule</i> are the ones from whichever of Part 1 or Part 2 of <i>GENPRU</i> 3 Annex 1R is specified in the <i>requirement</i> referred to in <i>GENPRU</i> 3.2.8R; and the <i>rules</i> so applied (including those in <i>GENPRU</i> 3 Annex 1R) are adjusted in accordance with paragraph 3.1.
1.4	If the condition in Articles 7(4) and 8(4) of the <i>Financial Groups Directive</i> is satisfied (the <i>financial conglomerate</i> is headed by a <i>mixed financial holding company</i> ) with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1, the <i>firm</i> must also comply with <i>GENPRU</i> 3.1.35R (as adjusted in accordance with paragraph 3.1) with respect to that <i>financial conglomerate</i> .
1.5	A <i>firm</i> must comply with the following with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1: <i>SYSC</i> 12 (as it applies to <i>financial conglomerates</i> and as adjusted under paragraph 3.1); and <i>GENPRU</i> 3.1.25R.

2 Table: PART 2: Third-country banking and investment groups

2.1	This Part of this annex sets out the <i>rules</i> with which a <i>firm</i> must comply under <i>GENPRU</i> 3.2.9R with respect to a <i>third-country banking and investment group</i> of which it is a member.
2.2	A <i>firm</i> must comply with one of the sets of <i>rules</i> specified in paragraph 2.3 as adjusted under paragraph 3.1 with respect to the <i>third-country banking and investment group</i> referred to in paragraph 2.1.
2.3	The <i>rules</i> referred to in paragraph 2.2 are: the <i>applicable sectoral consolidation rules</i> in paragraph 6.10 of <i>GENPRU</i> 3 Annex 1R.
2.4	The set of <i>rules</i> from paragraph 2.3 that apply with respect to a particular <i>third-country banking and investment group</i> (as referred to in paragraph 2.1) are those that would apply if they were adjusted in accordance with paragraph 3.1.

2.5	The <i>sectoral rules</i> applied by Part 2 of this annex cover all prudential <i>rules</i> applying on a consolidated basis including those relating to large exposures.
2.6	A <i>firm</i> must comply with SYSC 12 (as it applies to <i>banking and investment groups</i> and as adjusted under paragraph 3.1) with respect to the <i>third-country banking and investment group</i> referred to in paragraph 2.1.

3 Table: PART 3: Adjustment of scope

3.1	<p>The adjustments that must be carried out under this paragraph are that the scope of the <i>rules</i> referred in Part 1 or Part 2 of this annex, as the case may be, are amended:</p> <p>so as to remove any provisions disapplying those <i>rules</i> for <i>third-country groups</i>;</p> <p>so as to remove all limitations relating to where a member of the <i>third-country group</i> is incorporated or has its head office; and</p> <p>so that the scope covers every member of the <i>third-country group</i> that would have been included in the scope of those <i>rules</i> if those members had their head offices in, and were incorporated in, <del>an EEA State</del> <u>the UK</u>.</p>
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4 Table: PART 4: Definition used in this Annex

4.1	This Part sets out the definition which a <i>firm</i> must apply for the purposes of this annex as it applies in relation to <i>GENPRU 3.2</i> .
4.2	A reference to “ <i>rules</i> ” in this annex includes any <del>directly applicable Community regulation</del> <u>onshored regulations</u> that is <u>are</u> relevant to the purpose of which “ <i>rules</i> ” as used refers to.

In GENPRU 3 Annex 4R (see GENPRU 3.1.5R), the words “*EEA regulated entity*” are replaced by the words “*UK regulated entity*”. This change is not shown.

## Annex B

## Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 11 Recovery and resolution

### 11.1 Application and purpose

#### Application

...

- 11.1.2 G (1) ...
- (2) *An IFPRU 730k firm may be subject to supervision on a consolidated basis by the FCA, or the PRA ~~or another competent authority.~~*

...

#### Exclusion of non UK firms

- 11.1.4 R This chapter does not apply to:
- (1) ~~an incoming firm; or~~
- (2) a firm that is incorporated in, or formed under the law of, a *third country*.

...

#### Guidance on application

- 11.1.6 G (1) ...
- (2) *It also applies to financial institutions, financial holding companies and mixed financial holding companies within the same group as these institutions that are subsidiaries of ~~an EEA a~~ UK parent undertaking. ~~An EEA A UK~~ parent undertaking is an institution, a financial holding company or a mixed financial holding company in the ~~EEA~~ UK that is not itself a subsidiary of an institution, a financial holding company or a mixed financial holding company in the ~~EEA~~ UK.*

...

- 11.1.7 G The table below summarises whether a section of IFPRU 11 applies to a firm or qualifying parent undertaking:

	(1) <i>IFPRU 730k firm</i> that is not subject to supervision on a <i>consolidated basis</i>	(2) <i>firm or qualifying parent undertaking</i> that is the <i>EEA UK parent undertaking</i> of an <i>RRD group</i>	(3) <del>specific application to an <i>IFPRU 730k firm</i> that is a <i>subsidiary of an EEA parent undertaking in another EEA State</i> (note 1)</del>	(4) <i>firm or qualifying parent undertaking</i> that is a <i>subsidiary of an EEA a UK parent undertaking</i> of an <i>RRD group</i>	(5) <i>qualifying parent undertaking</i> that is a <i>mixed activity holding company</i> of an <i>IFPRU 730k firm</i>
<i>IFPRU 11.1</i> (Application and purpose)	Yes	Yes	No	Yes	Yes
<i>IFPRU 11.2</i> (Individual recovery plans)	Yes	No	No	No	No
<i>IFPRU 11.3</i> (Group recovery plans)	No	Yes	Yes	No	No
<i>IFPRU 11.4</i> (Information for resolution plans)	Yes	Yes	Yes	No	No
<i>IFPRU 11.5</i> (Intra-group financial support)	No	Yes	Yes <del><i>IFPRU 11.5.7R only</i></del>	Yes	Yes (note 2 <u>1</u> )
<i>IFPRU 11.6</i> (Contractual recognition of bail-in)	Yes	Yes	No	Yes	Yes (note 3 <u>2</u> )
<i>IFPRU 11.7</i> (Notifications)	Yes	Yes	No	Yes	Yes
<p>Note 1: <del><i>IFPRU 11.3.1R(3)</i> and <i>IFPRU 11.4.1R(4)</i> more fully describe this type of <i>firm</i>. Where specific application is not provided for this type of <i>firm</i>, the application is explained by (4).</del></p>					

Note 2 1: *IFPRU 11.5 only applies to mixed activity holding companies of an IFPRU 730k firm in an RRD group.*

Note 3 2: *IFPRU 11.6 only applies to mixed activity holding companies that do not hold an RRD institution using an intermediate financial holding company or mixed financial holding company.*

## 11.2 Individual recovery plans

...

## 11.3 Group recovery plans

### Application

11.3.1 R This section applies to:

- (1) a firm that is the ~~EEA~~ UK parent undertaking of an RRD group; and
- (2) a qualifying parent undertaking that is the ~~EEA~~ UK parent undertaking of an RRD group; ~~and~~
- (3) ~~an IFPRU 730k firm that is the subsidiary of the EEA parent undertaking of an RRD group where:~~
  - (a) ~~the EEA parent undertaking is an EEA parent financial holding company or an EEA parent mixed financial holding company that is incorporated in, or formed under, the law of an EEA state other than the United Kingdom; and~~
  - (b) ~~the IFPRU 730k firm has the FCA as its consolidating supervisor.~~  
[deleted]

...

### General requirements of the group recovery plan

11.3.5 R The group recovery plan must:

- (1) ...
- (2) identify measures the group may need to implement at the level of:
  - (a) the ~~EEA~~ UK parent undertaking; and
  - (b) ...

...

- 11.3.6 R The *group recovery plan* must include arrangements to ensure the coordination and consistency of measures for each *RRD group member*, ~~including, where applicable, each significant branch.~~

...

...

Group recovery plan for a group that includes an IFPRU 730k firm that is not a significant IFPRU firm

- 11.3.9 R If the *RRD group* includes an *IFPRU 730k* firm that is not a *significant IFPRU firm* (and does not include an *IFPRU 730k* firm that is a *significant IFPRU firm*) the *group recovery plan* must include:

...

- (7) a summary of any material changes to the *group recovery plan* since the previous version was sent to the ~~FCA or other EEA consolidating supervisor~~;

...

...

Assessment and review by the management body of the ~~EEA~~ UK parent undertaking

- 11.3.18 R (1) A firm that is ~~an EEA~~ a UK parent undertaking or a qualifying parent undertaking must ensure that its management body assesses and approves the *group recovery plan* before sending it to its consolidating supervisor.
- (2) ~~An IFPRU 730k firm that is not an EEA parent undertaking must ensure the management body of its EEA parent undertaking assesses and approves the group recovery plan before the IFPRU 730k firm sends it to its consolidating supervisor. [deleted]~~

...

- 11.3.21 R (1) A firm or qualifying parent undertaking must send the *group recovery plan* to its ~~EEA~~ consolidating supervisor.
- (2) ~~Where the consolidating supervisor is the FCA, a~~ A firm or qualifying parent undertaking must send the *group recovery plan* in line with SUP 16.20 (Recovery plans and information for resolution plans).

## 11.4 Information for resolution plans

Application

11.4.1 R This section applies to:

- (1) ...
- (2) a firm that is the *EEA UK parent undertaking* of an *RRD group*; and
- (3) a *qualifying parent undertaking* that is the *EEA UK parent undertaking* of an *RRD group*; and
- (4) an *IFPRU 730K* that is the *subsidiary* of the *EEA parent undertaking* of an *RRD group*:
  - (a) where the *EEA parent undertaking* is an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* that is incorporated in, or formed under, the law of an *EEA state* other than the *United Kingdom*; and
  - (b) the *IFPRU 730k firm* has the *FCA* as its *consolidating supervisor*.  
[deleted]

...

## 11.5 Intra-group financial support

...

### Summary of RRD intra-group financial support conditions

- 11.5.3 G
- (1) *RRD* recognises a form of *intra-group financial support*. This allows an *RRD group member* in one *EEA State* or a *third country* to give financial support to an *RRD institution* in its *group* in another *EEA State* or *third country*, when that institution has infringed or is likely to infringe an *RRD early intervention condition*.
  - (2) To give this specific form of financial support an *RRD group member* must use an *RRD group financial support agreement* and satisfy the applicable conditions
  - (3) If the *RRD group member* meets the applicable conditions, other *EEA States* will recognise this financial support.
  - (4) This section sets out the conditions which, in summary, are:
    - (a) the *consolidating supervisor of the group* approves the proposed *RRD group financial support agreement* (see *IFPRU 11.5.7* to *IFPRU 11.5.8G*);
    - (b) the agreement complies with the conditions for entering into an *RRD group financial support agreement* (see *IFPRU 11.5.9R* to *IFPRU 11.5.13G*);

- ~~(e) the financial support complies with the conditions for giving financial support using an *RRD group financial support agreement* (see *IFPRU 11.5.14R* to *IFPRU 11.5.15G*);~~
- ~~(d) the management bodies of the relevant *group* members take the decision to give and receive financial support (see *IFPRU 11.5.16R* to *IFPRU 11.5.17R*);~~
- ~~(e) the relevant *group* members notify the relevant authorities of the intention to give financial support (see *IFPRU 11.5.18R* to *IFPRU 11.5.21R*); and~~
- ~~(f) the relevant *group* members make the relevant disclosures (see *IFPRU 11.5.22R* to *IFPRU 11.5.23G*). [deleted]~~

...

#### Approval of RRD group financial support agreements

- 11.5.7 R (1) The following must apply to their *consolidating supervisor* for approval of any proposed *RRD group financial support agreement* or of any amendment to that agreement:
- ~~(a) a *firm* that is the *EEA UK* parent undertaking of an *RRD group*;~~
  - ~~(b) a *qualifying parent undertaking* that is the *EEA UK* parent undertaking of an *RRD group*; and~~
  - ~~(c) an *IFPRU 730K firm* that is a *subsidiary* of an *EEA parent undertaking* of an *RRD group*:~~
    - ~~(i) where the *EEA parent undertaking* is an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* that is incorporated in, or formed under, the law of an *EEA State* other than the *United Kingdom*; and~~
    - ~~(ii) has the *FCA* as its *consolidating supervisor*. [deleted]~~

...

...

#### Conditions for entering into an RRD group financial support agreement

- 11.5.9 R The parties to an *RRD group financial support agreement* must include:
- (1) one or more of the following:
    - ~~(a) a *parent institution in a Member State*; [deleted]~~
    - ~~(b) an *EEA a UK* parent institution;~~



...

...

Conditions for giving group financial support using an RRD group financial support agreement

11.5.14 R A *firm* or *qualifying parent undertaking* must not give financial support using an *RRD group financial support agreement* unless it is satisfied that:

...

- (7) the support will not create a threat to financial stability, ~~in particular in the United Kingdom~~;
- (8) the group member giving the support complies with the following when giving the support:
  - (a) the requirements of the UK provisions which implemented the articles of the CRD relating to capital and liquidity;
  - (b) any requirements imposed under the UK provisions which implemented article 104(2) (additional own funds requirements) of the *CRD*;
  - (c) the requirements relating to large exposures in the ~~CRR~~ UK CRR and the UK provisions which implemented the CRD.

...

11.5.16 G A *firm* or *qualifying parent undertaking* proposing to give financial support using an *RRD group financial support agreement* should also refer to articles 33 to 36 of the RRD Regulation ~~Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing RRD:~~

A

~~<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>~~

...

Notice of intention to give financial support using an RRD group financial support agreement

11.5.18 R A *firm* or a *qualifying parent undertaking* intending to give financial support using an *RRD group financial support agreement* must ensure that its management body notifies:

- (1) its *competent authority*;
- (2) where different, its *consolidating supervisor*; and

- (3) where different, the *competent authority* of the *group member* receiving the financial support; ~~and~~
- (4) ~~the EBA.~~ [deleted]

...

11.5.21 R A *firm* or *qualifying parent undertaking* must ensure it sends the decision of its *management body* to give financial support to:

- (1) its *competent authority*;
- (2) where different, its *consolidating supervisor*; and
- (3) where different, the *competent authority* of the *group member* receiving the support; ~~and~~
- (4) ~~the EBA.~~ [deleted]

...

## 11.6 Contractual recognition of bail-in

...

### Contractual recognition of bail-in

11.6.3 R (1) If a liability meets the conditions in (2), a *firm* or *qualifying parent undertaking* must include a term in the contract governing the liability which states that the creditor or party to the agreement creating the liability:

- (a) ...
- (b) agrees to be bound by any of the following actions of ~~a resolution authority~~ the Bank of England in relation to that liability:

...

(2) The contractual recognition of a bail-in requirement in (1) applies to a liability that is:

- (a) governed by the law of a *third country* that is not an EEA State;

...

- (e) not a liability which the ~~resolution authority~~ Bank of England has determined can be subject to *write-down and conversion powers* by the ~~resolution authority of an EEA State~~ Bank of England under:

...

- (3) The contractual recognition of bail-in requirement in (1) also applies to a liability that is:
- (a) governed by the law of an EEA State;
  - (b) issued or entered into after *exit day*;
  - (c) issued or entered into before *exit day* but materially amended after *exit day*;
  - (d) of a type that is not excluded under article 44(2) of RRD;
  - (e) not a *deposit* of a type referred to in point (a) of article 108 of RRD; and
  - (f) not a liability which the Bank of England has determined can be subject to *write-down and conversion powers* by the Bank of England under:
    - (i) the law of an EEA State; or
    - (ii) a binding agreement concluded with that EEA State.

**[Note: article 55(1) of RRD]**

- 11.6.4 G A firm or qualifying parent undertaking proposing to provide contractual recognition of bail-in should also refer to articles 42 to 44 of the RRD Regulation. Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing RRD:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>.

...

## Annex C

### Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and general provisions

...

#### 1.3 Remuneration and property valuation requirements for MCD creditors

Application

1.3.1 R *MIPRU 1.3 applies to an MCD creditor ~~other than an incoming EEA firm.~~*

...

#### 2 Responsibility for insurance distribution and MCD credit intermediation activity

##### 2.1 Application and purpose

...

Purpose

2.1.2 G The ~~main~~ original purpose of this chapter ~~is~~ was to implement in part the provisions of the *IDD* and the *MCD*.

...

#### 3 Professional indemnity insurance

##### 3.1 Application and purpose

...

Purpose

3.1.3 G The purposes of this chapter are to:

- (1) ~~implement~~ show the original implementation of articles 10(4) and 10(5) of the *IDD* in so far as it ~~requires~~ required *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and

...

...

### 3.2 Professional indemnity insurance requirements

3.2.1 R A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from:

- (1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the ~~EEA~~ UK; or

...

[**Note:** articles 10(4) and 10(5) of the *IDD*]

...

3.2.3 G A ~~non-EEA firm~~ non-UK firm (such as a captive insurance company outside the ~~EEA~~ UK) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the specified countries or territories. The purpose of this provision is to balance the level of protection required for the *policyholder* against a reasonable level of flexibility for the *firm*.

...

3.2.7A G ~~Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*. [deleted]~~

~~[**Note:** The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]~~

...

Minimum limits of indemnity: MCD credit intermediaries

3.2.9A R If the *firm* is:

- (1) an *MCD article 3(1)(b) credit intermediary* who is not also an *MCD article 3(1)(b) creditor* carrying out direct sales only; or
- (2) a *home finance intermediary* that is:
  - (a) an *MCD mortgage adviser*; or
  - (b) an *MCD mortgage arranger*,

who is not also an *MCD mortgage lender* carrying out direct sales only;

then the minimum *limit of indemnity* is ~~the amount set out in article 1 of the Commission Delegated Regulation (EU) No 1125/2014 *MCD Delegated Regulation* which is reproduced in MIPRU 3.2.9BEU that specified in MCOB 3.2.9BR.~~

[**Note:** article 29(2) of the *MCD*]

3.2.9B EU R The minimum monetary amount of the professional indemnity insurance or comparable guarantee ~~required to be held by credit intermediaries [as referred to in the first subparagraph of Article 29(2)(a) of Directive 2014/17/EU]~~ shall be is:

- (1) EUR 460 000 for each individual claim;
- (2) in aggregate EUR 750 000 per calendar year for all claims.

[**Note:** article 1 of the Commission Delegated Regulation (EU) No 1125/2014]

...

## 5 Insurance distributors and home finance providers using insurance distribution or home finance mediation services

### 5.1 Application and purpose

...

#### Purpose

5.1.2 G The original purpose of this chapter ~~is~~ was to implement article 16 of the *IDD* in relation to *insurance undertakings* and *insurance intermediaries*. The provisions of this chapter have been extended to *home finance providers* in relation to *insurance distribution activity*, and to *insurance undertakings* and *home finance providers* in relation to *home finance mediation activity*, to ensure that *firms* using these services are treated in the same way and to ensure that *clients* have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an *unauthorised person*, this chapter also ensures that each *person* in the chain of those providing services is authorised.

...

### 5.2 Use of intermediaries

...

5.2.2 R For the purposes of *MIPRU* 5.2.1R, the *person*, in relation to the activity must:

...

(4) ~~be registered in another an *EEA State* for the purposes of the *IDD*;~~  
~~or [deleted]~~

(5) in relation to *insurance distribution activity*, not be carrying this activity on in the *EEA UK*; or

...

[**Note:** article 16 of the *IDD*]

5.2.3

E

(1) A *firm* should:

(a) before using the services of the intermediary, check:

(i) the *Financial Services Register*; ~~or~~

(ii) ~~in relation to *insurance distribution* or *reinsurance distribution* carried on by an *EEA firm*, the register of its *Home State regulator*; [deleted]~~

for the status of the *person*; and

(b) use the services of that *person* only if the relevant register indicates that the *person* is registered for that purpose.

(2) (a) Checking the *Financial Services Register* before using the services of the intermediary and using the services of that *person* only if the *Financial Services Register* indicates that the *person* is registered for that purpose may be relied on as tending to establish that:

(i) the *person*, in relation to the activity, has *permission*; or

(ii) the *person*, in relation to *insurance distribution activity*, is an *exempt person* or an *authorised professional firm*.

(b) ~~In relation to *insurance distribution* or *reinsurance distribution* carried on by an *EEA firm*, checking the register of the *firm's Home State regulator* and using the services of the *EEA firm* only if the register indicates that the *firm* is registered for that purpose may be relied on as tending to establish that the *firm* is registered for the purposes of the *IDD* [deleted].~~

...

## Annex D

### Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU-INV)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 14 Consolidated supervision for investment businesses

...

...

#### 14.2 Scope of consolidation

14.2.1 R For the purposes of the rules in this chapter, a *firm's* group means the *firm* and:

- (1) any ~~EEA~~ UK *parent institution* in the group which is a *financial holding company*, a *credit institution*, or an *investment firm*;
- (2) any *credit institution*, *investment firm* or *financial institution* which is a *subsidiary* either of the *firm* or of the *firm's* ~~EEA~~ UK *parent institution* as defined in (1); and
- (3) any *credit institution*, *investment firm* or *financial institution* in which the *firm* or one of the entities in (1) or (2) holds a *participation*.

...

14.2.4 G (1) A *firm's* *parent* is a *financial holding company* if it is either a *financial institution* or a *securities and futures firm* that is subject to the financial rules in Chapter 3 and that is a *broad scope firm* (but not a *venture capital firm*) and if its *subsidiary undertakings* carry out mainly *listed activities*, activities of a *credit institution* or activities undertaken by a Chapter 3 *broad scope firm*. For this purpose the *FCA* interprets the phrases 'mainly' or 'main business' to mean where the balance of business is over 40% of the relevant group or sub-group's balance sheet (measured on the basis of total assets) or profit and loss statement (measured on the basis of gross income). In addition, if the *firm's* *parent* has significant holdings in *insurance undertakings* or *reinsurance undertakings*, it is a *mixed financial holding company*, and the *firm* is subject to the rules in GENPRU 3.1 instead of the rules in this chapter. This is because a *parent* cannot be a *financial holding company* and a *mixed financial holding company* at the same time. GENPRU 3.1 sets out what constitutes significant insurance holdings (broadly more than 10% of the financial sector activities of the group). A *firm's* *parent* is a *financial holding company* and not regarded as a *mixed financial holding company* unless:



- ...
- (a) the parent has been notified by its *coordinator* that the *group* it heads is a financial conglomerate (~~in accordance with Article 4(2) of the *Financial Groups Directive*~~); and
  - (b) it has not been notified that the *coordinator* and the relevant competent authorities have agreed not to treat the group as a *financial conglomerate* in accordance with ~~Article 3(3) of the *Financial Groups Directive*~~ regulation [x] of the *financial groups directive regulations*.

(2) A *firm* with an ultimate ~~non-EEA~~ non-UK parent may also be subject to the provisions in *GENPRU* 3.2.

(3) In the case where undertakings are linked ~~to the domain of consolidation by a relationship within the meaning of article 12(1) of Directive (83/349/EEC)~~ by a *consolidation article 12(1) relationship*, the *FCA* will determine how consolidation is to be carried out.

[*Editor's note*: In due course, the text here shall be amended to reflect the appropriate provisions in the *financial groups directive regulations*, when the Financial Conglomerates and Other Financial Groups (Amendments etc.) (EU Exit) Regulations 2019 which amend these is published.]

...

## 14.5 Group financial resources requirement

...

14.5.2 R Financial resources requirements for individual entities in the group are:

- (1) for *firms* regulated by the *FCA*, their regulatory capital requirement under *FCA* rules;
- (2) ~~for entities regulated by an *EEA regulator* and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement; [deleted]~~
- (2A) for entities that are *recognised third country credit institutions* or *recognised third country investment firms* and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement;
- (2B) for entities not in (2A) that are regulated by a third country competent authority named in the table in *BIPRU* 8 Annex 3R and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement; and
- (3) for other entities in the group, a notional financial resources requirement calculated as if the entity were regulated by the *FCA*.

...

## 14 Interpretation

### App 1

#### App1.1 G Glossary of defined terms for Chapter 14

If a defined term does not appear in the IPRU(INV) 14 glossary below, the definition in the main Handbook *Glossary* applies.

...	
<i>EEA parent</i>	<del>a firm's direct or indirect parent which has its head office in the EEA.</del>
...	
<i>participation</i>	a participation within the meaning of <u>the UK provisions which implemented Article 17 of Directive 78/660/EEC 2, point (2) of the Accounting Directive</u> or the ownership either direct or indirect of 20% or more of the voting rights or capital of another undertaking which is not a <i>subsidiary</i> .
...	
<i>UK parent</i>	<u>a firm's direct or indirect parent which has its head office in the UK.</u>

## Annex E

### Amendments to the Compensation sourcebook (COMP)

[*Editor's note:* this Annex takes into account the changes made by FCA 2018/22 which come into effect on 1 April 2019.]

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

#### INTRO Foreword

1

**(This Foreword to the Compensation sourcebook does not form part of COMP.)**

...

~~Chapter 14 Participation by EEA firms~~

~~This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.~~

#### 1.1 Application, Introduction, and Purpose

...

Introduction

...

- 1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* 2 to *COMP* 14 12A cover who is eligible, the amount of compensation and how it might be paid.

...

#### 2 The FSCS

##### 2.1 Application and Purpose

...

Purpose

- 2.1.2 G In order to carry out its functions and put into effect the provisions set out in *COMP* 3 – *COMP* 14 12A (which deal with determining whether compensation is payable, calculating the amount of compensation that should be paid, and making levies on *firms*), the *FSCS* needs to have a

variety of powers. The purpose of this chapter is to set out these powers, and the restrictions upon them.

...

## 5 Protected claims

...

### 5.5 Protected investment business

...

Territorial scope condition

- 5.5.2 R The territorial scope condition is that the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
  - (2) a branch of a *UK firm* which is:
    - (a) a *MiFID investment firm* established in another *EEA State*; or
    - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *advising on investments* or *safeguarding and administering investments*); [deleted])
  - (~~3~~) and the *claim* is an *ICD claim*; or
  - (3) both (1) and (2); or [deleted]
  - (4)
    - (a) a *UK branch* of an *EEA UCITS management company*; or
    - (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on; [deleted]

and in either case the *management company* is providing *collective portfolio management services* for a *UCITS scheme* but only if the *claim* relates to that activity; or
  - (5) an establishment of an *incoming EEA AIFM* in another *EEA State* if the *claim* relates to providing *AIFM management functions* on a *cross border services* basis for an *authorised AIF*. [deleted]

Managers and depositaries of funds

5.5.3 R The conditions referred to in *COMP* 5.5.1R for a manager or *depository* of a *fund* are:

- (1) for the activities of *managing an AIF, managing a UK UCITS or establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:

...

...

...

## 5.6 Protected home finance mediation

...

5.6.2 R *COMP* 5.6.1R applies only if the *protected home finance mediation* was carried on by a *relevant person*:

- (1) with a *customer* who was a resident in the *United Kingdom*; ~~or~~
- (2) ~~from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom with a customer who was resident elsewhere in the EEA;~~

at the time the *protected home finance mediation* was carried on.

...

## 5.7 Protected non-investment insurance distribution

....

5.7.2 R *COMP* 5.7.1R only applies if the conditions in (1) and (2) are satisfied:

- (1) the *protected non-investment insurance distribution* was carried on from:
- (a) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
- (b) ~~a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IDD;~~ and
- (2) the claimant making the *claim* (or where *COMP* 3.2.4R applies, the *customer* on behalf of whom a *firm* makes a *claim*) dealt initially, with a view to entering into a *relevant general insurance contract* or a *pure protection contract* but not a *long-term care insurance contract* or a *reinsurance contract*, with an intermediary that was:
- (a) established in the *United Kingdom*; ~~or~~

(b) ~~a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IDD.~~

5.7.3 G The *FSCS* will not cover a *claim* against an intermediary or a *successor* of an intermediary that meets the criteria of ~~either COMP 5.7.2R(2)(a) or COMP 5.7.2R(2)(b)~~ where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of ~~either COMP 5.7.2R(2)(a) or COMP 5.7.2R(2)(b)~~.

5.7.4 G ... However, *COMP 5.7.2R* has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on *protected non-investment insurance mediation* in accordance with *COMP 5.7.2R(1)(a)* may be covered by the *FSCS* if the claimant dealt initially with a *UK intermediary* that is not a *relevant person*.

...

## 6 Relevant persons and successors in default

...

### 6.2 Who is a relevant person?

...

6.2.3 G A pre-exit incoming EEA firm may be a participant firm in respect of acts or omissions before exit day that give rise to a claim against it.

### 6.3 When is a relevant person in default?

...

6.3.3 R The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

(1) ...

(2) a determination by the ~~relevant person's Home State regulator~~ FCA or the PRA that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;

...

...

### 6.3A When is a successor in default?

...

6.3A.3 R The *FSCS* may determine a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is a *MiFID investment firm*), and the *successor* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

(1) ...

(2) a determination by the ~~*successor's Home State regulator*~~ FCA or the PRA that the *successor* appears unable to meet *claims* against it and has no early prospect of being able to do so; or

...

...

## 7 Assignment or subrogation of rights

...

### 7.3 Automatic subrogation

...

Rights and obligations against the relevant persons, successors and third parties

...

7.3.10 R (1) The *FSCS* may determine that:

...

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, ~~another EEA State~~ or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

(2) ...

...

## 10 Limits on the amount of compensation payable

...

### 10.2 Limits on compensation payable

...

Table limits

...

- 10.2.5 G *COMP 12.4.4R includes further limits relating to certain ICD claims against ~~certain incoming EEA firms~~ pre-exit incoming EEA firms, where the act or omission giving rise to the claim arose before *exit day*. These reflect the *Investor Compensation Directive*, which will continue to apply to EEA State compensation schemes after *exit day*, under which compensation may be payable by the ~~incoming EEA firm's pre-exit incoming EEA firm's Home State compensation scheme~~ EEA State compensation scheme.*

...

## 12 Calculating compensation

...

### 12.4 The compensation calculation

Protected investment business: general

...

- 12.4.4 R *If the claimant has an *ICD claim* against ~~an incoming EEA firm~~ a pre-exit incoming EEA firm which is a *MiFID investment firm* or, where applicable, a *successor* of such a firm, and the act or omission giving rise to the *ICD claim* arose before *exit day*, the *FSCS* must take account of the liability of the ~~Home State compensation scheme~~ EEA State compensation scheme in calculating the compensation payable by the *FSCS*. For the purposes of applying this rule, "ICD claim" and "MiFID investment firm" have the meaning they had immediately before *exit day*.*

...

*COMP 14* (Participation by EEA Firms) is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

## 14 Participation by EEA firms [deleted]

Amend the following as shown.

### TP 1 Transitional Provisions



TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
42	<u>Amendments introduced by the Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X]</u>	<u>R</u>	<u>The changes referred to in column (2) apply in relation to a <i>claim</i> against a <i>relevant person</i> or a <i>successor</i>, that was <i>in default</i> after <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
43	<u>Amendments to COMP 5.5.2R(2) – (3) and COMP 5.7.2R(1)(b) and (2)(b) by the Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X]</u>	<u>R</u>	<u>The amendments referred to in column (2) only apply to acts or omissions by a <i>relevant person</i> after <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
44	<u>COMP TP 43</u>	<u>G</u>	<u>The purpose of COMP TP 43 is to ensure that the <i>FSCS</i> can pay compensation after <i>exit day</i> in respect of acts or omissions before <i>exit day</i> by a <i>branch</i> of a <i>UK firm</i> that was established in an <i>EEA State</i>.</u>		
45	<u>COMP 6.3.1R, 6.3A.1R, 9.2.2R, 11.2.6, 12.3.5R and 12.3.6R</u>	<u>R</u>	<u>The defined terms “<i>ICD claim</i>” and “<i>MiFID investment firm</i>” in or under the provisions referred to in column (2) have the meaning they had immediately before</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>

			<p><u>exit day</u> for any of the following purposes:</p> <p>(1) <u>declaring in default</u>, or</p> <p>(2) <u>postponing compensation where the claim is not an ICD claim</u> against, or</p> <p>(3) <u>paying a lesser sum in final settlement where the claim is not an ICD claim</u> against, or</p> <p>(4) <u>determining the quantification date in respect of</u>,  <u>a pre-exit incoming firm</u>, or the <u>successor</u> of such a firm.</p>		
46	<p><u>Amendments and deletions in participant firm and COMP</u> by the <u>Exiting the European Union: Glossary (Amendments) Instrument 201[X]</u> and the <u>Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X]</u> respectively</p>	R	<p>The <u>amendments and deletions</u> referred to in column (2) are <u>disapplied</u>, in relation to a <u>claim</u> against a <u>pre-exit incoming EEA firm</u> in respect of <u>any act or omission</u> by that firm before <u>exit day</u>, to the extent <u>needed to enable the FSCS</u>:</p> <p>(1) <u>to determine whether, had the claim been made immediately before exit day, the FSCS would have paid compensation in respect of it</u>; and</p> <p>(2) <u>if so, to pay compensation in respect of that claim</u>.</p> <p><u>For these purposes, where an amendment or deletion to a defined term is</u></p>	<u>From exit day indefinitely</u>	<u>exit day</u>

			<u>disapplied under this rule, that defined term has the meaning it had immediately before exit day.</u>		
--	--	--	--	--	--

...

## Sch 2 Notification requirements

### Sch 2.1G

1.	The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning <del>Chapter 14</del> and the Transitional Provisions, the notification rules in <i>COMP</i> apply only to the <i>FSCS</i> (the scheme manager).
...	

### Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COMP</i> 14.2.1R	Application by eligible inward passporting EEA firm to obtain <i>top-up cover</i> into <i>compensation scheme</i>	That firm is qualifying incoming EEA firm. The sub-scheme(s) the firm wishes to participate in. Confirmation that the level or scope of cover offered by its home state scheme(s) is less than that available in the UK.	The <i>firm's</i> decision that it wishes to obtain <i>top-up cover</i> into the UK scheme.	N/A
<i>COMP</i> 14.4.5R	Termination of <i>top-up cover</i>	Statement that incoming EEA firm is terminating <i>top-up cover</i>	Decision by firm to resign from FSCS	6 months notice
<i>COMP</i> 14.4.6R	Termination of inward	The firm's resignation	Termination of firm's <i>top-up cover</i>	No later than six weeks after

	passporting EEA firm's top-up cover into compensation scheme	from the compensation scheme and the level of compensation available to clients of the firm's UK branch following its decision to resign from FSCS		the end of the firms participation in compensation scheme
--	--	--	--	---

...

**Sch 5 Rights of action for damages**

...

Sch 5.2G

...

Chapter/ Appendix	Section/Annex	Paragraph	For private person?	Removed	For other person ?
...					
COMP 14.4.6R			Yes	No	No

**Annex F****Cross-cutting definitional changes**

**Part 1:** In the following provisions, delete the references to ‘*EU CRR*’ and insert references to ‘*UK CRR*’.

**Fees manual (FEES)**

*FEES 3.2.7R*

*FEES 3 Annex 6R*

*FEES 3 Annex 6AR*

**General Prudential sourcebook (GENPRU)**

*GENPRU 3.1.8R*

*GENPRU 3.1.36R*

*GENPRU 3.2.4G*

**Prudential sourcebook for Investment Firms (IFPRU)**

*IFPRU 11.5.23G*

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

*IPRU(INV) 14.1.2R*

**Supervision manual (SUP)**

*SUP 15.3.11R*

*SUP 16.12.3-AG*

*SUP 16.12.3-BG*

*SUP 16.12.12R*

*SUP 16.12.13R*

*SUP 16.12.16R*

*SUP 16.12.17R*

*SUP 16.12.23AR*

*SUP 16.12.24AR*

*SUP 16.12.26R*

*SUP 16.12.27R*

*SUP 16.16.3G*

*SUP 16 Annex 33BG*

*SUP 16 Annex 34BG*

**Part 2:** In the following provisions, delete any references to ‘*manage a UCITS*’ or ‘*managing a UCITS*’ and insert references to ‘*manage a UK UCITS*’ or ‘*managing a UK UCITS*’, as appropriate.

**Fees manual (FEES)**

*FEES 4 Annex 1AR, Part 1*

**Supervision manual (SUP)**

*SUP 16.12.4R*

*SUP 16.23.2R*

**Client Assets sourcebook (CASS)**

*CASS 6.1.16BAG*

**Part 3:** In the following provisions, delete the references to ‘*UK ELTIF*’ or ‘*ELTIF*’ and insert references to ‘*LTIF*’.

**Fees manual (FEES)**

*FEES 1.1.2R*

*FEES 3.2.7R*

*FEES 3 Annex 2R*

*FEES 4.2.11R*

*FEES 4 Annex 4R*

**Dispute Resolution: Complaints sourcebook (DISP)**

*DISP 1.1.5R*

*DISP 1 Annex 2R*

*DISP 2.7.6R*

**Compensation sourcebook (COMP)**

*COMP 5.5.1R*

**Part 4:** In the following provisions, delete the references to ‘*EuSEF*’ and insert references to ‘*SEF*’.

**Conduct of Business sourcebook (COBS)**

*COBS 4.12.4R*

**Supervision manual (SUP)**

*SUP 15.3.29R*

*SUP 15.3.30D*

*SUP 15.3.31G*

*SUP 15 Annex 6R (list)*

*SUP 15 Annex 6FG*

**Decision Procedure and Penalties Manual (DEPP)**

*DEPP 2 Annex 1*

**Investment Funds sourcebook (FUND)**

*FUND 1.3.7G*

**The Enforcement Guide (EG)**

*EG 19.27.4G*

*EG 19.27.5G*

**Part 5:** In the following provisions, delete the references to ‘*EuVECA*’ and insert references to ‘*RVECA*’.

**Conduct of Business sourcebook (COBS)**

*COBS 4.12.4R*

**Supervision manual (SUP)**

*SUP 15.3.29R*

*SUP 15.3.30D*

*SUP 15.3.31G*

*SUP 15 Annex 6R (list)*

*SUP 15 Annex 6FG*

**Decision Procedure and Penalties Manual (DEPP)**

*DEPP 2 Annex 1*

**Investment Funds sourcebook (FUND)**

*FUND 1.3.7G*

**The Enforcement Guide (EG)**

*EG 19.27.4G*

*EG 19.27.5G*

**Part 6:** In the following provisions, delete the references to ‘*acting as trustee or depositary of a UCITS*’ and insert references to ‘*acting as trustee or depositary of a UK UCITS*’.

**Fees manual (FEES)**



*FEES 4 Annex 1AR*

*FEES 6 Annex 3AR*

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

*IPRU(INV) 2.1.4G*

*IPRU(INV) 5.3.1R*

*IPRU(INV) 5.3.2R*

**Client Assets sourcebook (CASS)**

*CASS 1.4.6BG*

*CASS 6.1.1R*

*CASS 6.1.16FR*

*CASS 6.1.16IDR*

*CASS 6.1.16IEG*

*CASS 6.1.16IFG*

*CASS 6.6.41AG*

*CASS 6.6.57R*

*CASS 8.1.2AR*

*CASS 8.2.1R*

*CASS 10.1.1R*

**Supervision manual (SUP)**

*SUP 3.10.5R*

*SUP 16.12.4R*

*SUP 16.14.4R*

*SUP 16.23.2R*

**Collective Investment Schemes sourcebook (COLL)**

*COLL 6.6A.8R*

*COLL 6.6B.4G*

## Annex G

### Amendments to the General guidance on Benchmark Submission and Administration (BENCH)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1.1 Application and purpose

...

- 1.1.3 G (1) The EU benchmarks regulation applied from 1 January 2018. The benchmarks regulation is the UK version of this EU regulation and applies from 1 January 2018 exit day.
- (2) Various changes were made to the *Regulated Activity Order* as a result of the EU benchmarks regulation. In particular:
- (a) ~~There is a~~ A new regulated activity of: *administering a benchmark* (article 63S of the *Regulated Activities Order*) was introduced.
- (b) The regulated activity of *administering a specified benchmark* ~~will cease~~ ceased to apply (subject to the transitional provisions described in *SUP TP 10*).
- (c) The regulated activity of *providing information in relation to a specified benchmark* ~~will cease~~ ceased to apply (subject to the transitional provisions described in *SUP TP 10*). However, *benchmark contributors* which *contribute input data* to a *BMR benchmark administrator* are still subject to various requirements in the *Handbook* and are subject to the *benchmarks regulation* when doing so.

...

...

#### 2.3 Guidance for benchmark users: articles 28 and 29 of the benchmarks regulation

...

- 2.3.2 G ...
- (2) The effect of the prohibition in article 29 is that, subject to the exclusions in article 2 of the *benchmarks regulation*, a *firm* which is a *supervised entity* may only use a *benchmark* in cases where:
- (a) if the benchmark administrator is *located* in the ~~EU~~ UK, the benchmark administrator is listed in the register maintained by

~~ESMA~~ the FCA under article 36 of the *benchmarks regulation*;  
or

- (b) if the benchmark administrator is *located* outside the EU UK, ~~the benchmark administrator and the benchmark itself are~~ is listed in the register maintained by ~~ESMA~~ the FCA under article 36 of the *benchmarks regulation*.

2.3.3 G In considering articles 28(2) and article 29, *firms* will need to consider the *benchmarks regulation* and ~~legislation made under that regulation~~ onshored regulations which were previously *EU regulations* made under the EU benchmarks regulation. *Firms* should also note the points below.

- (1) “Use of a benchmark” is defined in article 3.1(7) of the *benchmarks regulation*. *ESMA* has provided guidance on that definition (when used in the context of the EU benchmarks regulation) in the form of “Q&As”. That guidance is available on *ESMA*’s website.

...

- (4) *ESMA* has produced guidance (in the form of “Q&As”) on various aspects of the EU benchmarks regulation. That guidance is available on *ESMA*’s website.

**EXITING THE EUROPEAN UNION: BUSINESS STANDARDS SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Banking: Conduct of Business sourcebook (BCOBS)	Annex D
Client Assets sourcebook (CASS)	Annex E
Market Conduct sourcebook (MAR)	Annex F
Product Intervention and Product Governance sourcebook (PROD)	Annex G

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application

##### 1.1 General application

...

##### ~~Auction regulation bidding~~

1.1.1C R ~~COBS 5 (Distance communications) applies to a firm in relation to its carrying on of auction regulation bidding. [deleted]~~

...

##### 1.3 Insurance distribution

##### References in COBS to the IDD Regulation

- 1.3.1 G (1) This sourcebook contains a number of provisions which ~~transpose~~ transposed the *IDD*.
- (2) In order to help *firms* which are subject to ~~the~~ those requirements of which implemented the *IDD* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ *IDD Regulation*, marked with the status letters “EU” “UK”. ~~The authentic provisions of the *IDD Regulation* are directly applicable to firms carrying on insurance distribution in relation to insurance-based investment products.~~
- (3) This sourcebook does not reproduce the *IDD Regulation* in its entirety. A *firm* to which provisions of the *IDD Regulation* applies should refer to the ~~electronic version of the Official Journal of the European Union for:~~ *IDD Regulation*.
- (a) ~~the authentic version of the applicable articles of the *IDD Regulation*; and~~
- (b) ~~a comprehensive statement of its obligations under the *IDD Regulation*.~~

...

- 1.3.3 R ...
- (2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has the

meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
...	
“article 20(1) of Directive (EU) 2016/97”	<i>COBS 9A.2.3AR</i> or <i>COBS 7.3.4R</i>
“article 30(1) of Directive (EU) 2016/97”	<i>COBS 9A.2.1R</i> and <i>COBS 9A.2.16R</i>
“article 30(2) of Directive (EU) 2016/97”	<i>COBS 10A.2.1R</i> and <i>COBS 10A.2.2R</i>
“article 30(3)(a) (ii) of Directive (EU) 2016/97”	<i>COBS 10A.4.1R(2A)</i>
“article 14(1) of this Regulation”	<i>COBS 9A.3.3AEU</i>
“article 185 of Directive 2009/138/EC”	relevant <i>rules</i> in <i>COBS 13</i> , <i>COBS 14</i> and <i>COBS 16.6</i> which are followed by a “ <b>Note:</b> ” referring to article 185 of Solvency II
...	
“Directive (EU) 2016/97”	<i>IDD</i>
...	

...

- 1.3.4 G *Firms* to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” “UK” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.3.5 G (1) Certain provisions in this sourcebook which ~~implement~~ implemented *IDD* require *firms* to provide *clients* with information “in good time”. There are also other provisions in this sourcebook which require information to be provided “in good time”, for example, *COBS 6.1ZA.19AR*.

...

...



**1 Annex Application (see COBS 1.1.2R)**  
**1**

Part 1: What?

Modifications to the general application of COBS according to activities

<b>1.</b>	<b>Eligible counterparty business</b>	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which <del>implement</del> <u>implemented</u> the <i>IDD</i> continue to apply.
		...
...		
<b>8.</b>	<b>PRIPs Regulation</b>	
8.1	R	The <del>general application rule</del> is modified so that a <i>firm</i> will not be subject to <i>COBS</i> to the extent that it would be contrary to the <i>United Kingdom's</i> obligations in respect of the <i>PRIPs Regulation</i> . <u>[deleted]</u>

...

**2 Conduct of business obligations**

...

**2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products**

...

- 2.3A.6 R (1) *COBS* 2.3A.5R does not apply to:
- (a) a fee, commission or non-monetary benefit which:
    - (i) is designed to enhance the quality of the relevant service to the *client* (see *COBS* 2.3A.8R and, also for an *insurance-based investment product*, *COBS* 2.3A.9AEU 2.3A.9AUK); and

...

...

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9A ~~EU~~  
UK ...

2.3A.9B R ~~COBS 2.3A.9A~~EU 2.3A.9AUK applies as if it was a *rule* to *firms* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

...

## 2.4 Agent as client and reliance on others

...

### Reliance on other insurance distributors

2.4.5A R Where a *firm* carrying on *insurance distribution* activities in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under *COBS 10A*, it may rely upon:

- (1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in *COBS 9A* ~~or equivalent requirements in another *EEA State*~~; or
- (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in *COBS 10A.2* ~~or equivalent requirements in another *EEA State*~~,

in performing that assessment.

[**Note:** article 30(2) of the *IDD*]

...

## 4 Communicating with clients, including financial promotions

...

### 4.4 Compensation information

4.4.1 R A *firm* must ensure that any reference in advertising to an investor compensation scheme ~~established under the *Investor Compensation Directive*~~ is limited to a factual reference to the scheme.

[**Note:** article 10(3) of the *Investor Compensation Directive*]

...

## 5 Distance communications

### 5.1 The distance marketing disclosure rules

#### Application

- 5.1.-1 R (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* ~~or another EEA State~~.

...

...

- 5.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~EEA~~ *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of ~~one or more EEA States~~ the *United Kingdom*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

## 5.2 E-Commerce

### Application

- 5.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

### Information about the firm and its products or services

- 5.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

- (5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

...

- (b) the professional title ~~and the EEA State where it was granted~~;

- (c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

...

...

- 5.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

...

**5 Annex Distance marketing information  
1R**

This Annex belongs to *COBS 5.1.1R* (The distance marketing disclosure rules)

Information about the firm

...	
(2)	Where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State</i></del> of residence <u>UK</u> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	
...	
(16)	The <del><i>EEA State</i></del> <u>State</u> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
...	

...

**6 Information about the firm, its services and remuneration**

**6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)**

...

Information concerning safeguarding of designated investments belonging to clients and client money

6.1.7 R (1) A *firm* that holds *designated investments* or *client money* for a *client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:

...

(e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee

scheme which applies to the *firm* by virtue of its activities in an ~~EEA State~~ the United Kingdom.

...

...

#### Compensation information

- 6.1.16 R (1) A *firm* must make available to a *client*, who has used or intends to use the *firm*'s services, information necessary for the identification of the *compensation scheme* ~~or any other investor compensation scheme of which~~ if the *firm* is a *participant firm* member (including, if relevant, membership through a *branch*) ~~or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.~~
- (2) The information under (1) must include the amount and scope of the cover offered by the ~~compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the *Investor Compensation Directive*~~ compensation scheme.
- (3) ...
- (4) The information provided for in this *rule* must be made available in a *durable medium*, or via a website if the *website conditions* are satisfied, in the official language or languages of the ~~EEA State~~ United Kingdom.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

#### 6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

##### Application

- 6.1ZA.1 R (1) Subject to (2) and (3), this section applies to a *firm*:
- ...
- (2) ...
- (3) Where a *firm* is carrying on *insurance distribution activities* for a *professional client* only those *rules* which ~~implement~~ implemented the requirements of the *IDD* apply.

- 6.1ZA.1 G For the purposes of *COBS* 6.1ZA.1R(3) if a *rule* ~~implements~~ implemented a requirement of the *IDD*, a note ("**Note:**") follows the *rule* indicating which provision is was being implemented.

...

## Information about a firm and its services: insurance distribution

- 6.1ZA.7 R A *firm* carrying on *insurance distribution activities* must provide a *retail*  
A *client* with the following general information, if relevant:
- ...
- (4) if the *firm* is acting through an *appointed representative* a statement of this fact ~~specifying the *EEA State* in which that *appointed representative* is registered;~~
- ...
- (6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, ~~*SYSC 3.3.1EU*~~ *3.3.1UK* (applied by *SYSC 3.3.3R*) or the policy required by article 4(1) of the *IDD Regulation*; and
- ...
- ...
- ...

## Information concerning safeguarding of client money: insurance distribution

- 6.1ZA.1 R (1) Where a *firm* doing *insurance distribution activities* holds *client*  
0A *money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:
- ...
- (b) (if it is a *firm* doing *MiFID, equivalent third country or optional exemption business*) ~~*COBS 6.1ZA.9EU*~~ *6.1ZA.9UK* and *COBS 6.1.7R(1)(e)*;
- in relation to that *client money*.
- ...
- ...

## Compensation information: MiFID business

- 6.1ZA.2 R (1) A *firm* must make available to a *client*, who has used or intends to use  
2 a *firm's* services, information necessary for the identification of the *compensation scheme* ~~or any other investor compensation scheme of which~~ if the *firm* is a *participant firm member* (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.

- (2) The information under (1) must include the amount and scope of the cover offered by the ~~compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the Investor Compensation Directive~~ compensation scheme.
- (3) ...
- (4) The information provided for in this *rule* must be made available in a *durable medium*, or via a website if the *website conditions* are satisfied, in the official language or languages of the ~~EEA State~~ United Kingdom.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

## **7 Insurance distribution**

### **7.1 Application**

- 7.1.1 R This chapter applies to a *firm* carrying on *insurance distribution activities* in relation to a *life policy*, but only if the *State of the commitment* is ~~an EEA State~~ the UK.

[**Note:** articles 1, 20(1) and 23 of the *IDD*]

...

## **9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)**

### **9.1 Application and purpose provisions**

...

Life policies for professional clients

- 9.1.5 R If the *firm* makes a *personal recommendation* to a *professional client* to take out a *life policy* which is not an *insurance-based investment product*, this chapter applies, but only those *rules* which ~~implement~~ implemented the requirements of the *IDD*.
- 9.1.6 G If a *rule* ~~implements~~ implemented a requirement of the *IDD*, a Note (“**Note:**”) follows the *rule* indicating which provision is was being implemented. *COBS 2.1* (acting honestly fairly and professionally), *COBS 2.6* (additional insurance distribution obligations), *COBS 4* (communicating with clients), *COBS 6* (information about the firm, its services and remuneration) and *COBS 14* (product information) contain further *rules* ~~implementing~~ which implemented the *IDD*.

...

**9A Suitability (MiFID and insurance-based investment products provisions)****9A.1 Application and purpose**

...

Effect of provisions marked “EU” “UK” for the firms distributing insurance-based investment products

- 9A.1.4 R Provisions in this chapter marked “EU” “UK” and including a Note (**Note:**) referring to the *IDD Regulation* apply as if they were *rules* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

**9A.2 Assessing suitability: the obligations**

...

Assessing the extent of the information required: insurance-based investment products

- 9A.2.4A EU UK 9(1) For the purposes of providing advice on an insurance-based investment product in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R, insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.
- 9(2) Without prejudice to the fact that, in accordance with ~~Article 20(1) of Directive (EU) 2016/97~~ COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR, any contract proposed shall be consistent with the customer’s demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:
- ...
- 17(3) Where information required for the purposes of ~~Article 30(1) or (2) of Directive (EU) 2016/97~~ COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R has already been obtained pursuant to ~~Article 20 of Directive (EU) 2016/97~~ COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR, insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** articles 9(1) and (2) and 17(3) of the *IDD Regulation*]



...

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6A EU 17(1) For the purposes of ~~Article 30(1) and (2) of Directive (EU) 2016/97~~  
UK ~~COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS~~  
10A.2.2R, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

...

[**Note:** article 17(1) of the *IDD Regulation*]

...

Obtaining information about a client's financial situation: insurance-based investment products

9A.2.7A EU ...  
UK

...

Obtaining information about a client's investment objectives: insurance-based investment products

9A.2.8A EU ...  
UK

...

Reliability of information: insurance-based investment products

9A.2.9A EU ...  
UK

...

Discouraging the provision of information: insurance-based investment products

9A.2.11 EU 17(2) The insurance intermediary or insurance undertaking shall not  
A UK discourage a customer or potential customer from providing information required for the purposes of ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R.

[**Note:** article 17(2) of the *IDD Regulation*]

...

Reliance on information: insurance-based investment products

9A.2.12 EU ...  
A UK

...

Insufficient information: insurance-based investment products

9A.2.13 EU 9(5) Where the insurance intermediary or insurance undertaking does not  
A UK obtain the information required under ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R, the insurance intermediary or insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.

[**Note:** article 9(5) of the *IDD Regulation*]

...

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.15 EU ...  
A UK

...

Switching: insurance-based investment products

9A.2.18 EU ...  
A UK

...

Unsuitability: insurance-based investment products

9A.2.20 EU 9(6) When providing advice on an insurance-based investment product in  
A UK accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[**Note:** article 9(6) of the *IDD Regulation*]

...

Automated or semi-automated systems: insurance-based investment products

9A.2.24 EU 12 The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.

[**Note:** article 12 of the *IDD Regulation*]

**9A.3 Information to be provided to the client**

...

Explaining the reasons for assessing suitability: insurance-based investment products

9A.3.1A EU 11 Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.

[**Note:** article 11 of the *IDD Regulation*]

...

Providing a suitability report: insurance-based investment products

9A.3.3A EU 14(1) When providing advice on the suitability of an insurance-based investment product in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R, insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:

...

...

[**Note:** article 14(1) to (3) of the *IDD Regulation*]

...

Periodic assessments: insurance-based investment products

9A.3.10 EU ...  
UK

**9A.4 Record keeping and retention periods for suitability records**

...

## Retention of records: insurance-based investment products

- 9A.4.3 EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679  
UK of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[**Note:** article 19(1) of the *IDD Regulation*]

## Record-keeping obligations for the assessment of suitability: insurance-based investment products

- 9A.4.4 EU 19(2) In the case of an assessment of suitability undertaken in accordance  
UK with ~~Article 30(1) of Directive (EU) 2016/97~~ COBS 9A.2.1R and COBS 9A.2.16R, the record shall further include the following:

...

[**Note:** article 19(2) of the *IDD Regulation*]

...

## 10A Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

### 10A.1 Application

...

- 10A.1.4 R Provisions in this chapter marked “EU” “UK” and including a Note (**Note:**) referring to the *IDD Regulation* apply as if they were *rules to firms*, to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

### 10A.2 Assessing appropriateness: the obligations

...

## Assessing a client's knowledge and experience: insurance-based investment product

10A.2.3 A	<del>EU</del> <u>UK</u>	15	Without prejudice to the fact that, in accordance with <del>Article 20(1) of Directive (EU) 2016/97</del> <u>COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR</u> , any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall determine whether the customer has the necessary knowledge and experience in order to understand the risks involved in relation to the service or product proposed or demanded when assessing whether an insurance service or product distributed in accordance with <del>Article 30(2) of Directive (EU) 2016/97</del> <u>COBS 10A.2.1R and COBS 10A.2.2R</u> is appropriate for the customer.
--------------	----------------------------	----	--

[**Note:** article 15 of the *IDD Regulation*]

...

## Information regarding a client's knowledge and experience: insurance-based investment products

10A.2.4 A	<del>EU</del> <u>UK</u>	17(1)	For the purposes of <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> , the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:
			...
		17(3)	Where information required for the purposes of <del>Article 30(1) or (2) of Directive (EU) 2016/97</del> <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> has already been obtained pursuant to <del>Article 20 of Directive (EU) 2016/97</del> <u>COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR</u> , insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** article 17(1) and (3) of the *IDD Regulation*]

...

## Discouraging the provision of information: insurance-based investment products

10A.2.5 A	<del>EU</del> <u>UK</u>	17(2)	The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> .
--------------	----------------------------	-------	--

[**Note:** article 17(2) of the *IDD Regulation*]

...

Reliance on information: insurance-based investment products

10A.2.6 EU ...  
A UK

...

#### 10A.4 Assessing appropriateness: when it need not be done due to type of investment

10A.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:

(a) the service:

(i) ...

(ii) relates to particular *financial instruments* (see paragraph (2)); and

(iii) ...

...

(2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:

(a) shares in companies admitted to trading on:

(i) a *regulated market* or an *EU regulated market*; or

...

except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*; or

(b) bonds or other forms of securitised debt admitted to trading on:

(i) a *regulated market* or an *EU regulated market*; or

...

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

...

...

...

## Other non-complex insurance-based investment products

10A.4.3 EU 16 An insurance-based investment product shall be considered as non-complex for the purposes of ~~Article 30(3)(a)(ii) of Directive (EU) 2016/97~~ COBS 10A.4.1R where it satisfies all of the following criteria:

UK

...

[Note: article 16 of the *IDD Regulation*]

...

**10A.7 Record keeping and retention periods for appropriateness records**

...

## Record keeping: insurance-based investment products

10A.7.2 EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

A

UK

19(3) In the case of an assessment of appropriateness undertaken in accordance with ~~Article 30(2) of Directive (EU) 2016/97~~ COBS 10A.2.1R and COBS 10A.2.2R, the record shall further include the following:

...

[Note: article 19(1) and (3) of the *IDD Regulation*]

...

**13 Preparing product information**

## 13.1 The obligation to prepare product information

...

PRIIPs

- 13.1.1A G (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*) in the United Kingdom.

[**Note:** article 5 of the *PRIIPs Regulation*]

- (2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the preparation of product information for *PRIIPs*, the rules in *COBS* 13.1 to *COBS* 13.4 do not apply to a *firm* in relation to the manufacture of a *PRIIP* (except where applicable to *Solvency II Directive information*). *COBS* 13.5 and *COBS* 13.6 continue to apply where relevant.

Application of the *PRIIPs* regulation to funds

- 13.1.1B G (1) A *UCITS management company* is exempt from the *PRIIPs Regulation* until 31 December 2019 (see article 32(1) of the *PRIIPs Regulation*). These *firms* should continue to publish a *key investor information document* until that date (see *COLL* 4.7).
- (2) (a) A manager of a *fund* offered to retail investors in the United Kingdom, other than a *UCITS*, is able to benefit from this exemption ~~where a Member State~~ on the basis that the United Kingdom applies rules on the format and content of the key investor information document in which implemented articles 78 to 81 of the *UCITS Directive* to that *fund* (see article 32(2) of the *PRIIPs Regulation*).

...

...

## 13.4 Contents of a key features illustration

...

- 13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* should:

...

- (2) Where the *projection* relates to a *financial instrument*, the *firm* should comply with either:



- (a) the requirements in article 44(6) of the *MiFID Org Regulation* (see ~~COBS 4.5A.14EU~~ 4.5A.14UK) where the firm is carrying on *MiFID, equivalent third country or optional exemption business*); or

...

...

### 13.5 Preparing product information: other projections

...

- 13.5.2B G Where a *firm* communicates a *projection* for a *packaged product* that is a *financial instrument*, the following future performance requirements are likely to apply:

- (1) article 44(6) of the *MiFID Org Regulation* (see ~~COBS 4.5A.14EU~~ 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

...

Exceptions to the projection rules: projections for more than one product

- 13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2* to the extent that the combined *projection* complies with the future performance requirements in either:

- (1) article 44(6) of the *MiFID Org Regulation* (see ~~COBS 4.5A.14EU~~ 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

...

- 13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a *firm* that elects to comply with the future performance rule in *COBS 4.6.7R*, or, if applicable, the requirement in article 44(6) of the *MiFID Org Regulation* (see ~~COBS 4.5A.14EU~~ 4.5A.14UK), will need to explain how the combined *projection* differs from other information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2*. In particular, the *firm* should identify where a *projection* in real terms is required under *COBS 13*.

...

## 13 Solvency II Directive Information

### Annex 1

This annex belongs to *COBS* 13.1.2R (The Solvency II Directive information)

Information about the firm

...

- (2) The name of the ~~EEA State~~ territory or country in which the head office and, where appropriate, agency or branch concluding the contract is situated;

...

...

## 14 Providing product information to clients

...

### 14.2 Providing product information to clients

Providing information about PRIIPs

- 14.2.-1 G (1) The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) in the United Kingdom with the *key information document* for that *PRIIP*.

[**Note:** article 13 of the *PRIIPs Regulation*]

- (2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the provision of information about *PRIIPs*, this chapter does not apply to a *firm* when it is advising on, or selling, a *PRIIP* (except where applicable to *Solvency II Directive information*).

...

The provision rules for products other than PRIIPs

- 14.2.1 R A *firm* that sells:

...

- (5A) a *unit* in a *KII-compliant NURS* must provide the following to a *retail client*:

...

- (b) if that *client* is present in the ~~EEA~~ UK, enough information for the *client* to be able to make an informed decision about

whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way);

...

- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:

...

- (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by *COBS 13.3.1R (2)* (General requirements) and, if that *client* is present in the ~~*EEA UK*~~, the information required by (5A)(b).

...

...

Exception to the provision rules: key features documents and key investor information documents

14.2.5 R A *firm* is not required to provide:

...

- (2) ~~a *key features document* or *key features illustration*, if another *person* is required to provide the *distance marketing information* by the *rules* of another *EEA State*; [deleted]~~
- (3) ~~the *Solvency II Directive information*, if another *person* is required to provide that information by the *rules* of another *EEA State*. [deleted]~~

...

...

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

- (2) a *life policy* if:
- (a) ~~the *firm* is operating from an establishment in another *EEA State* and the sale is by *distance contract*; or [deleted]~~

...

...

...

Exception to the provision rules: key features documents, key features illustrations, key investor information documents and NURS-KII documents

14.2.9 R A *firm* is not required to provide a *key features document* or a *key features illustration* if:

- (1) the *client* is habitually resident outside the ~~EEA~~ UK and not present in the ~~EEA~~ UK when the relevant application is signed; or

...

...

Providing additional information to the client

14.2.18 G ...

- (2) When a *firm* provides additional information it should:

...

- (b) consider whether any other *rules* or requirements in any ~~directly applicable EU~~ EU-derived regulations apply to the communication of that additional information. For example, for marketing communications relating to a *UCITS scheme* or ~~EEA UCITS scheme~~ see *COBS* 4.13.2R; and

...

...

### 14.3 Information about designated investments (non-MiFID provisions)

...

14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the ~~Prospectus Directive~~ Part VI of the Act, that *firm* must inform the *retail client* where that prospectus is made available to the public.

...

Information about UCITS schemes

14.3.11 R If a *firm* provides a *client* with a *key investor information document* or ~~EEA key investor information document~~ that meets all of the requirements of ~~articles 78 and 79 of the UCITS Directive (see COLL 4.7 (Key investor information and marketing communications)) and the KII Regulation~~

applying in relation to that document, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (*COBS* 2.2.1R(1)(b)); and
- (2) costs and associated charges (*COBS* 2.2.1R(1)(d) and *COBS* 6.1.9R);

in relation to the costs and associated charges in respect of the *UCITS* scheme itself, including the exit and entry commissions.

...

**14.3A Information about financial instruments (MiFID provisions)**

...

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

14.3A.2 R Provisions in this section marked “EU” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS* 1.2.2G).

14.3A.2 G The effect of *GEN* 2.2.22AR is that provisions in this section marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.  
A

...

14.3A.5 EU ...  
UK

48(3) Where an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the law of the United Kingdom which was relied on immediately before exit day to implement Directive 2003/71/EC, as that law is amended from time to time, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.

...

...

Timing of disclosure

14.3A.7 EU ...  
UK

14.3A.8 G The provisions in *COBS* that reproduce the information requirements contained in articles 47 to 50 of the *MiFID Org Regulation* are: *COBS* ~~6.1ZA.5EU~~ 6.1ZA.5UK, *COBS* ~~6.1ZA.8EU~~ 6.1ZA.8UK, *COBS* ~~6.1ZA.9EU~~ 6.1ZA.9UK, *COBS* ~~6.1ZA.14EU~~ 6.1ZA.14UK and *COBS* ~~14.3A.5EU~~ 14.3A.5UK.

Medium of disclosure

14.3A.9 ~~EU~~ ...  
UK

Keeping the client up-to-date

14.3A.10 ~~EU~~ ...  
UK

Information provided in accordance with the ~~UCITS Directive and the PRIIPs Regulation~~ relation to units in collective investment undertakings or PRIIPs

14.3A.11 ~~EU~~ ...  
UK

...

## 14 Lifetime ISA information Annex 1

This Annex belongs to *COBS* 13.3.1R(3) and *COBS* 14.2.1R(4A).

Information which comprises the following:

...

4 Projections

4.1 R Where a *firm* chooses to provide a *projection*, including a *personal projection*, in relation to investing in a *lifetime ISA* in addition to the information in *COBS* 14 Annex 1 3 (Example outcome of retirement saving by a retail client in a lifetime ISA), a *firm* must ensure that:

...

(2) where a *firm* that communicates a *projection* for a *lifetime ISA* in relation to its *MiFID or equivalent third country business*, the *projection* complies with the future performance requirements in article 44(6) of the *MiFID Org Regulation* (see *COBS* ~~4.5A.14EU~~ 4.5A.14UK); and

...

...

**15 Cancellation**

...

**15 Exemptions from the right to cancel**

**Annex 1**

	Exemptions for life policies and pension contracts (non-distance)		
1.1	R	There is no right to cancel a <i>non-distance contract</i> that is a <i>life policy</i> or a <i>pension contract</i> :	
		...	
		(5)	if the <i>consumer</i> , at the time he signs the application, is <i>habitually resident</i> :
		(a)	<del>in an <i>EEA State</i> other than the <i>UK</i> (but that state's rules may apply); or</del>
		(b)	outside the <del><i>EEA UK</i></del> and is not present in the <i>UK</i> .
...			

...

**16 Reporting information to clients (non-MiFID provisions)**

...

**16.6 Communication to clients – life insurance, long term care insurance and income withdrawals**

Disclosure for life insurance contracts: information to be provided during the term of the contract

- 16.6.1 R (1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:
- (a) ~~in an *EEA State* other than the *United Kingdom*; or~~
  - (b) outside the ~~*EEA United Kingdom*~~ and he was not present in the *United Kingdom*.

...

...

**16A Reporting information to clients (MiFID and insurance-based investment products provisions)**

**16A.1 Application**

...

Effect of provisions marked “EU” “UK” for firms distributing insurance-based investment products

- 16A.1.3 R Provisions in this chapter marked “EU” “UK” and including a Note (“**Note:**”) referring to the *IDD Regulation* apply as if they were *rules* to firms to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

...

**16A.4 Periodic reporting**

...

Provision by a firm and contents: insurance-based investment products

- 16A.4.2 EU 18(1) Without prejudice to ~~Article 185 of Directive 2009/138/EC of the European Parliament and of the Council~~ COBS 13.1.2R, COBS 13.3.2R, COBS 14.2.11R, COBS 14.2.5R, COBS 14.2.7R, COBS 16.6.3R, COBS 16.6.3AR and COBS 20.4.7R, and COBS 13 Annexes 1 and 2, the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.

...

[**Note:** article 18 of the *IDD Regulation*]

...

**18 Specialist Regimes**

...

**18.5 Residual CIS operators and small authorised UK AIFMs**

...

Distance marketing

- 18.5.5A G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* or ~~another EEA State~~, *COBS 5.1* applies specific requirements for that activity.

...

Exceptions from the requirement to provide a periodic statement



18.5.13 R ...

- (2) ~~For a firm acting as an outgoing ECA provider, the exemption for retail client investors ordinarily resident outside the United Kingdom applies only to an investor in the fund who is a retail client ordinarily resident outside the EEA. [deleted]~~

...

Record keeping requirements

...

18.5.15 E Table: Periodic statements

This table belongs to COBS 18.5.12E

Periodic statements				
...				
Adequate information	(2)	(a)	A periodic statement should contain:	
			...	
		(ii)	such information as an investor who is a retail client ordinarily resident outside the United Kingdom, or a professional client, has on his own initiative agreed with the firm as adequate.	
		(b)	<del>For a firm acting as an outgoing ECA provider, the words 'United Kingdom' is replaced by 'EEA' [deleted]</del>	

...

**18.5A Full-scope UK AIFMs and incoming EEA AIFM branches**

Application

18.5A.1 R Subject to COBS 18.5A.2R, this section applies to a firm which is:

- (1) a full-scope UK AIFM of:
  - (a) a UK AIF; and

(b) ~~an EEA AIF; and [deleted]~~

(c) ~~a non-EEA UK AIF; or~~

(2) ~~an incoming EEA AIFM branch. [deleted]~~

18.5A.2 R The adequate information provisions in COBS 18.5A.11R do not apply to a *full-scope UK AIFM* of:

(1) ~~a UK ELTIF or an EEA ELTIF~~ an LTIF; or

(2) an *unauthorised AIF* which is not a *collective investment scheme*.

#### Application or modification of general COBS rules

18.5A.3 R A *firm* when it is carrying on *AIFM investment management functions*:

(1) must comply with the *COBS rules* specified in the table, as modified by this section; and

(2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

<b>Chapter, section, rule</b>	<b>Full-scope UK AIFM</b>	<b>Incoming EEA AIFM branch</b>
1 (Application)	Applies	Applies
2.1.4R (AIFMs best interest rule)	Applies	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1	<del>Applies, as modified by COBS 18 Annex 1</del>
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies	Applies
5.2 (E-commerce)	Applies	Applies
11.2 (Best execution for AIFMs and residual CIS operators)	Applies as modified by COBS 18.5A.8R	<del>Applies as modified by COBS 18.5A.8R</del>

18.5A ( <i>Full-scope AIFMs and incoming EEA AIFM branches</i> )	Applies as modified by COBS 18.5A.2R	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5A.7R)	<del>Applies (subject to COBS 18.5A.7R)</del>

...

## Distance marketing

- 18.5A.10 R *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the UK, with or for a consumer in the UK ~~or another EEA State~~, COBS 5.1 applies specific requirements for that activity.

...

**18.5B UCITS management companies**

...

## Distance marketing

- 18.5B.7 G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the UK, with or for a consumer in the UK ~~or another EEA State~~, COBS 5.1 applies specific requirements for that activity.

...

**18.9 ICVCs**

...

- 18.9.2 G *Firms* should note that the operator of an ICVC when it is undertaking scheme management activity will be subject to:

- (1) ...
- (2) COBS 18.5A.3R if the operator is a full-scope UK AIFM ~~or an incoming EEA AIFM branch~~; or
- (3) ...

**18.10 UCITS qualifiers, AIFM qualifiers and service Service companies**

18.10.1 R The COBS provisions in the table apply to a ~~UCITS qualifier and a service company~~:

...

18.10.2 R ~~COBS 4 and COBS 12.4 apply to an AIFM qualifier. [deleted]~~

**18.11 Authorised professional firms**

...

18.11.2 *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

...

- (3) the *rules* in the following parts of *COBS* which ~~implement~~ implemented the *IDD* apply in relation to *insurance distribution activities*:

...

but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that ~~implement~~ implemented articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD* and that apply to the *firm*;

...

18.11.2A G For *COBS* 18.11.2R(3) if a *rule* ~~implements~~ implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision ~~is~~ was being implemented.

...

**18 Research and inducements for collective portfolio managers  
Annex 1**

1 Application

1.1 G This section applies to:

...

...

- (2) a *full-scope UK AIFM* and an ~~incoming EEA AIFM branch~~, in accordance with *COBS* 18.5A.3R;

...

...

2.4 G A firm may inform investors in the *fund* about the fees, commissions or monetary benefits transferred to them through:

...

(2) the annual reports provided on request to investors, for a *small authorised UK AIFM* in relation to an *authorised AIF*, a *full-scope UK AIFM*, ~~an incoming EEA AIFM branch~~ or a *UCITS management company*.

...

General modifications

...

4.3 R Where *COBS* 2.3B applies to a *firm*, the following modifications apply:

...

(5) in *COBS* 2.3B.24G, the reference to *COBS* 11.2A is to be construed as a reference to:

(a) *COBS* 11.2 for *small authorised UK AIFMs*, *residual CIS operators*, ~~and full-scope UK AIFMs and incoming EEA AIFM branches~~; and

...

...

**Sch 1 Record keeping requirements**

...

Sch 1.3

G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	...				
	<i>COBS</i> <del>9A.4.3EU</del> <u>9A.4.3UK</u>	Suitability (insurance-based investment products)	<i>Client</i> information for <i>suitability report</i> - details in <i>COBS</i> <del>9A.4.3EU</del> <u>9A.4.3UK</u> and <i>COBS</i>	From date of <i>suitability report</i>	For whichever is the longer of 5 years or the duration of the relationship

		<u>9A.4.4EU</u> <u>9A.4.4UK</u>		with the <i>client</i>
...				
<i>COBS</i> <del>10A.7.2AE</del> ⊕ <u>10A.7.2AU</u> <u>K</u>	...			
...				
<i>COBS</i> <del>16A.4.2EU</del> <u>16A.4.2UK</u>	...			
...				

...

## Annex B

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Annex Application (see ICOBS 1.1.2 R)

1

Part 1: Who?		
Modifications to the general rule according to type of firm		
...		
3	Authorised professional firms	
3.1	R	This sourcebook (except for ICOBS 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		...
		(4) <u>the UK provisions implementing which implemented</u> articles 1(4), 17, 18, 19, 20, 23, and 24 of the <i>IDD</i> (see <i>ICOBS 2.2.2R</i> (communication to customers and financial promotions), <i>ICOBS 2.2.2AR</i> (marketing communications), <i>ICOBS 2.5.-1R</i> (the customer's best interests rule), <i>ICOBS 2.6</i> (Distribution of connected contracts through exempt persons), <i>ICOBS 4.1</i> (Information about the firm, its services and remuneration), <i>ICOBS 4.1A</i> (Means of communicating to customers), <i>ICOBS 4.3</i> (remuneration disclosure), <i>ICOBS 5.2</i> (Demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 5.3.4R</i> (Personalised explanation), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 6A.3</i> (Cross-selling)), except to the extent that the firm is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
3.2	G	Compliance with <u>the UK provisions of which implemented</u> the <i>Distance Marketing Directive</i> is dealt with in the Professional Firms sourcebook (see <i>PROF 5.4</i> ).
...		
6	Lloyd's <del>[deleted]</del>	
6.1	R	<del>The Society must ensure that no member carries on motor vehicle liability insurance business at Lloyd's unless a claims</del>

		representative has been appointed to act for that member in each <i>EEA State</i> other than the <i>United Kingdom</i> , with responsibility for handling and settling a claim by an <i>injured party</i> . Otherwise, this sourcebook does not apply to the <i>Society</i> .
--	--	---

Part 2: What?		
Modifications to the general application rule according to activities		
...		
2		Contracts of large risks
2.1	R	Subject to Part 3 of this Annex:
		(1) this sourcebook does not apply to a <i>firm</i> distributing a <i>contract of large risks</i> where the risk is located outside the <i>European Economic Area United Kingdom</i> ;
		(2) only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a firm distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area United Kingdom</i> ; and
		(3) ...
		...
...		

Part 3: Where?		
Modifications to the general rule of application according to location		
1		EEA territorial scope rule: compatibility with European law [ <del>deleted</del> ]
1.1	R	(1) <del>The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for <i>guidance</i> on this).</del>
		(2) <del>This rule overrides any other rule in this sourcebook.</del>
1.2	R	<del>In addition to the <i>EEA territorial scope rule</i>, the effect of the <i>E-Commerce Directive</i> on territorial scope is applied in the fields covered by the ‘derogations’ in the Annex to that Directive other than the ‘insurance derogation’ in the fourth indent (see paragraph 8 of Part 4 for <i>guidance</i> on this).</del>



		[Note: article 3(3) of, and Annex to, the <i>E-Commerce Directive</i> ]	
2	Exemption for insurers: business with <del>non-EEA</del> <u>non-UK</u> customers via non-UK intermediaries		
2.1	R	This sourcebook does not apply to an <i>insurer</i> if:	
		(1)	the intermediary (whether or not an <i>insurance intermediary</i> ) in contact with the customer is not established in the <i>United Kingdom</i> ; and
		(2)	the <i>customer</i> is not <i>habitually resident</i> in, and, if applicable, the <i>State of the risk</i> is outside, <del>an EEA State</del> <u>the United Kingdom</u> .
3	Exemption for insurers: business with non-UK EEA customers [ <del>deleted</del> ]		
3.1	R	<del>A rule in this sourcebook which goes beyond the minimum required by EU legislation does not apply to an insurer if the customer is habitually resident in (and, if applicable, the State of the risk is) an EEA State other than the United Kingdom, to the extent that the EEA State in question imposes measures of like effect.</del>	

Part 4: Guidance [ <del>deleted</del> ]			
1	The main extensions and restrictions to the general application rule		
1.1	G	The general application <i>rule</i> is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.	
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application <i>rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the general application <i>rule</i> is likely to apply.	
2	The Single Market Directives and other directives		
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.	
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non- <i>UK</i> element. The <i>EEA</i> territorial scope <i>rule</i> is unlikely to apply if a <i>UK firm</i> is doing business from a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in	

		relation to a <i>UK</i> product. However, if there is a non- <i>UK</i> element, the <i>firm</i> should consider whether:
		(1) it is subject to the directive;
		(2) the business it is performing is subject to the directive; and
		(3) the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA</i> territorial scope <i>rule</i> may change the effect of the general application <i>rule</i> .
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
3		Insurance Distribution Directive: effect on territorial scope
3.1	G	The <i>IDD</i> ’s scope covers most <i>firms</i> carrying on most types of <i>insurance distribution</i> .
3.2	G	The <i>rules</i> in this sourcebook within the Directive’s scope are those implementing the minimum requirements in articles 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the <i>IDD</i> set out in:
		(1) <i>ICOB</i> S 2.2.2R (communication to customers and financial promotions), <i>ICOB</i> S 2.2.2AR (marketing communications), <i>ICOB</i> S 2.5. 1R (the customer’s best interests rule), <i>ICOB</i> S 2.6 (Distribution of connected contracts through exempt persons);
		(2) <i>ICOB</i> S 4.1 (General requirements for insurance intermediaries and insurers), <i>ICOB</i> S 4.1A (Means of communicating to customers), <i>ICOB</i> S 4.3 (Remuneration disclosure);
		(3) <i>ICOB</i> S 5.2 (Demands and needs), <i>ICOB</i> S 5.3.4R (Personalised explanation), <i>ICOB</i> S 5.3.3R (Advice on the basis of a fair analysis); and
		(4) <i>ICOB</i> S 6.1 (Providing product information to customers: general) and <i>ICOB</i> S 6 Annex 3R (Providing product information by way of a standardised insurance information document); and
		(5) <i>ICOB</i> S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i> S 6A.3 (Cross-selling).
3.2A	G	A Member State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 52 to, and article 22 of, the <i>IDD</i> ).”

3.2B	G	The additional requirements within the scope of the <i>IDD</i> and found in this sourcebook are those that:	
		(1)	deal with communication to <i>customers</i> and <i>financial promotions</i> , the <i>customer's best interests rule</i> and additional responsibilities of <i>insurance distributors</i> (see <i>ICOBS 2.2.2R</i> , <i>ICOBS 2.2.2AR</i> , <i>ICOBS 2.5.1R</i> and <i>ICOBS 2.6</i> ); and
		(2)	require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 5.2</i> (Demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 6.1A.5R</i> (Responsibility for producing the standardised insurance product information document), <i>ICOBS 6.1</i> (Providing product information to customers: general); <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 6A.3</i> (Cross-selling)).
3.3	G	The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <i>Home State</i> , except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i> ). Accordingly the general rules on territorial scope are not modified by the <i>IDD</i> except:	
		(1)	for an <i>EEA firm</i> providing <i>passport activities</i> under the Directive in the <i>United Kingdom</i> , additional rules within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect; and
		(2)	for <i>insurance distribution</i> business carried on by <i>insurers</i> :
		(a)	minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State</i> regulator; and
		(b)	paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State</i> regulator.
3.3A	G	An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution activities</i> from an establishment in the <i>United Kingdom</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.	

4	Solvency II Directive non-life business: effect on territorial scope	
4.1	G	The <i>Solvency II Directive's</i> scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .
4.2	G	The rules in this sourcebook within the <i>Solvency II Directive's</i> scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G	The <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)
4.4	G	If the <i>State of the risk</i> is an <i>EEA State</i> , the <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</i> is the <i>United Kingdom</i> , the relevant rules in this sourcebook apply. Those rules do not apply if the <i>State of the risk</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope	
5.1	G	The <i>Solvency II Directive's</i> scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G	The rules in this sourcebook within the Directive's scope are the cancellation rules (see <i>ICOBS 7</i> ) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
5.3	G	The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.

5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant rules in this sourcebook apply. Those rules do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> .)
6	Motor Insurance Directives: effect on territorial scope	
6.1	G	The scope of the <i>Consolidated Motor Insurance Directive</i> covers insurers conducting <i>motor vehicle liability insurance business</i> . The rules in this sourcebook within the Directive’s scope are those regarding the appointment of claims representatives and handling of claims by <i>injured parties</i> (see <i>ICOBS 8.2</i> ).
6.2	G	The Directive requires a <i>motor vehicle liability insurer</i> to appoint a claims representative in each <i>EEA State</i> other than its <i>Home State</i> . It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by <i>injured parties</i> .
6.3	G	The Directive’s provisions apply to <i>motor vehicle liability insurers</i> for which the <i>United Kingdom</i> is the <i>Home State</i> . (See articles 21 and 22 of the <i>Consolidated Motor Insurance Directive</i> ).
7	Distance Marketing Directive: effect on territorial scope	
7.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive</i> ’s scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The rules in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation rules (see <i>ICOBS 7</i> ) and the other specific rules implementing the Directive (see <i>ICOBS 3.1</i> .)
7.2	G	In the <i>FCA</i> ’s view, the Directive places responsibility for requirements within the Directive’s scope on the <i>Home State</i> except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis). (See article 16 of the <i>Distance Marketing Directive</i> .)

7.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> or <i>non-EEA state</i> ).	
7.4	G	Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA State</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> .	
7.5	G	In the <i>FCA's</i> view:	
		(1)	the 'country of origin' basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i> ; (See recital 6 to the <i>Distance Marketing Directive</i> .)
		(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules derived from the <i>Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> (See articles 4(1) and 16 of the <i>Distance Marketing Directive</i> ).
8	Electronic Commerce Directive: effect on territorial scope		
8.1	G	The <i>E-Commerce Directive's</i> scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive's scope.	
8.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA State</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA State</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply at least to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an establishment in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA State</i> .	
8.3	G	Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</i> , carrying on an <i>electronic commerce activity</i> from an establishment in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>E-Commerce Directive</i> .)	
8.4	G	The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the	

		Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under, and carrying on an <i>electronic commerce activity</i> within, the scope of the <i>Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the ‘general good’.	
8.5	G	Where the derogation applies, the <i>rules on financial promotion</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm’s</i> ‘country of origin’ applies rules of like effect), but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>E-Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03.)	
8.6	G	In the <i>FCA’s</i> view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):	
		(1)	is in line with the <i>Distance Marketing Directive</i> and the <i>IDD</i> ;
		(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	G	The ‘derogations’ in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 52 to the <i>IDD</i> , recital 6 to the <i>Distance Marketing Directive</i> , article 3 of, and the Annex to, the <i>E-Commerce Directive</i> .)	

...

### 3 Distance communications

#### 3.1 Distance marketing

##### Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

...

- 3.1.19 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of ~~one or more~~ *EEA States* the *United Kingdom*.

...

## 3.2 E-Commerce

### Application

- 3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

### Information about the firm and its products or services

- 3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

- (5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

(a) ...

(b) the professional title ~~and the EEA State where it was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

...

...

- 3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

...

...

## 3 Annex 1G **Guidance on the UK provisions which implemented the Distance Marketing Directive**

...

Q7. How ~~does~~ do the UK provisions which implemented the Directive apply to insurance intermediaries' services?

The *FCA* expects the UK provisions which implemented the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:



- the *firm* concludes a *distance contract* with a *consumer* covering its *insurance distribution activities* which is additional to any insurance contract which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the *effecting* or *carrying out* of an insurance contract by the *firm* or another *person*: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.

Q8. Can you give examples of when the UK provisions which implemented the Directive would and would not apply to insurance intermediaries' services?

The rules implementing which implemented the Distance Marketing Directive will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

Nor will the UK provisions which implemented the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance distribution activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the UK provisions which implemented the Distance Marketing Directive would apply would be a *distance contract* under which an *insurance intermediary* agrees to provide advice on a *consumer's* insurance needs as and when they arise.

...

**3 Annex 2R Distance marketing information**

...

Distance marketing information	
The firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State of residence</i></del> <u>UK</u> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with the representative.
...	
The distance contract	
...	

(16)	The <del>EEA State or States</del> <u>State or States</u> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
...	

...

#### 4 Information about the firm, its services and remuneration

...

##### 4.1A Means of communication to customers

...

Means of communication to customers; non-telephone sales

4.1A.2 R ...

(2) The *firm* must communicate the information in (1):

...

(b) in an official language of the ~~State of the risk~~ United Kingdom where the *State of the risk* is the United Kingdom, or in any other language agreed by the parties; and

...

...

#### 6 Product information

...

##### 6.2 Pre-contract information: general insurance contracts

...

Solvency II Directive derived disclosure requirements

...

6.2.3 R (1) ~~An EEA firm~~ A firm which has its head office in the European Economic Area must inform a *customer*, before any commitment is entered into, of the ~~EEA State~~ state in which the head office or, where appropriate, the branch with which the contract is to be concluded, is situated.

(2) Any documents issued to the *customer* must convey the information required by this *rule*.

...

6.2.4 R ~~An EEA firm~~ A firm which has its head office in the *European Economic Area* must ensure that the contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, states the address of the head office, or, where appropriate, of the branch of the *firm* which grants the cover.

...

...

**6.3 Pre- and post-contract information: pure protection contracts**

Solvency II Directive derived disclosure requirements

6.3.1 R ...

Information to be communicated before conclusion	
...	
(2)	The name of the <del>EEA State</del> <u>state</u> in which the head office and, where appropriate, the agency or branch concluding the contract is situated.
...	

...

**6 Annex 1R Responsibilities of insurers and insurance intermediaries in certain situations**

...

	Situation	<i>Insurance intermediary's</i> responsibility	<i>Insurer's</i> responsibility
...			
(2)	<i>Insurance intermediary</i> does not operate from <i>UK</i> establishment, is not <i>authorised</i> , is selling <i>connected contracts</i> or is <i>authorised professional firm</i> carrying on <i>non-mainstream regulated activities</i>  <i>Insurer</i> operates from <i>UK</i> establishment	None	Production and providing (but for <i>pure protection contracts</i> no <i>policy summary</i> is required unless the <i>insurance intermediary</i>

	<i>Customer habitually resident in the <del>EEA</del> <u>United Kingdom</u></i>		does not operate from a <i>UK</i> establishment)
(3)	As (2) but <i>customer habitually resident</i> outside the <del>EEA</del> <u>United Kingdom</u> and insurer not in contact with the <i>customer</i>	None	None
(4)	As (2) but <i>customer habitually resident</i> outside the <del>EEA</del> <u>United Kingdom</u> and insurer in contact with the <i>customer</i>	None	Production and providing
...			

...

### 6 Annex 3 Providing product information by way of a standardised insurance information document:

[**Note:** the *IDD IPID Regulation* is ~~directly~~ applicable to *IDD insurance intermediaries*, *IDD insurance undertakings* and *IDD ancillary insurance intermediaries*.]

This annex belongs to *ICOBS* 6.1.10AR.

#### 1 Effect of provisions marked ‘~~EU~~’ ‘UK’

- 1.1 R (1) Provisions in this section marked “~~EU~~” “UK” apply in relation to a *firm* to which the *IPID Regulation* is ~~not directly applicable~~ does not apply, as if they were *rules*.
- (2) In this annex, a word or phrase found in a provision marked “~~EU~~” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

...

...

Name and company logo of the manufacturer

- 2.4 ~~EU~~  
UK 1(1) The name of the manufacturer of the non-life insurance product, ~~the Member State where that manufacturer is registered~~, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title ‘insurance product information document’ at the top of the first page.

- 2.5 EU 1(2) The manufacturer may insert its company logo to the right of the  
UK title.

...

Reference to complete pre-contractual and contractual information

- 2.6 EU 2 The insurance product information document shall state  
UK prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

...

3 How must the IPID be presented and formatted?

- 3.1 R The *IPID* must:

...

- (4) be written in the official languages, or in one of the official languages, used in the part of the ~~Member State~~ state where the *policy* is offered or, if agreed by the *consumer* and the *insurance distributor*, in another language;

...

Length

- 3.2 EU 3 The insurance product information document shall be set out on  
UK two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the ~~competent authority~~ Financial Conduct Authority, be able to demonstrate that more space was needed.

...

Presentation and order of content

- 3.3 EU 4(1) The information of the insurance product information document  
UK listed in ~~in~~ Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1,2 mm.

- 3.4 EU 4(2) The length of the sections may vary, depending on the amount of  
UK information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.
- 3.5 EU 4(3) Where the insurance product information document is presented  
UK using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.
- 3.6 EU 4(4) Where the dimensions of the durable medium other than paper are  
UK such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:  
  
...
- 3.7 EU 4(5) The use of digital tools, including layering and pop-ups shall be  
UK permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer's attention from the content of the main document.  
  
Information provided through layering and pop-ups shall not include marketing or advertising material.

...

#### Plain language

- 3.8 EU 5 The insurance product information document shall be drafted in  
UK plain language, facilitating the customer's understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.

...

#### Headings and information thereunder

- 3.9 EU 6(1) The sections of the insurance product information document shall  
UK have the following headings and the following information thereunder:
- (a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included under the heading 'What is this type of insurance?', at the top of the document;

- (b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’. Each piece of information listed in this section shall be preceded by a green ‘tick’ symbol;
- (c) the information on the insured sum referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’;
- (d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘Where am I covered?’. Each piece of information listed in this section shall be preceded by a blue ‘tick’ symbol;
- (e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is not insured?’. Each piece of information in this section shall be preceded by a red ‘X’ symbol;
- (f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading ‘Are there any restrictions on cover?’. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;
- (g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading ‘What are my obligations?’;
- (h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading ‘When and how do I pay?’;
- (i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading ‘When does the cover start and end?’;
- (j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading ‘How do I cancel the contract?’.

...

...

## Use of icons

3.10

EU  
UK

- 7(1) Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:
- (a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an umbrella, which shall be white on a green background or green on a white background;
  - (b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background;
  - (c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background;
  - (d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an exclamation mark (!) within a triangle, which shall be white on an orange background or orange on a white background;
  - (e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background;
  - (f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background;
  - (g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background;
  - (h) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.



- 3.11 ~~EU~~ 7(2) All icons shall be displayed in a manner consistent with the  
UK standardised presentation format in the Annex.
- 3.12 ~~EU~~ 7(3) The icons referred to in paragraphs 1 and 2 may be presented in  
UK black and white where the insurance product information document is printed or photocopied in black and white.

...

...

## 8 Claims handling

...

### 8.2 Motor vehicle liability insurers

Application: who? what?

- 8.2.1 R (1) ...
- (2) The *rules* in this section relating to the appointment of claims representatives apply:
- (a) ~~in relation to claims by injured parties resulting from accidents occurring in an EEA State other than the injured party's EEA State of residence which are caused by the use of vehicles insured through an establishment in, and normally based in, an EEA State other than the injured party's EEA State of residence; and [deleted]~~
- (b) in relation to claims arising out of events occurring, and risks situated, in the *United Kingdom*, and covered by an ~~incoming EEA firm on a services basis~~ a firm operating from an establishment in the European Economic Area.
- (3) ...

...

Requirement to appoint claims representatives

...

- 8.2.2A R ~~A person carrying on, or seeking to carry on, motor vehicle liability insurance business must have a claims representative in each EEA state other than the United Kingdom. [deleted]~~
- 8.2.2B R ~~An incoming EEA firm~~ A firm operating from an establishment in the European Economic Area carrying on motor vehicle liability insurance business and covering ~~UK risks on a services basis~~ must have a claims

representative in the *United Kingdom* to deal with claims arising out of events occurring in the *United Kingdom*.

...

#### Conditions for appointing claims representatives

- 8.2.3 R A *firm* must ensure that each claims representative:
- ...
- (2) is resident or established in the ~~EEA State where it is appointed~~ United Kingdom;
- ...
- (5) is capable of examining cases in the official language(s) of the ~~EEA State of residence of the injured party~~ United Kingdom.
- ...

...

#### Notifying the appointment of claims representatives

- 8.2.5 R (1) A *firm* must notify to the ~~information centres of all EEA States~~ Motor Insurers' Information Centre:
- (a) the name and address of the claims representative which they have appointed in ~~each of the EEA States~~ the United Kingdom;
- ...
- ...
- ...

...

## 8.4 Employers' Liability Insurance

### Application

- 8.4.1 R ...
- (2) This section applies to:
- ...
- (b) ~~all incoming EEA firms or incoming Treaty firms falling within (a) including those providing cross border services.~~ [deleted]

...

...

## Annex C

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, except where otherwise indicated.

### 1 Application and purpose

...

### 1.3 General application: where?

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; ~~or~~
- (2) another *EEA State* where the activity is carried on from an establishment maintained by the *firm* (or its appointed representative) in the *United Kingdom*;

at the time that the *home finance activity* is carried on.

1.3.1A R (1) ~~The provisions of *MCOB* listed in *MCOB* 1.3.1AR(2) apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.~~

(2) The provisions mentioned in *MCOB* 1.3.1AR(1) are:

- (a) *MCOB* 2A.1.1R(2);
- (b) *MCOB* 2A.1.4R;
- (c) *MCOB* 2A.2.1R and 2A.2.2G; and
- (d) *MCOB* 7.6.28R. [deleted]

~~[Note: article 34(2) of the *MCD*]~~

Incoming ~~EEA credit intermediaries~~

1.3.1B R (1) ~~The application of *MCOB* to an *incoming EEA firm* that is an *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.~~

~~(2) MCOB 1.3.1BR(1) overrides every other rule in this sourcebook.  
[deleted]~~

~~[Note: article 34(2) of the MCD]~~

1.3.1C G ~~Guidance on MCOB 1.3.1AR and MCOB 1.3.1BR is in MCOB 1 Annex 5. For applicable rules in relation to knowledge and competence requirements for staff, incoming EEA firms should also refer to TC 2.1.5AR to TC 2.1.5FG and to the territorial application rules in TC Appendices 1 and 2.  
[deleted]~~

...

~~Electronic commerce activities and communications~~

1.3.3 R ~~This sourcebook does not apply to an incoming ECA provider acting as such. [deleted]~~

~~Distance contracts entered into from an establishment in another EEA State~~

1.3.4 R (1) ~~The rules in (2) do not apply to a firm with respect to a regulated mortgage activity or a home purchase activity exclusively concerning a distance contract if the following conditions are satisfied:~~

~~(a) the firm carries on the activity from an establishment maintained by the firm in an EEA State other than the United Kingdom; and~~

~~(b) either the EEA State:~~

~~(i) has implemented the Distance Marketing Directive; or~~

~~(ii) has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~

~~and, in either case, with the result that the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that State when the firm carries on that activity; and~~

~~(c) the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~

~~(2) The rules which do not apply are:~~

~~(a) initial disclosure requirements in MCOB 4.4A (in respect of regulated mortgage contracts) and MCOB 4.10 (in respect of home purchase plans);~~

- (b) ~~MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with consumers);~~
- (c) ~~MCOB 4.6 (Cancellation of distance mortgage mediation contracts) and distance home purchase mediation contracts);~~
- (d) ~~MCOB 5 (Pre application disclosure);~~
- (e) ~~MCOB 6 (Disclosure at offer stage);~~
- (f) ~~MCOB 7.6.7R to MCOB 7.6.17R (Further advances);~~
- (g) ~~MCOB 8.3 (Application of rules in MCOB 4) to the extent that it applies MCOB 4.4A to MCOB 4.6;~~
- (h) ~~[deleted]~~
- (i) ~~MCOB 9.3 (Pre application disclosure);~~
- (j) ~~MCOB 9.4 (Content of illustrations); and~~
- (k) ~~MCOB 9.5 (Disclosure at offer stage for equity release transactions). [deleted]~~

Distance contracts with retail customers

1.3.5 G ...

(1) *consumer*

The FCA's rules which implemented the Distance Marketing Directive ~~applies~~ apply for distance contracts with 'any natural person who is acting for purposes which are outside his trade, business or profession', for which the term 'consumer' has been adopted. ...

(2) *Distance contract*

...

(a) ... If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the FCA's rules which implemented the Distance Marketing Directive will not apply. ...

...

...

MCOB 1 Annex 5 (Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State) is deleted in its entirety. The deleted text is not shown but the Annex is marked [deleted] as shown below.

**1 Annex 5G Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State [deleted]**

**2 Conduct of business standards: general**

...

**2.7A E-Commerce**

Application

2.7A.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a person in the *United Kingdom* ~~or another EEA state~~, in relation to a *home finance transaction*.

Information about the firm and its products or services

2.7A.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

(5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

...

(b) the professional title ~~and the EEA State where the professional title was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

...

...

2.7A.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and

unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

**2A Mortgage Credit Directive**

...

**2A.3 Foreign currency loans**

...

2A.3.3 R Where:

- (1) ~~an MCD regulated mortgage contract is denominated in the currency of the EEA State in which the consumer is resident~~ sterling (“currency A”); and

...

2A.3.4 R The alternative currency referred to in *MCOB* 2A.3.1R(1) must be either:

...

- (2) ~~the currency of the EEA State in which the consumer either was resident at the time that the MCD regulated mortgage contract was entered into or is currently resident~~ sterling.

...

...

**3A Financial promotions and communications with customers**

**3A.1 Application and purpose**

...

Territorial scope

...

3A.1.13 R This chapter applies to a *firm* in relation to:

...

- (3) ...
- (4) ~~the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA State other than in the United Kingdom; and~~ [deleted]



- (5) ~~the communication or approval for communication of a financial promotion in relation to an MCD regulated mortgage contract to a person in an EEA State other than in the United Kingdom. [deleted]~~

...

Exceptions to territorial scope: financial promotions of qualifying credit relating to distance contracts

- 3A.1.16 R (1) ~~Notwithstanding MCOB 3A.1.13R and MCOB 3A.1.15R, where a firm which satisfies the conditions in (2) communicates a financial promotion of qualifying credit, the rules in (3) do not apply.~~
- (2) ~~The conditions are that:~~
- (a) ~~the firm communicates the financial promotion of qualifying credit from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;~~
- (b) ~~either that EEA State:~~
- (i) ~~has implemented the Distance Marketing Directive;~~  
~~or~~
- (ii) ~~has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~
- (c) ~~the financial promotion of qualifying credit relates, exclusively, to a distance contract, for the conclusion of which the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that state; and~~
- (d) ~~the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~
- (3) ~~The rules which do not apply are:~~
- (a) ~~MCOB 3A.3.2R (Name and contact point); and~~
- (b) ~~MCOB 3A.4.1R(1) and (2) (Real time qualifying credit promotions). [deleted]~~

...

### 3B MCD general information

#### 3B.1 Provision of general information

...

3B.1.2 R A firm must make available clear and comprehensible information about *MCD regulated mortgage contracts* at all times on paper, or on another *durable medium* or in electronic form, that includes:

...

(3) the forms of security, ~~including, where applicable, the possibility for it to be located in a different EEA State;~~

...

...

**4 Advising and selling standards**

**4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers**

4.5.1 G (1) There are certain additional disclosure requirements laid down by the FCA's rules which implemented the Distance Marketing Directive that will have to be provided by a *mortgage intermediary*, a *home purchase intermediary* and a *SRB intermediary* to a *consumer* prior to the conclusion of a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract*. ...

...

...

**4 Annex 3 Additional information requirements in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers**

...

<b>Additional information for distance contracts with retail customers consumers</b>	
All the contractual terms and conditions on which the service will be provided including, in particular, the following information:	
(1)	where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State or other country of residence</i></del> <i>United Kingdom</i> , the identity of that representative and the geographical address relevant to the <i>consumer's</i> relations with him;
...	

(6)	details of:	
	(a)	the <del>EEA State</del> <u>State</u> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>customer</i> prior to the conclusion of the <i>regulated mortgage contract, home purchase plan or regulated sale and rent back agreement</i> ;
	...	

...

**5A MCD Pre-application disclosure**

...

**5A European Standardised Information Sheet (ESIS)**

**Annex  
1R**

...

Introduction
...
3. Main features of the loan
<p>Amount and currency of the loan to be granted: [value][currency]</p> <p>(Where applicable) This loan is not in <del>[national currency of the borrower]</del> <u>sterling</u>.</p> <p>(Where applicable) The value of your loan in <del>[national currency of the borrower]</del> <u>sterling</u> could change.</p> <p>(Where applicable) For example, if the value of <del>[national currency of the borrower]</del> <u>sterling</u> fell by 20% relative to [credit currency], the value of your loan would increase to [insert amount in <del>national currency of the borrower</del> <u>sterling</u>]. However, it could be more than this if the value of <del>[national currency of the borrower]</del> <u>sterling</u> falls by more than 20%.</p> <p>(Where applicable) The maximum value of your loan will be [insert amount in <del>national currency of the borrower</del> <u>sterling</u>]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in <del>national currency of the borrower</del> <u>sterling</u>]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].</p> <p>...</p>
6. Amount of each instalment
...

<p>(Where applicable) The value of the amount you have to pay in <del>{national currency of the borrower}</del> <u>sterling</u> each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in <del>national currency of the borrower</del> <u>sterling</u>] each [insert period]. (Where applicable) For example, if the value of <del>{national currency of the borrower}</del> <u>sterling</u> fell by 20% relative to [credit currency], you would have to pay an extra [insert amount in <del>national currency of the borrower</del> <u>sterling</u>] each [insert period]. Your payments could increase by more than this.</p> <p>(Where applicable) The exchange rate used for converting your repayment in [credit currency] to <del>{national currency of the borrower}</del> <u>sterling</u> will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].</p> <p>...</p>
12. Complaints
<p>...</p> <p><del>(Where applicable) or you can contact FIN NET for details of the equivalent body in your own country.</del></p>
...

**5A Instructions to complete the ESIS**  
**Annex 2**

...

...				
3	Section '1. Lender'			
...				
3.3	R	<del>Where the <i>MCD regulated mortgage contract</i> is offered at a distance, the <i>firm</i> must, where applicable, provide the name and geographical address of the <i>MCD mortgage lender's</i> representative in the <i>EEA State</i> where the <i>consumer</i> is resident. [deleted]</del>		
...				
6	Section '4. Interest rate' and other costs			
...				
6.6	R	...		
		(3)	Where there is no cap, the example required by (1) must illustrate the <i>APRC</i> at the highest <i>borrowing rate</i> in at least the last 20 years. Or,	

			where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate, where applicable, or the highest value of a benchmark rate specified by the <i>FCA</i> or another competent authority or the European Banking Authority where the <i>MCD mortgage lender</i> does not use an external reference rate.
...			
8	Section '6. Amount of each instalment'		
...			
8.5	R	...	
		(3)	Where there is no cap, the illustration under (1) must illustrate the level of instalments at the highest <i>borrowing rate</i> in the last 20 years, or where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on:
			(a) ...
			(b) or the highest value of a benchmark rate specified by:
			(i) the <i>FCA</i> in <i>MCOB</i> 5A Annex 2, 6.8R to 6.10G;
			(ii) another competent authority; or
			(iii) the European Banking Authority
			where the <i>MCD mortgage lender</i> does not use an external reference rate.
		...	
...			
14	Section '12. Complaints'		
...			
14.3	R	<del>In the case of an <i>MCD regulated mortgage contract</i> with a consumer who is resident in another <i>EEA State</i>, the firm must refer to the existence of FIN-NET (<a href="http://ec.europa.eu/internal_market/fin-net/">http://ec.europa.eu/internal_market/fin-net/</a>) [deleted]</del>	
...			

**6 Disclosure at the offer stage**

...

**6.5 Mortgages: information to be provided in the offer document or separately**

...

Distance contracts with retail customers

6.5.6 R If a *firm* makes an offer to a *consumer* with a view to entering into a *regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) the ~~EEA State~~ State or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *customer* prior to the conclusion of the *regulated mortgage contract*;

...

...

**6 Annex 1 Distance home purchase plans: information to be provided to retail customers**

...

1.1	R	Distance home purchase plans: information to be provided to retail customers	
		...	
		(2)	the identity of the representative of the <i>home purchase provider</i> established in the <del><i>consumer's EEA State of residence</i></del> <u><i>United Kingdom</i></u> and the geographical address relevant for the customer's relations with the representative, if such a representative exists;
		...	
		(11)	the <del>EEA State or States</del> <u>State or States</u> whose laws are taken by the <i>home purchase provider</i> as a basis for the establishment of relations with the <i>retail customer</i> prior to the conclusion of the <i>distance contract</i> ;
		...	

...

**6A MCD disclosure at the offer stage**

...

**6A.5 MCD distance contracts with retail customers**

6A.5.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) the ~~EEA State or states~~ State or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*;

...

...

**7A Additional MCD disclosure: start of contract and after sale**

...

**7A.4 Foreign currency loans and significant exchange-rate movement disclosure**

7A.4.1 R (1) A *firm* must warn any *consumer* with a *foreign currency loan*, on a regular basis, where the value of either:

- (a) the *total amount payable* by the *consumer* which remains outstanding; or
- (b) the regular instalments;

varies by more than 20% from what it would be if the exchange rate between the currency of the *MCD regulated mortgage contract* and the currency of the ~~EEA State~~ country, applicable at the time of the conclusion of the *MCD regulated mortgage contract*, were applied.

...

...

**8 Equity release: advising and selling standard**

...

**8.2 Purpose**

...

8.2.2 G ...

- (3) This chapter also ~~implements~~ implemented certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts*.

...

**10A MCD Annual Percentage Rate of Charge**

...

**10A.3 APRC: additional assumptions**

10A.3.1 R ...

(12) In the case of a *shared equity credit agreement*:

(a) ...

(b) percentage increases in value of the immovable property which secures the *shared equity credit agreement*, and the rate of any inflation index referred to in the agreement, must be assumed to be:

(i) a percentage equal to the higher of:

(aa) ...

(bb) the level of inflation in the ~~EEA State~~ country where the immovable property is located at the time that the *MCD regulated mortgage contract* is entered into; or

...

...

10.3.2 G ~~Articles 17(1) to (5), (7) and (8) and Annex I of the MCD, which MCOB 10A transpose, are subject to maximum harmonisation. [deleted]~~~~[Note: article 2(2) of the MCD]~~

...

**14 MCD article 3(1)(b) credit agreements****14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements**

...

14.1.8 G *CONC 1.2.10R(1)(a)* relates to high net worth borrowers; the purpose of *MCOB 14.1.7R* is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that ~~implement~~ implemented the *MCD*.



...

## Annex D

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application

##### 1.1 General application

...

Limitations on the general application rule

...

##### 1.1.4 R ...

- (3) ~~A firm will not be subject to BCOBS to the extent that it would be contrary to the United Kingdom's obligations under an EU instrument.~~ [deleted]

...

#### 3 Distance communications

##### 3.1 Distance marketing

Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* ~~or another EEA State~~.

...

Contracts governed by law of a third party state

- 3.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~EEA~~ UK, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the ~~territory of one or more EEA States~~ UK.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

##### 3.2 E Commerce

Application

3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a person in the *United Kingdom* ~~or another EEA State~~.

Information about the firm and its products or services

3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

(5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

(a) the name of the ~~professional body (including any designated professional body) or similar institution~~ with which it is registered;

(b) the professional title ~~and the EEA State where it was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

(d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

...

3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

**3 Annex Distance marketing information**  
**1R**

This Annex belongs to *BCOBS 3.1.2R* (The distance marketing disclosure rules)

Information about the firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del>consumer's EEA State of residence</del> <i>United Kingdom</i> , the name of that representative and the

	geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	
...	
(16)	The <del>EEA State or States</del> <u>State or States</u> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
...	

...

## 5 Post sale

### 5.1 Post sale requirements

...

#### Security of electronic payments

...

- 5.1.10B R Such procedures should include authentication procedures for the verification of the identity of the *banking customer* or the validity of the use of a particular *payment instrument*, proportionate to the risks involved. Where appropriate, *firms* may wish to consider the adoption of ‘strong customer authentication’, as defined in the *Payment Services Regulations*, and specified in ~~regulatory technical standards adopted by the European Commission under article 98 of the *Payment Services Directive*~~ technical standards made under regulation 106A of those regulations.

...

### TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provisions applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
8	BCOBS 5.1.10BG	R	A <i>firm</i> need not have regard to the guidance referred to in column (2)	13 January 2018 until <del>the date</del>	13 January 2018

			in interpreting and applying <i>BCOBS</i> 5.1.10AR until <del>18 months</del> after the date on which the regulatory technical standards adopted under article 98 of the Payment Services Directive come into force [ <u>14 September 2019</u> ].	<del>specified in column (4)</del> [ <u>14 September 2019</u> ]	
...					

## Annex E

### Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and general provisions

...

#### 1.2 General application: who? what?

General application: who?

...

1.2.3 R CASS does not apply to an ICVC.

(1) ~~an ICVC; or~~

(2) ~~an incoming EEA firm other than an insurer, with respect to its passported activities; or~~

(3) ~~a UCITS qualifier.~~

...

#### 1.3 General application: where?

...

~~UK firms: passported activities from EEA branches~~

1.3.3 R ~~CASS applies to every UK firm, other than an insurer, in relation to passported activities carried on by it from a branch in another EEA State.~~  
[deleted]

1.3.4 R ~~CASS does not apply to an incoming ECA provider acting as such.~~  
[deleted]

...

#### 1A CASS firm classification and operational oversight

...

#### 1A.3 Responsibility for CASS operational oversight

...

The approved persons regime and the certification regime

...

### 3 Collateral

#### 3.1 Application and Purpose

Application

...

- 3.1.2 R *Firms* are reminded that ~~this chapter does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities.~~ The the application of this chapter is also dependent on the location from which the activity is undertaken (see CASS 1.3.2R and ~~CASS 1.3.3R~~).

...

### 5 Client money: insurance distribution activity

...

#### 5.5 Segregation and the operation of client money accounts

...

A firm's selection of a bank

...

- 5.5.46 G A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised ~~by an EEA regulator~~ in the UK. Any continuing assessment of that bank may be restricted to verification that it remains authorised ~~by an EEA regulator~~ in the UK.

...

#### 5.6 Client money distribution

Application

...

- 5.6.2 G (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with CASS 5.3 or CASS 5.4. Therefore, they may apply to a *UK branch* of ~~a non-EEA firm~~ an overseas firm. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.

...

## 6 Custody rules

### 6.1 Application

...

General purpose

...

- 6.1.24 G The *custody rules* also, where relevant, ~~implement~~ implemented the provisions of *MiFID* which ~~regulate~~ regulated the obligations of a *firm* when it ~~holds~~ held *financial instruments* belonging to a *client* in the course of its *MiFID business*.

...

## 7 Client money rules

...

### 7.11 Treatment of client money

...

Delivery versus payment transaction exemption

...

- 7.11.15 G ~~The exclusion from the *client money rules* for delivery versus payment transactions under CASS 7.11.14R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 51 to *MiFID*.~~ [deleted]

...

## 8 Mandates

### 8.1 Application

...

- 8.1.3 G ~~*Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see CASS 1.3).~~ [deleted]

...

## 10 CASS resolution pack

### 10.1 Application, purpose and general provisions



...

Purpose

10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:

- (1) ...
- (2) in the event of its or another *firm*'s resolution, assist the Bank of England ~~in its capacity as resolution authority under the *RRD*~~; and
- (3) ...

...

## Annex F

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Market Abuse

##### 1.1 Application and interpretation

...

1.1.6 G This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:

...

- (3) any provisions ~~specified in any Commission legislative text made pursuant to the *Market Abuse Regulation*~~ in the *MAR Level 2 Regulations*, and any applicable guidelines made by *ESMA* in force before *exit day*.

...

1.1.9 G References are made in this chapter to provisions in the *Market Abuse Regulation* and ~~other *EU* legislation made pursuant to the *Market Abuse Regulation*~~ provisions in the *MAR Level 2 Regulations* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other ~~*EU* legislation made pursuant to the *Market Abuse Regulation*~~ provisions in the *MAR Level 2 Regulations* have not been referred to does not mean that they would not also assist readers or that they have a different status.

...

##### 1.2 Market Abuse: general

...

1.2.2-A ~~EU~~ UK [article 2, article 14 and article 15 of the *Market Abuse Regulation*]

...

1.2.7-A ~~EU~~ UK [article 8(4) of the *Market Abuse Regulation*]

...

1.2.10A EU [article 7 of the *Market Abuse Regulation*]  
UK

...

1.2.15B EU [article 7(1)(d) of the *Market Abuse Regulation*]  
UK

...

1.2.18A EU [article 7(1)(b) of the *Market Abuse Regulation*]  
UK

...

1.2.19A G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>.~~ ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)]

...

### 1.3 Insider dealing

...

1.3.1A EU [article 8 of the *Market Abuse Regulation*]  
UK

...

1.3.23 G The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A person deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a *trading venue*, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national, *EU*

or ~~national~~ Member State level, market rules, contract, practice or custom, on the relevant commodity futures market.

- 1.3.24 G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>~~ ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN).]

#### 1.4 Unlawful disclosure

...

- 1.4.1A EU [article 10 of the *Market Abuse Regulation*]  
UK

...

#### 1.6 Manipulating transactions

...

- 1.6.1-A EU [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

#### 1.7 Manipulating devices

...

- 1.7.1-A EU [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

#### 1.8 Dissemination

...

- 1.8.1A EU [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

#### 1.9 Misleading behaviour & distortion

...

1.9.1-A EU [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

## 1.10 Statutory exceptions

Behaviour that does not amount to market abuse

1.10.1 G (1) *Behaviour* which conforms with article 5 of the *Market Abuse Regulation* or with a ~~directly applicable EU regulation made under article 5 of the *Market Abuse Regulation*~~ the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.

...

...

## 1 Annex Accepted Market Practices 2

EU [article 13 of the *Market Abuse Regulation*]  
UK

...

## 4 Support of the Takeover Panel's Functions

...

### 4.4 Exceptions

4.4.1 R This chapter is subject to the following exceptions:

...

(4) ~~this chapter does not apply to:~~

(a) ~~a UCITS qualifier; or~~

(b) ~~an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom. [deleted]~~

...

## 8 Benchmarks

### 8.1 Application and purpose

...

## Purpose

- 8.1.2 G The purpose of this chapter is to set out the requirements that apply to *firms* involved in the provision of, or contribution to, benchmarks, as follows:
- (1) *MAR 8.4 (Third country benchmark contributors)* sets out the requirements that apply to *third country benchmark contributors* that are not *supervised entities*, but would be if they were *located* in the ~~EU~~ UK. These *rules* apply requirements mirroring those which apply to *benchmark contributors* that are in scope of the *benchmarks regulation*.

...

...

**8.4 Third country benchmark contributors**

## Application

- 8.4.1 R (1) Subject to (2), this section applies to a *third country benchmark contributor* that:
- (a) is not a *supervised entity*; and
- (b) would be a *supervised entity* if it were *located* in the ~~EU~~ UK.

...

**8.5 Regulated benchmark administrators**

...

## Notifications about suspected benchmark manipulation

...

- 8.5.7 G ...
- (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to ~~its competent authority~~ the FCA any conduct that may involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.

...

...

## 8.7 Procedures for exercising powers in relation to critical benchmarks

...

Compulsion powers under the benchmarks regulation

### 8.7.3 G ...

(2) The *benchmarks regulation* confers various directly applicable powers on ~~competent authorities~~ the FCA in relation to *critical benchmarks*. In particular:

- (a) article 21(3) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to compel the administrator of a *critical benchmark* to continue publishing the *critical benchmark* for up to 24 months; and
- (b) article 23(6) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to contribute input data to the administrator of a *critical benchmark* for up to 24 months.

...

Exercise of compulsion powers: general

8.7.4 G (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which ~~competent authorities~~ the FCA may exercise the compulsion powers.

(2) In some cases, the ~~competent authority~~ FCA may only have a short period in which to decide whether to exercise a compulsion power.

...

(4) The *benchmarks regulation* does not require ~~a competent authority~~ the FCA to consult on the use of compulsion powers ~~(save that competent authorities must consult the college established under article 46 of the benchmarks regulation when exercising the compulsion power in article 23).~~

...

## Annex G

## Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Product Intervention and Product Governance Sourcebook (PROD)

...

### 1.3 Application of PROD 3

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.3.6 R (1) ~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see PROD 1.3.7G to PROD 1.3.10G for guidance on this).~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Effects of the EEA territorial scope rule~~

- 1.3.7 G ~~One of the effects of PROD 1.3.6R is the override the application of this sourcebook to the overseas establishments of EEA firms in circumstances covered by MiFID. [deleted]~~
- 1.3.8 G ~~The guidance in this chapter provides a general overview only and is not comprehensive. [deleted]~~
- 1.3.9 G ~~When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. PROD 1.3.6R is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a UK product, in other words PROD 3 will apply to the UK firm. However, if there is a non-UK element, the firm should consider whether:~~
- (1) ~~It is subject to the directive (in general, directives only apply to UK firms and EEA firms, but the implementing provisions may not treat non-EEA firms more favourably than EEA firms);~~
- (2) ~~the business it is performing is subject to the directive; and~~
- (3) ~~the particular rule is within the scope of the directive.~~

~~If the answer to all three questions is 'yes', PROD 1.3.6R may change the application of the rules in this sourcebook. [deleted]~~



- 1.3.10 G ~~When considering a particular situation, a firm should also consider whether two or more directives apply. [deleted]~~

MiFID: effect on territorial scope

- 1.3.11 G ~~PERG 13 contains general guidance on the persons and businesses to which the UK provisions which implemented MiFID applies apply.~~

- 1.3.12 G ~~For a UK MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply to its MiFID business carried on from an establishment in the United Kingdom. They also generally apply to its MiFID business carried on from an establishment in another EEA State, although in the case of rules that implement article 24(2) MiFID only where that business is not carried on within the territory of that EEA State. Where a MiFID investment firm carries on MiFID business from a branch in another EEA State, organisational requirements, including rules implementing product manufacture obligations under article 16 MiFID are home state requirements and therefore FCA responsibility (see SUP 13A Annex 1G). [deleted]~~

~~[Note: see articles 34(1) and 35(1) and (8) of MiFID]~~

- 1.3.13 G ~~For an EEA MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply only to its MiFID business if that business is carried on from an establishment in, and within the territory of, the United Kingdom and only to the extent that the rules implement article 24(2) of MiFID. [deleted]~~

~~[Note: see articles 35(1) and (8) of MiFID]~~

Electronic Commerce Directive: effect on territorial scope

- 1.3.14 G ~~The guidance on the Electronic Directive in COBS 1 Annex 1, Part 3, paragraph 7 applies equally in relation to the rules in PROD 3. [deleted]~~

...

## 1.4 Application of PROD 4

...

When an intermediary may be considered to be manufacturing

- 1.4.4 EU UK 3(1) For the purposes of Article 25(1) of Directive (EU) 2016/97 rules 4.2.1, 4.2.2, 4.2.29, 4.2.34, 4.3.1 and 4.3.2 of the Product Intervention and Product Governance sourcebook, insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

...

[**Note:** article 3 of the *IDD POG Regulation*]

- 1.4.5 G The effect of *PROD 1.4.3~~EU~~UK* and *PROD 1.4.6R* is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product and, if so, should comply with *PROD 4.2* (Manufacture of insurance products).

Effect of provisions marked “~~EU~~” “UK”

- 1.4.6 R (1) Subject to (2) and *PROD 1.4.3R*, provisions in this section and in *PROD 4* marked “~~EU~~ UK” apply to *firms manufacturing or distributing* insurance products, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.
- (2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“Article 17(1) of Directive (EU) 2016/97”	<i>ICOB</i> S 2.5. 1R, in relation to a <i>non-investment insurance contract</i> , or <i>COBS 2.1.1R</i> , in relation to a <i>life policy</i>
“Article 25(1) of Directive (EU) 2016/97”	<i>PROD 4.2.1R</i> and <i>PROD 4.2.2R</i>
“Article 8(2)”	<i>PROD 4.2.30<del>EU</del>UK</i>
“competent authorities”	<i>FCA</i>
“customer” and “potential customer”	<i>customer</i>
“Directive (EU) 2016/97”	<i>IDD</i>
“insurance-based investment products”	<i>insurance-based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>distributor</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>insurer</i>
“manufacturer” and “manufacturers within the meaning	<i>manufacturer</i>

of Article 2 of this Delegated Regulation”	
“manufacturing”	<i>manufacturing</i>
“shall”	must

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.4.8 R (1) ~~The territorial scope of *PROD 4* is modified to the extent necessary to be compatible with European law.~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.4.9 G ~~The rules and guidance on the *E-Commerce Directive* in *ICOBS 1 Annex 1*, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in *COBS 1 Annex 1*, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the rules in *PROD 4*. [deleted]~~

...

## 2 Statement of policy with respect to the making of temporary product intervention rules

...

### 2.6 General considerations for product intervention rules

...

- 2.6.2 G The *FCA* will also take into account general considerations that include, but are not limited to, whether the proposed *rules* are:

...

- (7) compatible (where relevant) with other applicable law, ~~for example~~ *EU* law.

...

## 3 Product governance: MiFID

### 3.1 General

[Note: ESMA has also issued guidelines under article 16(1) of the ESMA Regulation covering: “MiFID II product governance requirements”, dated 5 February 2018. See <https://www.esma.europa.eu/sites/default/files/library/esma35-43>

620\_guidelines\_on\_mifid\_ii\_product\_governance\_requirements\_0.pdf]: Guidelines on MiFID II product governance requirements, 05/02/2018, ESMA35-43-620]

...

### 3.2 Manufacture of products

...

Review of financial instruments

...

- 3.2.24 R When a crucial event affecting the potential risk or return expectation of the *financial instrument* occurs, a *manufacturer* must take appropriate action, which may consist of:

...

- (8) informing the ~~relevant competent authority~~ FCA.

...

- 3.2.36 R *Manufacturers* must make the compliance reports available to ~~their competent authority~~ the FCA on request.

[**Note:** article 9(6) *MiFID Delegated Directive*]

...

### 3.3 Distribution of products and investment services

...

Obtaining information from manufacturers

- 3.3.3 R *Distributors* must obtain from ~~MiFID~~ *manufacturers* subject to PROD 3.2 information to gain the necessary understanding and knowledge of the *financial instruments* they intend to *distribute* in order to ensure that the *financial instruments* will be *distributed* in accordance with the needs, characteristics and objectives of the target market.

[**Note:** article 16(3) *MiFID* and article 10(2) *MiFID Delegated Directive*]

...

Distributing financial instruments manufactured by ~~non-MiFID~~ firms to whom PROD 3.2 does not apply, including third country firms

- 3.3.5 R (1) *Distributors* must take all reasonable steps to comply with *PROD 3.3* when *distributing financial instruments* manufactured by any *firm* to which ~~MiFID manufacturer~~ product governance

requirements ~~in (PROD 3.2 or equivalent requirements of another EEA State)~~ do not apply.

...

#### Compliance reports

...

- 3.3.25 R *A distributor shall make the compliance reports available to ~~competent authorities~~ the FCA on request.*

[Note: article 10(8) of the *MiFID Delegated Directive*]

...

## 4 Product governance: IDD

...

### 4.2 Manufacture of insurance products

...

#### Product approval process

- 4.2.5 ~~EU~~  
UK 4(1) ...

[Note: article 4(1) of the *IDD POG Regulation*]

- 4.2.6 ~~EU~~  
UK 4(2) ...

[Note: article 4 (2) of the *IDD POG Regulation*]

- 4.2.7 ~~EU~~  
UK 9 Relevant actions taken by manufacturers in relation to their product approval process shall be duly documented, kept for audit purposes and made available to the ~~competent authorities~~ Financial Conduct Authority upon request.

[Note: article 9 of the *IDD POG Regulation*]

- 4.2.8 ~~EU~~  
UK 4(3) ...

[Note: article 4(3) of the *IDD POG Regulation*]

- 4.2.9 UK 4(4) ...

[Note: article 4(4) of the *IDD POG Regulation*]

4.2.10 EU 5(4) ...  
UK

[**Note:** article 5(4) of the *IDD POG Regulation*]

4.2.11 EU 4(5) ...  
UK

[**Note:** article 4(5) of the *IDD POG Regulation*]

4.2.12 EU 4(6) ...  
UK

[**Note:** article 4(6) of the *IDD POG Regulation*]

Manufacture by more than one firm

4.2.13 EU 3(4) An insurance intermediary and an insurance undertaking that are both  
UK manufacturers within the meaning of Article 2 of this Delegated Regulation, shall sign a written agreement which specifies their collaboration to comply with the requirements for manufacturers referred to in ~~Article 25(1) of Directive (EU) 2016/97~~ rules 4.2.1, 4.2.2, 4.2.29, 4.2.33 and 4.2.34 of the Product Intervention and Product Governance sourcebook the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.

[**Note:** article 3(4) of the *IDD POG Regulation*]

4.2.14 R In circumstances other than *PROD* 4.2.13~~EUUK~~, when *firms* collaborate to  
*manufacture* an insurance product, they must outline their mutual responsibilities in a written agreement.

...

4.2.16 EU 5(1) ...  
UK

[**Note:** article 5(1) of the *IDD POG Regulation*]

4.2.17 EU 5(2) ...  
UK

[**Note:** article 5(2) of the *IDD POG Regulation*]

4.2.18 EU 5(3) ...  
UK

[**Note:** article 5(3) of the *IDD POG Regulation*]

...

## Product testing

4.2.22 ~~EU~~  
UK 6(1) ...

[**Note:** article 6(1) of the *IDD POG Regulation*]

4.2.23 G For the purposes of *PROD 4.2.22~~EU~~UK*, *manufacturers* should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[**Note:** recital 8 to the *IDD POG Regulation*]

4.2.24 ~~EU~~  
UK 6(2) ...

[**Note:** article 6(2) of the *IDD POG Regulation*]

...

## Distribution channels and information disclosure to distributors

4.2.27 ~~EU~~  
UK 8(1) ...

[**Note:** article 8(1) of the *IDD POG Regulation*]

...

4.2.30 ~~EU~~  
UK 8(2) ...

[**Note:** article 8(2) of the *IDD POG Regulation*]

4.2.31 ~~EU~~  
UK 8(3) The information referred to in paragraph 2 shall enable the insurance distributors to:

...

- (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in ~~Article 17(1) of Directive (EU) 2016/97~~ rule 2.5-1 of the Insurance: Conduct of Business sourcebook and rule 2.1.1 of the Conduct of Business sourcebook.

[**Note:** article 8(3) of the *IDD POG Regulation*]

## Monitoring and review of insurance products

...

4.2.35 EU 7(1) ...  
UK

[**Note:** article 7(1) of the *IDD POG Regulation*]

4.2.36 EU 7(2) ...  
UK

[**Note:** article 7(2) of the *IDD POG Regulation*]

4.2.37 EU 7(3) ...  
UK

[**Note:** article 7(3) of the *IDD POG Regulation*]

4.2.38 EU 8(4) ...  
UK

[**Note:** article 8(4) of the *IDD POG Regulation*]

4.2.39 EU 8(5) ...  
UK

[**Note:** article 8(5) of the *IDD POG Regulation*]

### 4.3 Distribution of insurance products

...

4.3.3 R A distributor must take all reasonable steps to obtain the information in *PROD 4.2.29R* when distributing insurance products manufactured by any person to which ~~IDD manufacturer~~ product governance requirements in in (~~*PROD 4.2*, (or equivalent requirements of another EEA State or directly applicable requirements of the *IDD POG Regulation*)~~) do not apply.

...

4.3.5 EU 10(1) ...  
UK

[**Note:** first sub-paragraph of article 10(1) of the *IDD POG Regulation*]

4.3.6 EU 10(2) ...  
UK

[**Note:** article 10(2) of the *IDD POG Regulation*]

4.3.7 EU 10(3) ...  
UK

[**Note:** article 10(3) of the *IDD POG Regulation*]



4.3.8 EU 10(4) ...  
UK

[**Note:** article 10(4) of the *IDD POG Regulation*]

4.3.9 EU 10(5) ...  
UK

[**Note:** article 10(5) of the *IDD POG Regulation*]

4.3.10 EU 10(6) ...  
UK

[**Note:** article 10(6) of the *IDD POG Regulation*]

4.3.11 EU 11 ...  
UK

[**Note:** article 11 of the *IDD POG Regulation*]

...

4.3.13 EU 12 Relevant actions taken by insurance distributors in relation to their  
UK product distribution arrangements shall be duly documented, kept  
for audit purposes and made available to the ~~competent authorities~~  
Financial Conduct Authority upon request.

[**Note:** article 12 of the *IDD POG Regulation*]

4.3.14 EU 10(1) ...  
UK

[**Note:** second sub-paragraph of article 10(1) of the *IDD POG Regulation*]

**EXITING THE EUROPEAN UNION: REGULATORY PROCESSES  
SOURCEBOOKS (AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
  - (3) section 395 (The [FCA's and PRA's] Procedures) of the Financial Services and Markets Act 2000; and
  - (4) regulation 120 (guidance) of the Payment Services Regulations 2017.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m].

**Amendments to the Handbook**

- C. The Supervision manual (SUP) is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Regulatory Processes Sourcebooks (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

#### 1A The FCA’s approach to supervision

##### 1A.1 Application and purpose

...

###### Purpose

- 1A.1.2 G The *Act* (section 1L) requires the *FCA* to “maintain arrangements for supervising authorised persons”. Section 1K of the *Act* also requires the *FCA* to provide general *guidance* about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of *authorised person* or *regulated activity*. One purpose of this *guidance* is to discharge the duties of the *FCA* set out in sections 1L and 1K of the *Act*. The *FCA*’s approach to supervision is also designed to enable it to meet its supervisory obligations in accordance with ~~EU legislation, where applicable, including in relation to requirements arising otherwise than under the *Act* (for example, directly applicable EU regulations~~ *onshored regulations*).

...

##### 1A.2 Introduction

...

- 1A.2.2 G For a *firm* which undertakes business internationally (or is part of a *group* which does), the *FCA* will have regard to the context in which it operates, including the nature and scope of the regulation to which it is subject in jurisdictions other than the *United Kingdom*. For a *firm* with its head office outside the *United Kingdom*, the regulation in the jurisdiction where the head office is located will be particularly relevant. As part of its supervision of such a *firm*, the *FCA* will usually seek to cooperate with relevant *overseas regulators*, including exchanging information on the *firm*. ~~Different arrangements apply for an *incoming EEA firm*, an *incoming Treaty firm* and a *UCITS qualifier*. The arrangements applying for an *incoming EEA firm* and an *incoming Treaty firm* are addressed in SYSC Appendix 1. For *UCITS qualifiers* see also *COLLG*.~~

...

#### 7 Individual requirements

## 7.1 Application and purpose

Application

...

- 7.1.2 R ~~The application of this chapter to an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier* with a *Part 4A permission* (a "*top-up permission*") is limited as explained in *SUP 7.2.4G*: [deleted]~~

...

## 7.2 The FCA's powers to set individual requirements and limitations on its own initiative

...

- 7.2.4 G ~~The *FCA* may use its *own-initiative powers* only in respect of a *firm's Part 4A permission*; that is, a *permission* granted to a *firm* under sections 55E or 55F of the *Act* (Giving permission) or having effect as if so given. In respect of an *incoming EEA firm*, an *incoming Treaty firm*, or a *UCITS qualifier*, this power applies only in relation to any *top-up permission* that it has. There are similar but more limited powers under Part XIII of the *Act* in relation to the *permission* of an *incoming EEA firm* or *incoming Treaty firm* under Schedules 3 or 4 to the *Act* (see *EG 8.26* to *EG 8.27*).~~

...

## 11 Controllers and close links

### 11.1 Application

Application to firms

- 11.1.1 R This chapter applies to every *firm* except:
- (1) an *ICVC*;
  - (2) ~~an *incoming EEA firm*; [deleted]~~
  - (3) ~~an *incoming Treaty firm*; [deleted]~~
  - (5) a *sole trader*;
  - (6) ~~a *UCITS qualifier*; [deleted]~~
  - (7) a *UK ISPV*;
  - (8) a *firm* which only has *permission* for *administering a benchmark*,

as set out in the table in *SUP 11.1.2R*.

...

## 11.2 Purpose

...

- 11.2.7 G The requirements in *SUP 11* ~~implement~~ implemented certain provisions relating to changes in *control* and *close links* which were required under the *Single Market Directives*.

...

## 11.3 Requirements on controllers or proposed controllers under the Act

...

- 11.3.14 G ~~Pursuant to section 188 of the Act (Assessment: consultation with EC competent authorities), the *appropriate regulator* is obliged to consult any appropriate *Home State regulator* before making a determination under section 185 of the Act (Assessment: general).~~ [deleted]

...

## 11.5 Notifications by firms

...

- 11.5.4 G *Firms* are reminded that a change in *control* may give rise to a change in the *group companies* to which the *appropriate regulator's* consolidated financial supervision requirements apply. Also, the *firm* may for the first time become subject to the *appropriate regulator's* requirements on consolidated financial supervision ~~(or equivalent requirements imposed by another *EEA State*)~~. This may apply, for example, if the *controller* is itself an authorised *undertaking*. The *appropriate regulator* may therefore request such a *firm, controller* or proposed *controller* to provide evidence that, following the change in *control*, the *firm* will meet the requirements of these *rules*, if appropriate.

...

## 11.7 Acquisition or increase of control: assessment process and criteria

...

- 11.7.13 G Before making a determination under section 185 or giving a *warning notice* under section 191A, the *appropriate regulator* must comply with the requirements as to consultation ~~with EC competent authorities set out in section 188 of the Act and~~ with the other regulator set out in sections 187A, 187B and 191A of the *Act*, as applicable.

...

## 11.8 Changes in the circumstances of existing controllers

11.8.1 R A firm must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (4) if a *controller*, who is authorised in ~~another~~ an EEA State as a an EEA MiFID investment firm, CRD credit institution or EEA UCITS management company or under the *Solvency II Directive* or the *IDD*, ceases to be so authorised (registered in the case of an *IDD insurance intermediary*).

...

## 12 Appointed representatives

### 12.1 Application and purpose

General application

12.1.1 R ...

- (1A) This chapter applies to a ~~UK MiFID investment firm~~ MiFID investment firm which is considering appointing, has decided to appoint or has appointed an ~~EEA tied agent~~ FCA registered tied agent.

...

- (2) ~~This chapter does not apply to a UCITS qualifier.~~ [deleted]

- (3) ~~This chapter does not apply in relation to a tied agent acting on behalf of an EEA MiFID investment firm unless that tied agent is established in the UK.~~ [deleted]

Territorial application: compatibility with EU law

12.1.1A R (1) ~~The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this).~~ [deleted]

- (2) ~~This rule overrides every other rule in this chapter.~~ [deleted]

12.1.1B G ~~For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State.~~ [deleted]

~~[Note: articles 34(1) and 35(1) and (8) of MiFID]~~

12.1.1C G ~~For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent~~

~~they relate to the knowledge and competence of one or more of its *UK tied agents*. An *EEA MiFID investment firm* should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a *UK tied agent* to carry on *MiFID business* on its behalf. [deleted]~~

~~[Note: article 29(3) of *MiFID*]~~

Interaction of SUP 12 and other modules in relation to MiFID business

- 12.1.1D G In addition to those *rules* in SUP 12 relating to the *MiFID business* of *appointed representatives* and *tied agents*, there are other ~~*MiFID*~~ obligations derived from *MiFID* in the *Handbook* relevant to the knowledge and competence of *tied agents* and related compliance obligations (see SYSC 5.1, *TC* and *FIT* (in respect of *appointed representatives* that are *approved persons*)). These provisions are subject to the territorial application requirements in their respective chapters.

...

- 12.1.5 G This chapter also sets out:
- (1) *guidance* about section 39A of the *Act*, which is relevant to a ~~*UK MiFID investment firm*~~ *MiFID investment firm* that is considering appointing an *FCA registered tied agent*; and
  - (2) the *FCA's rules*, and *guidance* on those *rules*, in relation to the appointment of:
    - (a) an ~~*EEA tied agent*~~ *FCA registered tied agent* by a ~~*UK MiFID investment firm*~~ *MiFID investment firm*;

...

## 12.2 Introduction

...

Business for which an appointed representative is exempt

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

- (aa) ~~*bidding in emissions auctions* (article 24A of the *Regulated Activities Order*) where that activity does not consist either of *dealing on own account* or the *execution of orders on behalf of clients*; [deleted]~~



...

...

...

What is a tied agent?

12.2.16 G ...

- (3) This chapter sets out the provisions which apply to *tied agents*:
- (a) ~~established in the UK; or~~
  - (b) ~~established in another EEA State and appointed by a UK MiFID investment firm~~ MiFID investment firm.
- (4) ~~A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.~~ [deleted]
- (5) ~~A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such~~ Such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent FCA registered tied agent. ~~EEA tied agents are either FCA registered tied agents or EEA registered tied agents.~~
- ...
- (7) ~~Under MiFID, a tied agent must be registered with the competent authority of the EEA State in which it is established. A UK MiFID investment firm~~ MiFID investment firm may appoint a tied agent established in the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent must be registered with the FCA. ~~Such an EEA tied agent~~ a tied agent is referred to in the Handbook as an FCA registered tied agent.
- (8) ~~If a UK MiFID investment firm appoints a tied agent established in an EEA State other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent.~~ [deleted]

What is a MiFID optional exemption appointed representative?

12.2.17 G ...

- (3) The *rules* in this chapter which apply with respect to ~~UK~~ *UK tied agents* appointed by ~~UK~~ *UK firms* also apply to a *firm* that appoints a *MiFID optional exemption appointed representative*.

What is a structured deposit appointed representative?

12.2.18 G (1) If a *MiFID investment firm* or a *third country investment firm* appoints a *person* to act under its full and unconditional responsibility but only for the purpose of selling, or advising *clients* in relation to, *structured deposits* (and not any of the activities within ~~article 4(1)(29) of MiFID~~ section 39(7) of the Act), that *person* will not be a *tied agent* in respect of that activity.

...

- (3) The *rules* in this chapter which apply with respect to ~~UK~~ *UK tied agents* appointed by ~~UK~~ *UK firms* also apply to a *firm* that appoints a *structured deposit appointed representative*.

### 12.3 **What responsibility does a firm have for its appointed representatives or EEA FCA registered tied agents?**

Responsibility for appointed representatives

12.3.1 G In determining whether a *firm* has complied with:

...

- (3) any qualifying *EU* provision specified, or of a description specified, for the purpose of section 39(4) of the *Act* by the Treasury by order,

anything that an *appointed representative* has done or omitted to do as respects the business for which the *firm* has accepted responsibility will be treated as having been done or omitted to be done by the *firm* (section 39(4) of the *Act* and article 17 of the *MCD Order*).

...

Responsibility for ~~EEA~~ FCA registered tied agents

12.3.5 R ~~A UK MiFID investment firm must not appoint an EEA registered tied agent or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its EEA registered tied agent. [deleted]~~

[~~Note: paragraph 1 of article 29(2) of MiFID~~]

12.3.6 G The effect of section 39A(6)(b) of the *Act* is to prohibit a ~~UK MiFID investment firm~~ MiFID investment firm from appointing an *FCA registered*

*tied agent*  unless it has accepted responsibility in writing for the agent’s activities in acting as a  *tied agent* .

#### 12.4 What must a firm do when it appoints an appointed representative or an ~~EEA~~ FCA registered tied agent?

...

Appointment of an FCA registered tied agent

- 12.4.11 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an *FCA registered tied agent*, SUP 12.4.2R and SUP 12.4.2AR apply to that *firm* as though the *FCA registered tied agent* were an *appointed representative*.

[**Note:** paragraphs 2 and 3 of article 29(3) of *MiFID*]

Tied agents

- 12.4.12 G (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the applicable register (section 39(1A) of the *Act*). ~~If the *tied agent* is established in the UK, the The register maintained by the *FCA* is the applicable register for these purposes. If the *tied agent* is established in another *EEA State*, the applicable register is that maintained by the *competent authority* in the *EEA State* in which the *tied agent* is established.~~
- (2) A ~~UK MiFID investment firm~~ MiFID investment firm that appoints an *FCA registered tied agent* who is not registered with the *FCA* will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the *Act* (see section 39A(6)(c) and (d) of the *Act*).
- (3) ~~A UK MiFID investment firm that appoints an *EEA registered tied agent* will be required to register that agent with the *competent authority* of the *EEA State* in which it is established. This requirement will be imposed by the rules of that *EEA State*. [deleted]~~
- (4) ~~If the *tied agent* is not established in the UK and is appointed by an *EEA MiFID investment firm*, it cannot commence acting as a *tied agent* until it is included on the public register of *tied agents* in the *EEA State* in which it is established. [deleted]~~

...

...

#### 12.5 Contracts: required terms

...

- 12.5.2 G ...

- (1A) ~~The requirement described in paragraph (1) does not apply if the firm is an EEA MiFID investment firm. [deleted]~~

...

12.5.2A G If:

- (1) a ~~UK MiFID investment firm~~ MiFID investment firm or a *third country investment firm* appoints an *appointed representative* that is a *tied agent* or a *MiFID optional exemption appointed representative*, regulation 3(6) of the Appointed Representatives Regulations requires the contract between the *firm* and the *appointed representative* to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in ~~article 4(1)(29) of MiFID~~ section 39(7) of the Act while entered on the Register.

...

...

Required contract terms for ~~EEA~~ FCA registered tied agents

- 12.5.8 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent, SUP 12.5.6AR(1A) applies to that *firm* as though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

[**Note:** articles 4(1)(29) and 29(1) of *MiFID*]

Required contract terms for FCA registered tied agents

- 12.5.9 G Under section 39A(6)(a) of the *Act* a ~~UK MiFID investment firm~~ MiFID investment firm must ensure that the contract it uses to appoint an *FCA registered tied agent* complies with the requirements that would apply under the *Appointed Representatives Regulations* if it were appointing an *appointed representative*.

...

## 12.6 **Continuing obligations of firms with appointed representatives or ~~EEA~~ FCA registered tied agents**

...

- 12.6.1A R A *firm* that is a *principal* of a *tied agent* that is an *appointed representative* must monitor the activities of that *tied agent* so as to ensure the *firm* complies with obligations ~~imposed under~~ derived from *MiFID* (or equivalent obligations relating to the *equivalent business of a third country investment firm*) when acting through that *tied agent*.

[**Note:** paragraph 3 of article 29(2) of *MiFID*]

- 12.6.1B R A *firm* that is a *principal* of an *appointed representative* that carries on *MCD credit intermediation activity* must monitor the activities of that *appointed representative* to ensure compliance with obligations ~~imposed under~~ derived from the MCD (including those in *MCOB* and *TC*).

...

Continuing obligations of firms with ~~EEA~~ FCA registered tied agents

- 12.6.15 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent, *SUP* 12.6.1R, *SUP* 12.6.1AR, *SUP* 12.6.5R and *SUP* 12.6.11AR apply to that *firm* as though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

Continuing obligations of firms with MiFID optional exemption appointed representatives or structured deposit appointed representatives

- 12.6.15 R If a *firm* appoints a *MiFID optional exemption appointed representative* or a  
A *structured deposit appointed representative*, that *firm* must:

- (1) monitor the activities of the *appointed representative* to ensure that the *firm* complies with those obligations which ~~implement~~ implemented provisions of *MiFID* and to which it is subject when acting through its *appointed representative*;

...

- 12.6.15B G In *SUP* 12.6.15AR(1), the obligations which ~~implement~~ implemented relevant provisions of *MiFID* to which a *firm* is subject include:

- (1) in the case of a *MiFID optional exemption firm* appointing a *MiFID optional exemption appointed representative*, those conduct requirements which are ~~imposed pursuant to~~ derived from article 3(2) of *MiFID*; and
- (2) in the case of a *firm* appointing a *structured deposit appointed representative*, those requirements which are ~~imposed pursuant to~~ derived from article 1(4) of *MiFID*.

...

## 12.7 Notification requirements

...

Notifications relating to ~~EEA~~ FCA registered tied agents

- 12.7.9 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent this section applies to that *firm* as though

the ~~EEA tied agent~~ FCA registered tied agent were an appointed representative.

...

## **12.8 Termination of a relationship with an appointed representative or ~~EEA~~ FCA registered tied agent**

...

Termination of a ~~UK~~ MiFID investment firm's relationship with an ~~EEA~~ FCA registered tied agent

- 12.8.6 R If a ~~UK MiFID investment firm~~ MiFID investment firm has appointed an ~~EEA tied agent~~ FCA registered tied agent this section applies to that firm as though the ~~EEA tied agent~~ FCA registered tied agent were an appointed representative.

## **12.9 Record keeping**

...

Record keeping in relation to ~~EEA~~ FCA registered tied agents

- 12.9.5 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent this section applies to that firm as though the ~~EEA tied agent~~ FCA registered tied agent were an appointed representative.

...

SUP 13 and the Annexes to SUP 13 are deleted in their entirety. The deleted text is not shown but is marked deleted as shown below.

## **13 Exercise of passport rights by UK firms [deleted]**

SUP 13A and the Annexes to SUP 13A are deleted in their entirety. The deleted text is not shown but is marked deleted as shown below.

## **13A Qualifying for authorisation under the Act [deleted]**

SUP 14 is deleted in its entirety. The deleted text is not shown but is marked deleted as shown below.

## **14 Incoming EEA firms changing details, and cancelling qualification for authorisation [deleted]**

Amend the following as shown.

## 15 Notifications to the FCA

### 15.1 Application

Who?

15.1.1 G This chapter applies to every *firm* except that:

(1) only *SUP* 15.10 applies to an *ICVC* ~~or a *UCITS* qualifier~~; and

...

15.1.2 R ~~The application of this chapter to an *incoming EEA firm* or an *incoming Treaty firm* is set out in *SUP* 15 Annex 1. [deleted]~~

...

Where?

...

15.1.6 R ~~This chapter does not apply to an *incoming ECA provider* acting as such. [deleted]~~

...

### 15.3 General Notification Requirements

...

Communication with the appropriate regulator in accordance with Principle 11

...

15.3.8 G Compliance with *Principle* 11 includes, but is not limited to, giving the *FCA* notice of:

(1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's* risk profile or resources, including, but not limited to:

...

(f) a substantial change or a series of changes in the *governing body* of an *overseas firm* ~~(other than an *incoming firm*)~~; or

...

...

## Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

(d) a breach of ~~a directly~~ an applicable provision imposed by *MiFIR* or any *onshored regulations* which were previously *EU regulations* adopted under *MiFID* or *MiFIR*; or

(da) a breach of ~~a directly~~ an applicable provision in the ~~*EU CRR*~~ *UK CRR* or any ~~directly applicable regulations~~ *onshored regulations* which were previously ~~*EU Regulations*~~ *made adopted* under *CRD* or the *EU CRR*; or

...

(ea) ~~a breach of a directly applicable provision in the *auction regulation*; or~~ [deleted]

...

(h) a breach of any ~~directly~~ applicable *onshored regulations* which were previously *EU regulations* ~~made~~ adopted under *AIFMD*; or

(ha) a breach of the *benchmarks regulation* (apart from Annex II to that regulation), any ~~directly~~ applicable ~~regulations~~ *onshored regulations* ~~or requirements which were previously~~ *EU regulations* made or imposed under the *EU benchmarks regulation* or of any requirements imposed under the *EU benchmarks regulation*; or

...

...

## Competition law infringements

...

15.3.35 G ...



- (2) Notification under *SUP* 15.3.32R is not sufficient to constitute an application for leniency or immunity from penalty in any subsequent investigation under Chapter 1 of the *Competition Act 1998* ~~or article 101 of the Treaty~~.

#### 15.4 Notified persons

- 15.4.1 R (1) An *overseas firm*, ~~which is not an incoming firm~~, must notify the *FCA* within 30 *business days* of any *person* taking up or ceasing to hold the following positions:

...

...

...

SUP 15 Annex 1 is deleted in its entirety. The deleted text of the Annex is not shown but is marked deleted as shown below.

#

#### 15 Annex 1 Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions [deleted]

Amend the following as shown.

#### 15A Applications and notifications under EMIR

##### 15A.1 Application and notifications under EMIR

...

- 15A.1.3 R Where a *person* intends to rely on article 11~~(6), (7)~~, (8), or 9 ~~or (10)~~ for an exemption from the obligation to implement risk management procedures set out in article 11(3) of *EMIR*, the *person* should make their application or notification to the *FCA* in accordance with *EMIR requirements*, including (where relevant) those set out in the *EMIR technical standards on OTC derivatives and Part 5 (Transitional Provisions: Intragroup Transactions) of the Trade Repositories (EU Exit) Regulations*.

...

**15B Applications and notifications under the *benchmarks regulation* and powers over Miscellaneous BM persons**

...

**15B.3 Applications to endorse a third country benchmark**

15B.3.1 G (1) Article 33 of the *benchmarks regulation* provides that a *supervised entity* may apply to the *FCA* to endorse a benchmark or a family of benchmarks provided in a *third country* for their use in the ~~EU~~ UK.

...

**15B.4 Applications for recognition of third country administrators**

15B.4.1 G (1) Article 32 of the *benchmarks regulation* provides that a benchmark administrator *located* in a *third country* may apply to ~~a competent authority~~ the FCA for prior recognition.

...

...

**16 Reporting requirements**

**16.1 Application**

...

16.1.2 G The only categories of *firm* to which no section of this chapter applies are:

- (1) ... ~~;~~
- (2) ~~an incoming EEA firm or incoming Treaty firm, unless it is:~~
  - (a) ~~a firm of a type listed in SUP 16.1.3 R as a type of firm to which SUP 16.6, SUP 16.7A, SUP 16.9, SUP 16.12, SUP 16.14, or SUP 16.23A applies; or~~
  - (b) ~~an insurer with permission to effect or carry out life policies; or~~
  - (c) ~~a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or~~
  - (d) ~~a payment service provider to which SUP 16.22 applies~~  
[deleted]
- (3) ~~a UCITS qualifier. [deleted]~~

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17) and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
<i>SUP</i> 16.1, <i>SUP</i> 16.2 and <i>SUP</i> 16.3	All categories of <i>firm</i> except:		Entire sections
	(a)	...	
	(b)	an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , which is not: [deleted]	
		(i) a <i>firm</i> of a type to which <i>SUP</i> 16.6 or <i>SUP</i> 16.12 applies; or	
		(ii) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i> ; or	
		(iii) a <i>firm</i> with <i>permission</i> to establish, operate or wind up a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> ; or	
		(iv) a <i>payment service provider</i> to which <i>SUP</i> 16.22 applies	
	(c)	a <i>UCITS qualifier</i> . [deleted]	
<i>SUP</i> 16.4 and <i>SUP</i> 16.5	All categories of <i>firm</i> except:		Entire sections
	...		
	(b)	an <i>incoming EEA firm</i> ; [deleted]	

	(c)	<del>an incoming Treaty firm; [deleted]</del>	
	...		
	(h)	<del>a UCITS qualifier [deleted]</del>	
	...		
...			
<i>SUP</i> 16.10	All categories of <i>firm</i> except:		Entire sections
	(a)	an <i>ICVC</i> ; and	
	(b)	<del>a UCITS qualifier; and [deleted]</del>	
	...		
...			
<i>SUP</i> 16.23A	A <i>firm</i> undertaking the regulated activities in <i>SUP</i> 16.23A.1R, <del>including all incoming EEA firms or incoming Treaty firms (including those providing cross-border services and undertaking the same activities)</del>		Entire section
...			

16.1.4 G ...

(3) Requirements for individual *firms* reflect:

...

(c) whether a *firm* has its registered office (or if it does not have a registered office, its head office) in the *United Kingdom*; and

(d) ~~whether a *firm* is an incoming EEA firm or incoming Treaty firm; and [deleted]~~

...

## 16.3 General provisions on reporting

## Application

- 16.3.1 G (1) ... ~~...~~
- (2) ~~an incoming EEA firm or incoming Treaty firm, which is not [deleted]~~
- (a) ~~a firm of a type listed in SUP 16.1.3 R as a firm to which section SUP 16.6 or SUP 16.12 applies;~~
- (b) ~~an insurer with permission to effect or carry out life policies;~~
- (3) ~~a UCITS qualifier. [deleted]~~

...

**16.5 Annual Close Links Reports**

...

- 16.5.2 G ...
- ...
- (3) if the *person* is subject to the laws, regulations or administrative provisions of a territory which is not ~~an EEA State~~ the UK, whether those foreign provisions, or any deficiency in their enforcement, would prevent the *appropriate regulator's* effective supervision of the *firm*.

...

**16.7A Annual report and accounts**

## Application

- 16.7A.1 R This section applies to every *firm* in the *regulatory activity group (RAG)* set out in column (1), which is a type of *firm* in column (2), of the tables in SUP 16.7A.3R and SUP 16.7A.5R, except:
- (1) ~~an incoming EEA firm with permission for cross border services only; [deleted]~~
- (2) ~~an incoming EEA firm in relation to its carrying on of bidding in emissions auctions; [deleted]~~

...

...

Requirement to submit annual report and accounts

16.7A.3 R A *firm* in the *RAG* in column (1) and which is a type of *firm* in column (2) must submit its *annual report and accounts* to the *FCA* annually on a single entity basis.

(1)	(2)
RAG	Firm type
1	...
	...
	<del>Non-EEA bank</del> A <u>non-UK bank</u> .
...	

...

Time period for firms submitting their annual report and accounts

16.7A.8 R *Firms* must submit their *annual report and accounts* in accordance with *SUP* 16.7A.3R within the following deadlines:

(1) for a ~~non-EEA bank~~ non-UK bank, within 7 months of the accounting reference date;

...

...

## 16.12 Integrated Regulatory Reporting

Application

16.12.1 G The effect of *SUP* 16.1.1 R is that this section applies to every *firm* carrying on business set out in column (1) of *SUP* 16.12.4 R except:

(1) ~~an incoming EEA firm with permission for cross border services only;~~ [deleted]

(1A) ~~an incoming EEA firm in relation to its carrying on of bidding in emissions auctions;~~ [deleted]

...

...

16.12.3 R

...

- 16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
<i>RAG</i> number	<i>Regulated Activities</i>	<b>Provisions containing:</b>		
		<b>applicable <i>data items</i></b>	<b>reporting frequency/ period</b>	<b>due date</b>
...				
<del><i>RAG 11</i></del> [deleted]	<del>Bidding in emissions auctions</del> [deleted]	<del><i>SUP 16.12.29AR</i></del> [deleted]	<del><i>SUP 16.12.29AR</i></del> [deleted]	<del><i>SUP 16.12.29AR</i></del> [deleted]
...				

- 16.12.11 R The applicable *data items* referred to in *SUP 16.12.4R* are set out according to *firm* type in the table below:

Description of <i>data item</i>	Firms' prudential category and applicable <i>data items</i> (note 1)
...	...
<del>Non-EEA sub-group</del> <del>Non-UK sub-group</del>	
...	
Note 1	All <i>firms</i> , except <i>IFPRU investment firms</i> in relation to <i>data items</i> reported under the <del><i>EU CRR</i></del> <i>UK CRR</i> , when submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in <i>SUP 16 Annex 24</i> . Guidance notes for completion of the <i>data items</i> are contained in <i>SUP 16 Annex 25</i> .
...	

...

16.12.15 R ...

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>
	...
	...
<del>Non-EEA subgroup</del> <u>Non-UK sub-group</u>	
...	
Note 34	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

16.12.22 R ...  
A

Description of <i>Data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>
...	
<del>Non-EEA sub-group</del> <u>Non-UK sub-group</u>	
...	
Note 29	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

16.12.25 R ...  
A

Description of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>
...	...
...	



<del>Non-EEA sub-group</del> <u>Non-UK sub-group</u>	
...	
Note 30	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

~~Regulated Activity Group 11~~

- 16.12.29 R A firm must submit the form contained in SUP 16 Annex 32R (Bidding in  
A emissions auctions return) annually within 30 business days from its accounting reference date unless the firm did not carry on any auction regulation bidding during the year to which that form relates. [deleted]

**16.13 Reporting under the Payment Services Regulations**

...

## Purpose

- 16.3.2 G ...
- (4) give directions to ~~EEA authorised payment institutions~~ under regulation 30(4) of the *Payment Services Regulations* in relation to:
- (a) the information that they must provide to the FCA in respect of the *payment services* they carry on in the *United Kingdom* in exercise of passport rights; and
- (b) the time at which and the form in which they must provide that information and the manner in which it must be verified. [deleted]

...

## Reporting requirement

- 16.13.3 D (1) An authorised payment institution, a small payment institution, ~~an EEA authorised payment institution~~ or a registered account information service provider must submit to the FCA the duly completed return applicable to it as set out in column (2) of the table in SUP 16.13.4D.

...

16.13.3 D SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting)  
A also apply to *authorised payment institutions, small payment institutions, ~~EEA authorised payment institutions~~ and registered account information service providers* as if a reference to *firm* in these rules were a reference to these categories of *payment service provider*.

...

16.13.4 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *authorised payment institutions, small payment institutions, ~~EEA authorised payment institutions~~ and registered account information service providers*.

...

#### Operational and Security Risk assessments

...

16.13.11 G The *EBA* issued Guidelines on 12 December 2017 on the security measures for operational and security risks of payment services under the *Payment Services Directive*. The Guidelines specify requirements for the establishment, implementation and monitoring of the security measures that *payment service providers* must take to manage operational and security risks relating to the *payment services* they provide.

[**Note:** see ~~<https://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-security-measures-for-operational-and-security-risks-under-the-psd2>~~ EBA guidelines: Guidelines on the security measures for operational and security risks of payment services, 12 December 2017/EBA/GL/2017/17.

16.13.12 D *Payment service providers* must comply with the *EBA's* Guidelines on the security measures for operational and security risks of payment services EBA/GL/2017/17 as issued on 12 December 2017 where they are addressed to *payment service providers*.

...

16.13.17 G ~~*Payment service providers* should note that article 16(3) of Regulation (EU) No. 1093/2010 also requires them to make every effort to comply with the *EBA's* Guidelines on security measures for operational and security risks of payment services. [deleted]~~

...

## 16.15 Reporting under the Electronic Money Regulations

...

### Reporting requirement

...

- 16.15.8 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money issuers* that are not *credit institutions*.

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
...				
(a) the Post Office Limited (b) the Bank of England, <del>the ECB and the national central banks of EEA States other than the United Kingdom</del> (c) Government departments and local authorities (d) <i>credit unions</i> (e) municipal banks (f) the National Savings Bank	<i>Average outstanding electronic money</i>	No standard format	Annual (Note 6)	30 <i>business days</i>

...

## 16.17 Remuneration reporting

...

### Interpretation

- 16.17.2 R In this section “UK lead regulated group” means an *FCA consolidation group* that is headed by ~~an EEA parent institution~~ a UK parent institution, ~~an EEA parent financial holding company~~ a UK parent financial holding company or ~~an EEA parent mixed financial holding company~~ a UK parent mixed financial holding company.

...

### Method for submitting remuneration reporting

...

16.17.3 R (1)

...

(5) The *firm* must complete the Remuneration Benchmarking Information Report using accounting year-end amounts in euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

(6) This *rule* applies to:

(a) an *IFPRU investment firm*; and

(b) an *overseas firm* that:

(i) ~~is not an EEA firm; [deleted]~~

(ii) ~~has its head office outside the EEA; and [deleted]~~

(iii) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*;

that:

(c) is not, and does not have, ~~an EEA a UK parent institution, an EEA a UK parent financial holding company or an EEA a UK parent mixed financial holding company~~, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the *firm's* last complete financial year.

(7) This *rule* also applies to:

(a) an *IFPRU investment firm*; and

(b) an *overseas firm* that

(i) ~~is not an EEA firm; [deleted]~~

(ii) ~~has its head office outside the EEA; and [deleted]~~

(iii) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*;

that:

- (c) is part of a UK lead regulated group, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the *firm's* last complete financial year.
- (8) In this rule “total assets” means:
- (a) in relation to an *IFPRU investment firm*, its total assets as set out in its balance sheet on the relevant *accounting reference date*; and
- (b) in relation to an overseas firm in (76)(b) and (87)(b), the total assets of the *overseas firm* as set out in its balance sheet on the relevant *accounting reference date* that cover the activities of the branch operation in the *United Kingdom*.

...

#### High Earners Reporting Requirements

- 16.17.4 R (1) A *firm* to which this *rule* applies must submit a High Earners Report to the *FCA* annually.
- (2) The *firm* must submit that report to the *FCA* within four months of the end of the *firm's accounting reference date*.
- (3) A *firm* that is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the ~~EEA~~ UK.
- (4) A *firm* that is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* who mainly undertook their professional activities within the ~~EEA~~ UK at:
- (a) the ~~EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company~~ UK parent institution, UK parent financial holding company or UK parent mixed financial holding company of the UK lead regulated group;
- (b) each *subsidiary* of the UK lead regulated group that has its registered office (or, if it has no registered office, its head office) in an ~~EEA State~~ the UK; and
- (c) each *branch* of the UK lead regulated group that is established or operating in an ~~EEA State~~ the UK.

- (5) (a) The *firm* must complete a ~~separate~~ template, in the format set out in SUP 16 Annex 34A, for each ~~EEA State in which~~ where there is a *high earner*, and for each payment bracket of EUR 1 million. Those templates together form the High Earners Report.
- (b) The number of *high earners* must be reported as the number of natural persons, independent of the number of working hours on which their contract is based.
- (9) The information in the High Earners Report must be denominated in Euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.
- (10) This *rule* applies to an *IFPRU investment firm* that is not, and does not have, ~~an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company.
- (11) This *rule* also applies to an *IFPRU investment firm* that is part of a UK lead regulated group.
- (12) This *rule* also applies to a *BIPRU firm*, an *exempt CAD firm*, a *local firm*, or any other *firm* that is not a *bank*, a *building society* or an *IFPRU investment firm*:
- (a) that is part of a UK lead regulated group; and
- (b) where that UK lead regulated group contains either:
- (i) a *bank*, *building society* or an *IFPRU investment firm*; or
- (ii) an *overseas firm* that;
- (A) ~~is not an EEA firm;~~ [deleted]
- (B) ~~has its head office outside the EEA; and~~ [deleted]
- (C) would be a *bank*, *building society* or an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *UK* and had obtained whatever authorisations for doing so as are required under the *Act*.
- (13) This *rule* also applies to an *overseas firm* that:
- (a) ~~is not an EEA firm;~~ [deleted]
- (b) ~~has its head office outside the EEA;~~ [deleted]

- (c) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the UK and had obtained whatever authorisations for doing so as are required under the *Act*;

and either:

- (d) is not, and does not have, ~~an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company; or
- (e) is part of a UK lead regulated group.

...

## 16.18 AIFMD reporting

### Application

- 16.18.1 G This section applies to the following types of *AIFM* in line with *SUP* 16.18.2G:

- (1) a *full-scope UK AIFM*;
- (2) a *small authorised UK AIFM*;
- (3) a *small registered UK AIFM*;
- (4) an ~~above-threshold non-EEA AIFM~~ above-threshold non-UK AIFM marketing in the UK; and
- (5) a ~~small non-EEA AIFM~~ small non-UK AIFM marketing in the UK.

- 16.18.2 G

Type of AIFM	Rules	Directions	Guidance	AIFMD level 2 regulation
<i>full-scope UK AIFM</i>	<i>FUND</i> 3.4 (Reporting obligation to the FCA) and <i>SUP</i> 16.18.5R			Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )
<i>small authorised UK AIFM</i>	<i>SUP</i> 16.18.6R			Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i>

				<del>16.18.4EU</del> <del>16.18.4UK)</del>
<i>small registered UK AIFM</i>		<i>SUP</i> 16.18.7D		Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <del>16.18.4UK)</del>
<del><i>above-threshold non-EEA AIFM</i></del> <del><i>above-threshold non-UK AIFM</i></del> <i>marketing in the UK</i>			<i>SUP</i> 16.18.8G	Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <del>16.18.4UK)</del>
<del><i>small non-EEA AIFM</i></del> <del><i>small non-UK AIFM</i></del> <i>marketing in the UK</i>		<i>SUP</i> 16.18.9D		Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <del>16.18.4UK)</del>

Purpose

- 16.18.3 G This section specifies the end dates for reporting periods for *AIFMs* and the reporting period for *small AIFMs* for the types of *AIFM* to whom this section applies. Although article 110 of the *AIFMD level 2 regulations* (Reporting to competent authorities) (as replicated in ~~*SUP* 16.18.4EU~~ ~~*SUP* 16.18.4UK)~~) applies certain reporting requirements directly to *AIFMs*, it does not specify the end dates for reporting periods for an *AIFM* and, for *small AIFMs*, it does not specify the reporting period. Therefore, *competent authorities* are required to specify these requirements.

Article 110 of the *AIFMD level 2 regulation*

16.18.4

~~EU~~  
~~UK~~

<del>Reporting to competent authorities</del> <u>the FCA</u>	
1.	In order to comply with the requirements of <del>the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU</del> rule 3.4.2 of the Investment Funds sourcebook [ <i>FUND</i> 3.4.2R] and directions given by the FCA under regulation 21(2) of the



<p><u>AIFM Regulations 2013</u>, an AIFM shall provide the following information when reporting to <del>competent authorities</del> <u>the FCA</u>:</p>	
(a)	the main instruments in which it is trading, including a breakdown of financial instruments and other assets, including the AIF's investment strategies and their geographical and sectoral investment focus;
(b)	the markets of which it is a member or where it actively trades;
(c)	the diversification of the AIF's portfolio, including, but not limited to, its principal exposures and most important concentrations.
<p>The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.</p>	
2.	<p>For each of the EU AIFs they manage and for each of the AIFs they market in the <u>United Kingdom</u> or the <u>Union</u>, AIFMs shall provide to <del>the competent authorities of their home Member State</del> <u>the FCA</u> the following information in accordance with <u>Article 24(2) of Directive 2011/61/EU</u> <u>rule 3.4.3 of the Investment Funds sourcebook</u> [<u>FUND 3.4.3R</u>]:</p>
(a)	the percentage of the AIF's assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in <del>point (a) of Article 23(4) of Directive 2011/61/EU</del> <u>rule 3.2.5(1) of the Investment Funds sourcebook</u> [ <u>FUND 3.2.5R(1)</u> ];
(b)	any new arrangements for managing the liquidity of the AIF;
(c)	the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
(d)	the current risk profile of the AIF, including:
(i)	the market risk profile of the investments of the AIF, including the expected return and volatility of the AIF in normal market conditions;
(ii)	the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF's assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;
(e)	information on the main categories of assets in which the AIF invested including the corresponding short market value and

	long market value, the turnover and performance during the reporting period; and
(f)	the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with <del>point (b) of Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU</del> rules 3.6.3(2) and 3.7.5(2)(b) of the <u>Investment Funds sourcebook [FUND 3.6.3R(2) and 3.7.5R(2)(b)]</u> .
3.	The information referred to in paragraphs 1 and 2 shall be reported as follows:
(a)	on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in <del>points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU</del> <u>sub-paragraphs (b) and (a) respectively of regulation 9(1) of the AIFM Regulations 2013</u> but do not exceed EUR 1 billion, for each of the <u>UK and EU</u> AIFs they manage and for each of the AIFs they market <u>in the United Kingdom or the Union</u> ;
(b)	on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the <u>UK and EU</u> AIFs they manage, and for each of the AIFs they market <u>in the United Kingdom or in the Union</u> ;
(c)	on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;
(d)	on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.
4.	By way of derogation from paragraph 3, the <del>competent authority of the home Member State of the AIFM</del> <u>FCA</u> may deem it appropriate and necessary for the exercise of its function to require all or part of the information to be reported on a more frequent basis.
5.	AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under <del>Article 24(4) of Directive 2011/61/EU</del> <u>rule 3.4.5 of the Investment</u>

	Funds sourcebook [ <i>FUND 3.4.5R</i> ] at the same time as that required under paragraph 2 of this Article.
6.	AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.
7.	<del>In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent authorities of the home Member State shall mean the competent authority of the Member State of reference. [deleted]</del>
[Note: Article 110 of the <i>AIFMD level 2 regulation</i> ]	

...

## Guidelines

- 16.18.11 G *ESMA's* guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the *AIFMD* ([http://www.esma.europa.eu/system/files/2013-1339\\_final\\_report\\_on\\_esma\\_guidelines\\_on\\_aifmd\\_reporting\\_for\\_publication\\_revised.pdf](http://www.esma.europa.eu/system/files/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf)), 8 August 2014 (ESMA/2014/869EN), provide further details in relation to the requirements in this section.

...

**16.23 Annual Financial Crime Report**

## Application

...

- 16.23.2 R Unless a *firm* is listed in the table below, this section does not apply to it where both of the following conditions are satisfied:

(1) ...

...

Table: Firms to which the exclusion in SUP 16.23.2R does not apply

a <i>UK bank</i> ;
a <i>building society</i> ;
<del>a <i>EEA bank</i></del> ;
<del>a <i>non-EEA bank</i></del> ;
<del>a <i>non-UK bank</i></del> ;
a <i>mortgage lender</i> ;

a mortgage administrator; or
a firm offering life and annuity insurance products.

...

**16.23A Employers' Liability Register compliance reporting**

16.23A. R (1) This section applies to any *firm* required to produce an employers' liability register in compliance with the requirements in *ICOBS* 8.4.4R, which is a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers' liability insurance.

1

- (a) ~~a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers' liability insurance; and~~
- (b) ~~an incoming EEA firm or incoming Treaty firm falling within (a), including those providing cross border services.~~

...

**16.24 Retirement income data reporting**

Application

16.24.1 R This section applies to:

- (1) (a) ~~a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; and~~
- (b) ~~a firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance.~~
- (2) ~~This rule does not apply to an incoming firm:~~
- (a) ~~in respect of that part of its business that was carried on as an electronic commerce activity; or~~
- (b) ~~if the customer is habitually resident in (and, if applicable, the State of the risk is) an EEA State other than the United Kingdom, to the extent that the EEA State in question imposes measures of like effect. [deleted]~~

...

**18 Transfers of business**

...

## 18.2 Insurance business transfers

...

- 18.2.23 G Under the terms of the Memorandum of Understanding, the *PRA* will lead when carrying out consultation with *EEA regulators* and/or other foreign regulators.  
A
- 18.2.24 G ~~The guidance set out in SUP 18.2.25G to SUP 18.2.30G derives from the requirements of the Solvency II Directive and the associated agreements between EEA regulators. Schedule 12 of the Act implements some of these requirements. [deleted]~~
- 18.2.25 G (1) ~~If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under the Solvency II Directive) or a Swiss general insurance company, then the appropriate regulator has to consult the transferee's Home State regulator, who has 3 months to respond. It will be necessary for the appropriate regulator to obtain from the transferee's Home State regulator a certificate confirming that the transferee will meet the Home State's solvency margin requirements (if any) after the transfer. [deleted]~~
- (1) ~~If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under the Reinsurance Directive) it will be necessary for the appropriate regulator to obtain from the transferee's Home State regulator a certificate confirming that the transferee will meet the Home State's solvency margin requirements (if any) after the transfer. [deleted]~~
- (2) ~~If the transferee is authorised in the United Kingdom, the The appropriate regulator will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the appropriate regulator has required of a UK firm a "recovery plan" of the kind mentioned in the PRA Rulebook: Solvency II firms: Undertakings in Difficulty, the appropriate regulator will not issue a certificate for so long as it considers that policyholders' rights are threatened within the meaning of these paragraphs.~~
- 18.2.26 G ~~The transferor will need to provide the appropriate regulator with the information that the Home State regulator requires from the appropriate regulator. This information includes:~~
- (1) ~~the transfer agreement or a draft, with:~~
- (a) ~~the names and addresses of the transferor and transferee; and~~
- (b) ~~the classes of insurance business and details of the nature of the risks or commitments to be transferred;~~

- (2) ~~for the business to be transferred (both before and after reinsurance):~~
- (a) ~~the amount of technical provisions;~~
  - (b) ~~the amount of *premiums* (in the most recent financial period); and~~
  - (c) ~~for *general insurance business*, the *claims* incurred (in the most recent financial period);~~
- (3) ~~details of assets to be transferred;~~
- (4) ~~details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and~~
- (5) ~~the *states of the risks* or the *states of the commitments* of the business being transferred. [deleted]~~
- 18.2.27 G If the transferee is not (and will not be) *authorised* and will not be ~~neither an *EEA firm* nor a *Swiss general insurance company*~~, then the *appropriate regulator* will need to consult the transferee's insurance supervisor in the place where the business is to be transferred. The *appropriate regulator* will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.
- 18.2.28 G If the transferor is a *UK insurer* (other than a *pure reinsurer*) and the business to be transferred includes business carried on from a branch in another *EEA State*, then the *appropriate regulator* has to consult the *Host State regulator*, who has 3 months to respond. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling *claims* if the branch is to be closed. [deleted]
- 18.2.29 G If the transferor is a *UK insurer* and the business to be transferred includes a long term insurance contract (other than reinsurance) for which the *state of the commitment* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* has to consult the *Host State regulator*. If the transferor is a *UK insurer* and the business to be transferred includes a general insurance contract (other than reinsurance) for which the *state of the risk* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* must consult the *Host State regulator*. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for *long term insurance business*) if a draft of the *scheme report* was also available. The *appropriate regulator* will also need to have sufficient information about the business proposed to be transferred

to be satisfied that the applicants have undertaken sufficient steps to identify the *state of the risk* or the *state of the commitment*, as the case may be. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months. [deleted]

- 18.2.30 G Where the transferor is a *UK deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *appropriate regulator* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *appropriate regulator* and the other *regulatory bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer. [deleted]

...

- 18.2.47 G As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required. [deleted]

...

#### Post-transfer advertising

- 18.2.61 G Under section 114 of the Act the court must direct that notice of the transfer be published by the transferee in any *EEA State* other than the *United Kingdom* which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant *EEA State*. Such publication should include the notification of the transfer to the policyholders in the *state of the commitment* or the *state of the risk*. The parties should also be mindful of relevant provisions of the national laws of the relevant *state of the commitment* or the *state of the risk*. [deleted]

- 18.2.62 G Under section 114A of the Act the court may direct that notice of a transfer be published by the transferee in any *EEA State* which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of *reinsurance*. [deleted]

...

### 18.3 Insurance business transfers outside the United Kingdom

#### Purpose

- 18.3.1 G Under section 115 of the Act, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any necessary margin of

solvency, to facilitate an *insurance business* transfer to the *firm* under overseas legislation ~~from a firm authorised in another EEA State or from a Swiss general insurance company~~. This section provides *guidance* on how the *appropriate regulator* would exercise this power and on related matters.

...

- 18.3.2 G ~~Under cooperation agreements between EEA regulators, if it has serious concerns about the proposed transferee, the appropriate regulator should inform the regulatory body of the transferor within 3 months of the original request from that regulatory body. The appropriate regulator is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, the appropriate regulator is required to cooperate with the Swiss regulatory body and would apply similar principles to~~ If it has serious concerns about a proposed transfer from a Swiss general insurance company, the appropriate regulator should inform the Swiss regulatory body.

...

#### 18.4 Friendly Society transfers and amalgamations

...

- 18.4.2 G *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in ~~EEA States~~ states other than the *United Kingdom*, or for an amalgamation where additional procedures are required

...

- 18.4.9 G For an amalgamation the successor society, and for a transfer the transferee, may need to apply for *permission*, or to vary its *permission*, under Part 4A of the *Act*. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary *permission* or variation should be given. If the transferee is ~~an EEA firm or a Swiss general insurance company~~, then confirmation will be needed from its ~~Home State regulator~~ regulator that it meets ~~the Home State's~~ relevant solvency margin requirements (see *SUP* 18.4.25G(3)).

...

- 18.4.24 G ~~For a directive friendly society, if the transfer or amalgamation includes policies where the state of the risk or the state of the commitment is an EEA State other than the United Kingdom, consultation with the Host State regulator is required and SUP 18.2.25G to SUP 18.2.29G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to~~



~~the appropriate authority for confirmation of an amalgamation or transfer and the appropriate authority may require the notice of the application to be published in two national newspapers in the *Host State*. [deleted]~~

- 18.4.25 G The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:
- (1) ...
  - (2) the appropriate authority must be satisfied that:
 

...

    - (c) ~~for a *directive friendly society* where a transfer includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, the *Host State regulator* has been notified of the transfer and has consented or has not refused consent to the transfer; and [deleted]~~
  - (3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company* ~~or an *EEA firm*~~, this is evidenced by a certificate from its ~~*home state regulator*~~ regulator).

...

## **App 2 Insurers: Regulatory intervention points and run-off plans**

### **App 2.1 Application**

- 2.1.1 R Subject to *SUP* App 2.1.6R, *SUP* App 2.1 to 2.15 apply to an *insurer*, unless it is:
- ~~(1) a *Swiss general insurer*; or~~
  - ~~(2) an *EEA deposit insurer*; or~~
  - ~~(3) an *incoming EEA firm*; or~~
  - ~~(4) an *incoming Treaty firm*.~~

...

### **App 2.10 Grant or variation of permission**

- 2.10.1 The *PRA* will ask *Solvency II firms* seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see the *UK provisions which implemented* article 18 of the *Solvency II Directive*). It may make

a similar request to other *firms* (see SUP 6.3.25G). *Firms* which have submitted such a *scheme of operations* are not required to submit to the PRA a further *scheme of operations* under this appendix unless SUP App 2.8 or the relevant parts of PRA Rulebook: Non-Solvency II firms: Run Off Operations or PRA Rulebook: Solvency II firms: Run Off Operations apply. SUP 6 Annex 4 does, however, apply to such a *firm*.

...

**App 2.15 Run-off plans for closed with-profits funds**

...

2.15.8B Delegated acts or implementing technical standards may be adopted under UK provisions which implemented article 35(6) and (7) of the *Solvency II Directive* in relation, among other things, to run-off plans. In that event *Solvency II firms* should comply with those acts and standards to the extent that they supersede SUP App 2.15.8A G.

...

SUP Appendix 3 is deleted in its entirety. The deleted text is not shown but is marked deleted as shown below.

**App 3 Guidance on passporting issues [deleted]**

Amend the following as shown.

**TP 10 Benchmarks Regulation Transitional Provisions**

...

10.2 Overview

10.2.1 G (1) The EU benchmarks regulation applied from 1 January 2018. The benchmarks regulation is the UK version of, and replacement for, this EU regulation and applies from 1 January 2018 exit day.

...

**Sch 1 Record keeping requirements**

...

Sch 1.2G	<b>Handbook reference</b>	<b>Subject of record</b>	<b>Contents of record</b>	<b>When record must be made</b>	<b>Retention period</b>
----------	---------------------------	--------------------------	---------------------------	---------------------------------	-------------------------

...				
<i>SUP 12.9.5R</i>	<i>EEA tied agents FCA registered tied agents</i>	If a <i>UK MiFID investment firm</i> appoints an <i>EEA tied agent FCA registered tied agent</i> the record keeping requirements in <i>SUP 12.9</i> applies to that <i>firm</i> as though the <i>EEA tied agent FCA registered tied agent</i> were an appointed representative.		
<i>SUP 13.11</i>	<i>UK firm exercising EEA right</i>	(a) the services or activities it carries on from a <i>branch in, or provide cross border services into, another EEA State under that EEA right;</i> and the <i>requisite details or relevant details relating to those services or activities (if applicable)</i>	Not specified	Three years from the earlier of the date on which:(a) it was superseded by a more up to date record; or
				(a) the <i>UK firm</i> ceased to have a <i>branch in, or carry cross border services into, any EEA State under an EEA right</i>
<i>SUP 13.11.1R</i>	Exercise of passport	(1) Services or activities carried on from a <i>branch</i>	Not specified	Five years (for <i>firms</i> passporting

	rights by <i>UK firms</i>	in, or provided cross-border into, another <i>EEA State</i> under an <i>EEA right</i> .  (2) The details relating to those services or activities (as set out in <i>SUP 13.6</i> and <i>SUP 13.7</i> ).		under <i>MiFID</i> ) or three years (for other <i>firms</i> ) from earlier of:  (1) record being superseded;  (2) <i>firm</i> ceasing to have any <i>EEA branches</i> or <i>cross border services</i> .
...				

...

**Sch 4 Powers exercised**

Sch  
4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the <i>rules</i> in <i>SUP</i> :	
	...
	<b>Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)</b>
	...

...

Sch  
4.3G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> in <i>SUP</i> to direct, require or specify:	
	...
	<b>Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)</b>
	...



## Annex B

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

#### 1 Application and Purpose

##### 1.1 Application and Purpose

###### Application

.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the *FCA*. It sets out:

....

(3) the *FCA*'s policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator ~~or an *EEA* regulator (*DEPP* 7)~~;

...

#### 2 Statutory notices and the allocation of decision making

...

##### 2.5 Provision for certain categories of decision

...

Decisions relating to applications for *FCA* authorisation or approval

2.5.3 G *FCA* staff under *executive procedures* will take the decision to give a *warning notice* if the *FCA* proposes to:

...

(6) ~~refuse an application for variation or rescission of a requirement imposed on an *incoming EEA* firm. [deleted]~~

...

2.5.16 G ~~A notice under paragraph 15A(4) of Schedule 3 to the Act relating to the application by an *EEA* firm for approval to manage a *UCITS* scheme is not a *warning notice*, but the *FCA* will operate a procedure for this notice which will be similar to the procedure for a *warning notice*. [deleted]~~

...

## 2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk \* (see *DEPP* 2.4)

Section of the Act	Description	Handbook reference	Decision maker
...			
192L(1) 192L(4)	when the <i>FCA</i> is proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*		<i>RDC</i>
200(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA incoming firm</i> [deleted]		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.6G
...			
269(1)/(2)	when the <i>FCA</i> , on an application under section 267(4) or (5) by an operator of a section 264 recognised scheme to revoke or vary a direction that the promotion of the scheme be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application [deleted]		<i>RDC</i>
...			

Paragraph 15A(4) of Schedule 3	when the <i>FCA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> [deleted]	<i>SUP-13A</i> See <i>DEPP</i> 2.5.16G	<i>Executive procedures</i>
...			
Paragraph 15B(2)(a) of Schedule 3	when the <i>FCA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> [deleted]	<i>SUP-13A</i>	<i>Executive procedures</i>
Paragraph 19(8)/(12) of Schedule 3	when the <i>FCA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i> [deleted]	<i>SUP-13</i>	<i>RDC</i>



...

Payment Services Regulations	Description	Handbook reference	Decision maker
...			
Regulations 10(2), 10(3)(a), 15 and 19	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution</i> or <i>account information service provider's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulations 28(1) and 26	<del>when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i> [deleted]</del>		<del><i>Executive procedures</i></del>
Regulations 28(2)(a) and 26	<del>when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i> [deleted]</del>		<del><i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i></del>
Regulations 28(1), 28(2)(a) and 26	when the <i>FCA</i> is <del>proposing or</del> deciding to cancel the registration of an <i>EEA branch</i> * or an <i>EEA registered account</i>		<i>RDC</i>

	<i>information service provider</i> [deleted]		
--	---	--	--

...

<b>Cross-Border Payments in Euro Regulations 2010</b> [deleted]	<b>Description</b>	<b>Handbook reference</b>	<b>Decision-maker</b>
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to impose a financial penalty*		<i>RDC</i>
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *		<i>RDC</i>
Regulations 10(1) and 10(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty		<i>RDC</i>

	against a relevant person (Note 1)		
<p>Note:</p> <p>(1) <del>The <i>Cross-Border Payments in Euro Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</del></p> <p>[deleted]</p>			

Electronic Money Regulations	Description	Handbook reference	Decision maker
...			
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative		<i>RDC</i> or <i>Executive procedures</i> (Note 1)
Regulation 29(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch of an authorised electronic money institution</i> [deleted]		<i>Executive procedures</i>
Regulation 29(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch of an authorised electronic money institution</i> [deleted]		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

Regulation 29(2) and Regulation 29(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch of an authorised electronic money institution*</i> [deleted]		<i>RDC</i>
...			

<b>Recognised Auction Platforms Regulations 2011 [deleted]</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision-maker</b>
Regulation 5A	where the <i>FCA</i> is proposing or deciding to publish a statement censuring an <i>RAP</i> , or to impose a financial penalty on an <i>RAP</i>	<i>REC 2A.4</i>	<i>RDC</i>

<b>Alternative Investment Fund Managers Regulations 2013</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
Regulation 13(2)(a), article 14b of the <i>EuVECA regulation</i> <i>RVECA regulation</i> and article 15b of the <i>EuSEF regulation</i> <i>SEF regulation</i>	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>

Regulation 18(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>small registered UK AIFM</i> including, where applicable, its registration as a <del><i>EuSEF manager</i></del> or <del><i>EuVECA manager</i></del> <u><i>SEF manager</i></u> or <u><i>RVECA manager</i></u>		<i>RDC</i>
Regulation 18(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>small registered UK AIFM</i> including where applicable its registration as a <del><i>EuSEF manager</i></del> or <del><i>EuVECA manager</i></del> <u><i>SEF manager</i></u> or <u><i>RVECA manager</i></u>		<i>RDC</i>
Regulation 23B(1)	where the <i>FCA</i> proposes to refuse an application made by a <i>UK AIF</i> for authorisation as a <del><i>UK-ELTIF</i></del> <u><i>UK LTIF</i></u>		<i>Executive procedures</i>
Regulation 23B(2)(a)	where the <i>FCA</i> decides to refuse an application made by a <i>UK AIF</i> for authorisation as a <del><i>UK-ELTIF</i></del> <u><i>UK LTIF</i></u>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>
Regulation 23C(1)	where the <i>FCA</i> proposes to revoke the authorisation of a <del><i>UK-ELTIF</i></del> <u><i>UK LTIF</i></u>		<i>RDC</i>

Regulation 23C(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a <del><i>UK ELTH UK</i></del> <u><i>LTIF</i></u>		<i>RDC</i>
...			
Regulation 71(1)(e)	where the <i>FCA</i> is proposing or deciding to publish a statement that an <i>unauthorised AIFM</i> has contravened the regulations or <del>directly applicable <i>EuSEF regulation</i> or <i>EuVECA regulation</i></del> <u><i>SEF regulation</i> or <i>RVECA regulation</i></u>		<i>RDC</i>
Regulation 71(1)(f)	where the <i>FCA</i> is proposing or deciding to impose a financial penalty on an <i>unauthorised AIFM</i> that has contravened the regulations or <del>directly applicable <i>EuSEF regulation</i> or <i>EuVECA regulation</i></del> <u><i>SEF regulation</i> or <i>RVECA regulation</i></u>		<i>RDC</i>

...

## 2 Annex 2 Supervisory notices

Section of the Act	Description	Handbook reference	Decision maker
...			
191B(1)	when the <i>FCA</i> gives a <i>restriction</i>		<i>Executive procedures</i>

	<i>notice</i> under section 191B		
197(3)/(6)/(7)(b)	when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> [deleted]	<del>SUP 14</del>	<del>RDC or executive procedures</del>  See <del>DEPP 2.5.7G and 2.5.7AG</del>
...			

...

<b>Alternative Investment Fund Managers Regulations 2013</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Regulation 22(4)	where the <i>FCA</i> is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a <i>small registered UK AIFM</i> , a <i>EuSEF manager</i> or <i>EuVECA manager</i>		<i>RDC</i> or <i>executive procedures</i>  See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i>
Regulation 22(4)	<del>where the <i>FCA</i> is exercising its power on its own initiative to give or vary a direction under regulation 22(2) to a <i>small registered UK AIFM</i> with its registered office in an <i>EEA State</i> other than the <i>UK</i> in accordance with article 19.3 of the <i>EuSEF regulation</i> or article 18.3 of</del>		<del><i>RDC</i> or <i>executive procedures</i></del>  <del>See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i></del>

	<del>the <i>EuVECA regulation</i> [deleted]</del>		
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...

<b>The Financial Services Act 2012 (Consumer Credit) Order 2013 [deleted]</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Article 3(6)	<del>when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> by reference to the contravention or likely contravention of a <i>CCA Requirement</i></del>	<del><i>SUP-14</i></del>	<i>RDC</i> or <i>executive procedures</i>  <i>See DEPP 2.5.7G and DEPP 2.5.7AG</i>

...

<b>Markets in Financial Instruments Regulations 2017</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Regulations 10(2) and <u>Regulation 12(2)</u>	when the <i>FCA</i> is exercising its power of intervention in respect of a <i>third country firm</i>		<i>RDC</i> or <i>executive procedures</i>  (see <i>DEPP 2.5.7G</i> and <i>DEPP 2.5.7AG</i> )
...			

...

**6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition**

**6A.1 Introduction**



...

- 6A.1.2 G (1) For the purposes of *DEPP* 6A, “suspension” refers to the suspension of:
- (a) any *permission* which an *authorised person* has to carry on a *regulated activity* (under sections 123B or 206A of the *Act*),
  - (b) any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*),
  - (c) a *sponsor’s* approval (under section 88A(2)(b) of the *Act*),
  - (d) and a *primary information provider’s* approval (under section 89Q(2)(b) of the *Act*);
- (2) “restriction” refers to limitations or other restrictions in relation to:
- (a) the carrying on of a *regulated activity* by an *authorised person* (under sections 123B or 206A of the *Act*),
  - (b) [deleted]
  - (c) the performance of services to which a *sponsor’s* approval relates (under section 88A(2)(c) of the *Act*), and
  - (d) the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the *Act*);
- (3) “condition” refers to a condition imposed in relation to any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*);
- (4) “limitation” refers, apart from in *DEPP* 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an *approved person* of any function to which the approval relates is to have effect (under section 66 of the *Act*); and
- (5) “disciplinary prohibition” refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a *MiFID investment firm* (under section 123A(2)(a) and (3) of the *Act*) or a temporary prohibition on

an individual directly or indirectly acquiring or disposing of *financial instruments* ~~(or *emission products*)~~ on his or her own account or the account of a third party, (under section 123A(2)(b) of the *Act*), ~~or a temporary prohibition on an individual directly or indirectly making a bid at an auction conducted by a *recognised auction platform*, on his or her own account or the account of a third party (under section 123A(2)(c) of the *Act*).~~

~~[Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for application of the powers to contraventions of the *auction regulation*]~~

...

## 7 Statement of policy on interviews conducted on behalf of overseas and EEA regulators

### 7.1 Application and purpose

#### Application

7.1.1 G *DEPP 7* applies when the *FCA*:

- (1) has appointed an investigator at the request of an *overseas regulator*, under section 169(1)(b) (Assistance to overseas regulators) ~~or an *EEA regulator*~~ under section 131FA of the *Act*; and
- (2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the *Act*, to permit a representative of the *overseas regulator* ~~or of the *EEA regulator*~~ to attend, and take part in, any interview conducted for the purposes of the investigation.

...

7.1.4 G The *FCA* is keen to promote co-operation with *overseas regulators* and ~~*EEA regulators*~~. It views provision of assistance to *overseas regulators* and ~~*EEA regulators*~~ as an essential part of discharging its general functions.

### 7.2 Interviews

#### Appointment of investigator and confidentiality of information

7.2.1 G Under section 169(1)(b) and section 131FA of the *Act*, the *FCA* may appoint an investigator to investigate any matter at the request of an *overseas regulator* ~~or *EEA regulator*~~. The powers of the investigator appointed by the *FCA* (referred to here as the '*FCA*'s investigator')

include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).

- 7.2.2 G Where the *FCA* appoints an investigator in response to a request from an *overseas regulator* ~~or *EEA regulator*~~ it may, under section 169(7) or section 131FA of the *Act*, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The *FCA* may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator* ~~or *EEA regulator*~~ as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

...

#### Policy on use of investigative powers

- 7.2.4 G The *FCA*'s policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators* ~~and *EEA regulators*~~, is set out in the *FCA*'s Enforcement Guide (*EG*).

#### Use of direction powers

- 7.2.5 G The *FCA* may need to consider whether to use its direction power at two stages of an investigation:
- (1) at the same time that it considers the request from the *overseas regulator* ~~or *EEA regulator*~~ to appoint investigators;
  - (2) after it has appointed investigators, either at the request of the *overseas regulator* ~~or *EEA regulator*~~ or on the recommendation of the investigators.
- 7.2.6 G Before making a direction under section 169(7) or section 131FA the *FCA* will discuss and determine with the *overseas regulator* ~~or *EEA regulator*~~ how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FCA* will at this stage determine the extent to which the representative of the *overseas regulator* ~~or *EEA regulator*~~ will be able to participate in the interview. The *overseas regulator* ~~or *EEA regulator*~~ will be notified of this determination on the issuing of the direction.
- 7.2.7 G The direction will contain the identity of the representative of the *overseas regulator* ~~or *EEA regulator*~~ that is permitted to attend any interview and the role that he will play in the interview. If the *FCA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

## Conduct of interview

...

7.2.9 G The *FCA*'s investigator will act on behalf of the *FCA* and under its control. He may be instructed to permit the representative of the *overseas regulator* ~~or *EEA regulator*~~ to assist in the preparation of the interview. Where the *FCA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in *DEPP* 7.2.6G.

7.2.10 G If the direction does permit the representative of an *overseas regulator* ~~or *EEA regulator*~~ to attend the interview and ask the interviewee questions, the *FCA*'s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

...

(3) The *FCA*'s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* ~~or *EEA regulator*~~ was either present or not present.

(4) Where the *FCA*'s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* ~~or *EEA regulator*~~ as to the conduct of the interview and the contents of this statement of policy.

7.2.11 G The *FCA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* ~~or *EEA regulator*~~. Whether or not the interviewee is the *person* under investigation, the *FCA*'s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* ~~or *EEA regulator*~~ is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FCA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

...

- 7.2.14 G When the *FCA's* investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* ~~or *EEA regulator*~~. It will also state that in criminal proceedings or proceedings for *market abuse* the *FCA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.
- 7.2.15 G The *FCA's* investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* ~~or *EEA regulator*~~ wishes to ask questions about *documents* during the interview and the *FCA's* investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FCA's* investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.
- 7.2.16 G When the *FCA's* investigator has exercised the compulsory interview power, the *FCA's* investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* ~~or *EEA regulator*~~. The interviewee will also be required to answer these questions. The *FCA's* investigator may intervene at any stage during questioning by the representative of the *overseas regulator* ~~or *EEA regulator*~~.

## Language

- 7.2.17 G Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* ~~or *EEA regulator*~~ then the translation costs will normally be met by the *overseas regulator* ~~or *EEA regulator*~~. ~~Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the *FCA*.~~ In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator* ~~or *EEA regulator*~~.

## Tape-recording

7.2.18 G All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FCA*'s investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The *FCA* will not provide the *overseas regulator* or ~~*EEA regulator*~~ with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

7.2.19 G The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FCA*. The presence at the interview of a representative of the *overseas regulator* or ~~*EEA regulator*~~ may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FCA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.

7.2.20 G In relation to the publication of investigations by *overseas regulators* or ~~*EEA regulators*~~, the *FCA* will pursue a policy similar to the policy that relates to its own investigations.

...

**Sch 3 Fees and other required payments**

...

Sch 3.2G

The <i>FCA</i> 's power to impose financial penalties is contained in:	
	Section 63A (Power to impose penalties) of the <i>Act</i>
	Section 66 (Disciplinary powers) of the <i>Act</i>
	Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the <i>Act</i>
	Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the <i>Act</i>
	Section 91 (Penalties for breach of Part 6 Rules) of the <i>Act</i>

	Section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i>
	section 131G (Power to impose penalty or issue censure) of the <i>Act</i>
	Section 192K (Power to impose penalty or issue censure) of the <i>Act</i>
	Section 206 (Financial penalties) of the <i>Act</i>
	Section 249 (Disciplinary measures) of the <i>Act</i>
	Section 312F (Financial penalties) of the <i>Act</i>
	Section 345 (Disciplinary measures) of the <i>Act</i>
	Part III of Schedule 1ZA (The Financial Conduct Authority) to the <i>Act</i>
	the <i>Money Laundering Regulations</i>
	the Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/3298)
	the <i>RCB Regulations</i>
	the <i>Payment Services Regulations</i>
	<del>the <i>Cross-Border Payments in Euro Regulations</i> [deleted]</del>
	the <i>OTC derivatives, CCPs and trade repositories regulation</i>
	the <i>AIFMD UK regulation</i>
	the <i>Referral Fees Regulations</i>
	the <i>CCA Order</i>
	the <i>Immigration Regulations</i>
	the <i>MCD Order</i>
	the <i>Small and Medium Sized Business (Credit Information) Regulations</i>
	the <i>MiFI Regulations</i>
	the <i>UK Benchmarks Regulations 2018</i>
	the <i>DRS Regulations</i>
	the <i>Payment Accounts Regulations</i>

	the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>
--	--

#### Sch 4 Powers Exercised

##### Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	Section 63C (Statement of policy)
	Section 63ZD (Statement of policy relating to conditional approval and variation)
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by paragraph 1 of the Schedule to the <del><i>Cross-Border Payments in Euro Regulations</i></del> )
	Section 88C (Action under s.88A: statement of policy)
	Section 89S (Action under s. 89Q: statement of policy)
	Section 93(1) (Statement of policy)
	Section 124(1) (Statement of policy)
	Section 131J (Impositions of penalties under section 131G: statement of policy)
	Section 139A (Power of the FCA to give guidance)
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i> )
	Section 192N (Imposition of penalties under section 192K: statement of policy)
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , by paragraph 3 of the Schedule to the <del><i>Cross-Border Payments in Euro Regulations</i></del> , by article 23(4) of the <i>MCD Order</i> , regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , by regulation 36(6) of the <i>Payment Accounts Regulations</i> and by regulation 40 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> )



	Section 249 (Disciplinary measures)
	Section 312J (Statement of policy)
	Section 345D (Imposition of penalties on auditors or actuaries: statement of policy)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , <del>by paragraph 5 of the Schedule to the <i>Cross Border Payments in Euro Regulations</i></del> , by article 24(2) of the <i>MCD Order</i> , regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , by paragraph 4 of Schedule 7 of the <i>Payment Accounts Regulations</i> and by regulation 41 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> )
	Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

Sch 4.2G

The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	Regulation 42 (Guidance) of the <i>RCB Regulations</i>
	Regulation 44 (Warning notices and decision notices) of the <i>RCB Regulations</i>
	Regulation 86 (Proposal to take disciplinary measures) of the <i>Payment Services Regulations</i>
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<del>Regulation 14 (Guidance) of the <i>Cross Border Payments in Euro Regulations</i> [deleted]</del>
	Regulation 70 (Warning Notices, Decision Notices and Supervisory Notices) of the <i>AIFMD UK regulation</i>
	Regulation 71 (Application of Act to unauthorised AIFs) of the <i>AIFMD UK regulation</i>
	Regulation 29 (Statements of policy) of the <i>Referral Fees Regulations</i>
	Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i>

	Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the <i>CCA Order</i>
	Article 4 (Statement of policy) of the <i>CCA Order</i>
	Regulation 28 (Statements of policy) of the <i>Immigration Regulations</i>
	Regulation 29 (Application of Part 26 of the 2000 Act) of the <i>Immigration Regulations</i>
	Paragraph 7 of Schedule 1 (Guidance) of the <i>MiFI Regulations</i>
	Paragraph 14 of Schedule 1 (Statements of Policy) of the <i>MiFI Regulations</i>
	Paragraph 22 of Schedule 1 (Application of Part 26 of the Act) of the <i>MiFI Regulations</i>
	Regulation 20 (Guidance) of the <i>DRS Regulations</i>
	Regulation 27 (Statements of Policy) of the <i>DRS Regulations</i>
	Regulation 37 (Application of Part 26 of the Act) of the <i>DRS Regulations</i>
	Regulation 82 (The FCA: procedure (general)) of the <i>Money Laundering Regulations</i>
	Paragraph 3 (Statements of Policy) of Schedule 1 of the Packaged Retail and Insurance-based Investment Products Regulations
	Paragraph 6 (Application of Part 26 of the Act) of Schedule 1 to the Packaged Retail and Insurance-based Investment Products Regulations
	Regulation 14 (Statements of Policy) of the <i>UK Benchmarks Regulations 2018</i>
	Regulation 19 (Application of Part 11 of the Act (information gathering and investigations)) of the <i>UK Benchmarks Regulations 2018</i>
	Regulation 23 (Application of Part 26 of the Act (notices)) of the <i>UK Benchmarks Regulations 2018</i>

**EXITING THE EUROPEAN UNION: SPECIALIST SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Credit Unions New sourcebook (CREDS)	Annex A
Consumer Credit sourcebook (CONC)	Annex B
Professional Firms sourcebook (PROF)	Annex C
Recognised Investment Exchanges sourcebook (REC)	Annex D
Investment Funds sourcebook (FUND)	Annex E
Collective Investment Schemes sourcebook (COLL)	Annex F

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Specialist Sourcebooks (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 2.1 Application and purpose

##### Application

...

##### Purpose

- 2.1.2 G The purpose of this chapter is to provide *rules* and *guidance* relating to senior management arrangements, systems and controls that are specific to *credit unions*.

...

- 2.1.3 G ...

- (3) ~~SYSC 4 to SYSC 10 (other than SYSC 6.1.1R (which only applies to a limited extent) and SYSC 6.3) do not apply to a firm (including a credit union) in relation to its carrying on of auction regulation bidding (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10). [deleted]~~

...

#### 10 Application of other parts of the Handbook to credit unions

##### 10.1 Application and purpose

...

##### Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3	G	Module	Relevance to Credit Unions
		...	...
		Banking: Conduct of Business	<i>BCOBS</i> sets out <i>rules</i> and <i>guidance</i> for credit unions on how they should conduct their business with their <i>customers</i> . In particular there are <i>rules</i> and <i>guidance</i> relating to communications with <i>banking customers</i> and <i>financial</i>

sourcebook (BCOBS)	<p><i>promotions (BCOBS 2), distance communications (BCOBS 3), information to be communicated to banking customers (BCOBS 4), post sale requirements (BCOBS 5), and cancellation (BCOBS 6). The rules in BCOBS 3.1 that relate to distance contracts may apply to a credit union. This is because <u>BCOBS 3 contains requirements which implemented the Distance Marketing Directive</u> applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a) of the <u>Distance Marketing Directive</u>), i.e. if the credit union routinely sells any of its services by post, telephone, fax or the internet.</i></p>
...	

## Annex B

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Application and purpose and guidance on financial difficulties

...

### 1.2 Who? What? Where?

...

EEA territorial scope rule: compatibility with European law

- 1.2.6 R (1) ~~CONC does not apply to an incoming ECA provider where, in providing a service, the provider is acting as such. [deleted]~~
- (2) ~~CONC applies to an outgoing ECA provider where, in providing a service, the provider is acting as such. [deleted]~~
- (3) ~~The territorial scope of CONC is otherwise modified to the extent necessary to be compatible with European law. [deleted]~~
- (4) ~~This rule overrides every other rule in this sourcebook.~~
- Note:** ~~article 3(3) of, and the Annex to, the E-Commerce Directive. [deleted]~~

...

## 2 Conduct of business standards: general

...

### 2.7 Distance marketing

Application

- 2.7.1 R (1) Subject to (2) and (3), this section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK* ~~or another EEA State.~~

...

The distance marketing disclosure rules

- 2.7.2 R (1) Subject to (2), (3) and (4), a *firm* must provide a *consumer* with the distance marketing information (*CONC 2 Annex 1R*) in good time before the *consumer* is bound by a *distance contract* or offer.
- [**Note:** regulation 7(1) of SI 2004/2095]
- [**Note:** articles 3(1) and 4(5) of the *Distance Marketing Directive*]
- ...
- (4) ...
- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the ~~European Consumer Credit Information~~ Pre-contract Consumer Credit Information (Overdrafts) form in accordance with the *disclosure regulations* and, unless *CONC 2.7.12R* would otherwise apply, a copy of the contractual terms and conditions;
- ...

...

Contracts governed by the law of a third party state

- 2.7.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~EEA~~ UK, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of ~~or one or more EEA States~~ the UK.
- [**Note:** regulation 16(3) of SI 2004/2095]
- [**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

## 2.8 E-commerce

Application

- 2.8.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *UK* with or for a *person* in the *UK* ~~or another EEA State~~.

Information about the firm and its products or services

- 2.8.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:



- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
- (5) if it is a professional-firm, ~~or a person regulated by the equivalent of a designated professional body in another EEA State:~~
  - (a) the name of the professional body ~~(including any designated professional body)~~ or similar institution with which it is registered;
  - (b) the professional title; ~~and the EEA State where it was granted;~~
  - (c) ~~a reference to the applicable professional rules in the EEA State of establishment and the means to access them; and~~
  - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(2) of the E-Commerce Directive]

...

**2 Annex Distance marketing information  
1R**

This Annex belongs to *CONC 2.7.2R* (The distance marketing disclosure rules)

Information about the firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del>consumer's EEA State of residence</del> <u>UK</u> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	
...	

(16)	The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract. [deleted]
...	

...

### 3 Financial promotions and communications with customers

#### 3.1 Application

...

Where?

3.1.9 R This chapter applies to a *firm* in relation to:

(1) ...

(2) ... ; and

(3) ~~the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA State other than the UK;~~ [deleted]

...

...

## Annex C

### Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Professional firms

##### 1.1 Application and Purpose

Application

...

- 1.1.1A R This sourcebook does not apply to an ~~incoming ECA provider~~ acting as such. [deleted]

...

Purpose

...

- 1.1.4 G This sourcebook outlines:

...

- (6) the arrangements made by the *FCA* for complying with its obligations under the *IDD* in relation to:
- (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; ~~and~~
  - (b) ~~*exempt professional firms* that wish to passport under the *IDD*.~~

...

- 1.1.6 G The *rules* and *guidance* in this sourcebook are intended to:

...

- (4) explain the background to and the arrangements made by the *FCA* for:

- (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; ~~and~~
- (b) ~~*authorised professional firms and exempt professional firms* that wish to exercise their *EEA right* under the *IDD* to establish a *branch* or provide *cross border services* in another *EEA State*.~~

...

### 3 The FCA's duties and powers

#### 3.1 The FCA's duty to keep itself informed

...

- 3.1.2 G The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct *insurance distribution activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:

...

- (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, *insurance distribution activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the *insurance distribution activity* ~~and, where relevant, the passporting information required by the *FCA* for the purposes of paragraph 25 of Schedule 3 to the *Act* (EEA Passport Rights).~~

...

### 5 Non-mainstream regulated activities

...

#### Conduct of Business sourcebook

- 5.3.2 G *COBS 18.11* provides that *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:

...

(2) (where these are *insurance distribution activities*) the parts of *COBS* set out in *COBS 18.11.2R(3)(a)* to (i) which ~~implement~~ implemented the *IDD* apply unless:

(a) the *designated professional body* of the *firm* has made rules which ~~implement~~ implemented some or all of articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD*;

...

...

...

#### Senior Management Arrangements, Systems and Controls

5.3.4 G The following provisions do not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*:

...

(4) *SYSC 19F.2* (*IDD* remuneration incentives) where the *designated professional body* of the *firm* has made *rules*, approved by the *FCA*, that ~~implement~~ implemented article 17(3) of the *IDD* and that apply to the *firm*; and

...

...

#### Client Assets

5.3.9 G *CASS 1.2.4 R* provides that with the exception of *CASS 1* and the *insurance client money chapter*, *CASS* does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. *CASS 1.2.5 R* further provides that if the *non-mainstream regulated activities* are *insurance distribution activity*, *CASS 5* (the *insurance client money chapter*) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which ~~implement~~ implemented the *IDD* and which are in the form approved by the *FCA* under *section 332(5)* of the *Act*.

Insurance: Conduct of Business sourcebook

- 5.3.10 G (1) *ICOBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see *ICOBS 1 Annex 1*, Part 1, paragraph 3.1R, except for:

...

- (d) provisions in *ICOBS* which ~~implement~~ implemented articles 1(4), 17, 18, 19, 20, 23, and 24 of the *IDD* (see *ICOBS 2.2.2R* (communication to customers and financial promotions), *ICOBS 2.2.2AR* (marketing communications), *ICOBS 2.5.-1R* (the customer's best interests rule), *ICOBS 2.6* (Distribution of connected contracts through exempt persons), *ICOBS 4.1* (Information about the firm, its services and remuneration), *ICOBS 4.1A* (Means of communicating to customers), *ICOBS 4.3* (remuneration disclosure), *ICOBS 5.2* (Demands and needs), *ICOBS 5.3.3R* (Advice on the basis of a fair analysis), *ICOBS 5.3.4R* (Personalised explanation), *ICOBS 6A.1.4R* (Ensuring the customer can make an informed decision) and *ICOBS 6A.3* (Cross-selling)), except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA*.

...

## 7 Insurance Distribution Activity

### 7.1 Register of persons carrying on insurance distribution activity

...

Financial Services Register

...

- 7.1.7 G The information to be included on the record in relation to *exempt professional firms* will, as required by the UK provisions which implemented the *IDD*, include details of:

- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, *insurance distribution activity*; and
- (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the *insurance distribution activity*; ~~and~~
- (3) ~~each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the *IDD*:~~

- (a) ~~has established a branch; or~~
- (b) ~~is providing cross border services.~~

...

## 7.2 **Passporting under the IDD** [deleted]

- 7.2.1 G ~~All persons that are on the register maintained by the FCA in accordance with article 3 of the IDD, and so permitted to conduct insurance distribution activity, are entitled to exercise the EEA right conferred upon them by articles 4 (freedom to provide services) and 6 (freedom of establishment) of the IDD to establish a branch or provide services relating to insurance distribution activity in another EEA State. Both authorised professional firms and exempt professional firms that are so registered by the FCA get the benefit of these passporting rights.~~
- 7.2.2 G ~~Any authorised professional firm or exempt professional firm that is contemplating the exercise of rights under articles 4 (freedom to provide services) or 6 (freedom of establishment) of the IDD to establish a branch or provide services relating to insurance distribution activity in another EEA State is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both authorised professional firms and exempt professional firms are UK firms for the purposes of the Handbook, including SUP 13.~~
- 7.2.3 G ~~A UK firm proposing to establish a branch in another EEA State for the first time under an EEA right derived from the IDD must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the Act (EEA Passport Rights). These include the requirement that the firm must at the outset give the FCA a notice in the required form of its intention to establish the branch. SUP 13.3.2G to SUP 13.3.2CG and SUP 13.3.5G detail the procedure to be followed once such a notice of intention has been received by the FCA. SUP 13.5.1R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9AG (Firms passporting under the IDD) will also be relevant.~~
- 7.2.4 G ~~A UK firm proposing to provide cross border services into another EEA State for the first time under an EEA right derived from the IDD must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act (EEA Passport Rights). The UK firm must at the outset give the FCA a notice in the required form of its intention to provide the cross border services into another EEA State. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2G, SUP 13.4.4G and SUP 13.4.5AG.~~

~~SUP 13.5.2R (Specified contents: notice of intention to provide cross border services) and SUP 13.7.11AG will also be relevant.~~

...



## Annex D

### Amendments to the Recognised Investment Exchanges sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Introduction

##### 1.1 Application

...

1.1.1A G ~~The guidance in REC 6A applies to EEA market operators exercising passporting rights in the United Kingdom. [deleted]~~

...

1.1.3 G ...

(5 ~~Guidance for EEA market operators exercising their passporting rights in the United Kingdom is set out in REC 6A. [deleted]~~

...

##### 1.2 Purpose, status and quotations, notes or references

###### Purpose

1.2.1 G The purpose of the *guidance* (~~other than in REC 6A~~) in this sourcebook is to give information on the *recognised body requirements*. ~~The purpose of the guidance in REC 6A is to give EEA market operators information about their passporting rights in the United Kingdom.~~ Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

###### Status

1.2.2 G (1) ... Other informative text regarding provisions of *EU* directives or ~~directly applicable EU~~ *onshored regulations* which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word “Note”. ...

...

## 2 Recognition requirements

...

Delete the text of REC 2A (Recognised Auction Platforms). The text is not shown but the chapter is marked [deleted] as shown below.

### 2A Recognised Auction Platforms [deleted]

*[Editor's note: In due course consequential amendments will be made to remove all Handbook references to recognised auction platforms (RAPs) and related provisions]*

...

### 2.4A Management body

...

2.4A.2 UK Schedule to the Recognition Requirements Regulations, paragraph 2B

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

...

### 2.5 Systems and controls, algorithmic trading and conflicts

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraphs 3 – 3H

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

...

### 2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets

...

2.6.7 EU ...

UK

2.6.8    ~~EU~~ ...  
          UK

...

2.6.10   ~~EU~~ ...  
          UK

2.6.11   ~~EU~~ ...  
          UK

2.6.11A   ~~EU~~ ...  
          UK

2.6.11B   ~~EU~~ ...  
          UK

2.6.11C   ~~EU~~ ...  
          UK

...

2.6.15   ~~EU~~ ...  
          UK

2.6.16   ~~EU~~ ...  
          UK

...

2.6.18   ~~EU~~ ...  
          UK

2.6.18A   ~~EU~~ ...  
          UK

2.6.18B   ~~EU~~ ...  
          UK

2.6.18C   ~~EU~~ ...  
          UK

...

**2.7 Access to facilities**

...

2.7.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7B

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

2.7.1B UK Schedule to the Recognition Requirements Regulations, Paragraph 7C

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

2.7.1C UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZC

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

...

**2.7A Position management and position reporting in relation to commodity derivatives**

2.7A.1 UK ...

Paragraph 7BB – Position reporting

*[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Recognition Requirements Regulations]*

...

**2.12 Availability of relevant information and admission of financial instruments to trading**

...

2.12.2AA UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZB

[*Editor's note*: In due course, the text reproduced here will be amended in line with any amendments made to the *Recognition Requirements Regulations*]

2.12.2B ~~EU~~ ...

UK

...

2.12.2D ~~EU~~ ...

UK

2.12.2E ~~EU~~ ...

UK

...

## **2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)**

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

[*Editor's note*: In due course, the text reproduced here will be amended in line with any amendments made to the *Recognition Requirements Regulations*]

...

## **2.16B Operation of a data reporting service**

Schedule to the Recognition Requirements Regulations, Paragraph 9I

[*Editor's note*: In due course, the text reproduced here will be amended in line with any amendments made to the *Recognition Requirements Regulations*]

...

## **3 Notification rules for UK recognised bodies**

...

### **3.14A Operation of a trading venue**

Purpose

3.14A.1 G ...

~~[Note: *MiFID RTS 3* and *MiFID ITS 4*, Annex IV provide for the format for notification by the operator of an *MTF* or *OTF* to its *Home State competent authority* of any arrangements to facilitate access to and trading on the *trading venue* by remote users, members or participants within the territory of another *EEA State*]~~

...

- 3.14A.7B G ~~According to article 4(7) of *MiFIR*, waivers granted by *competent authorities* in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by *ESMA* by 3 January 2020. *ESMA* shall issue an opinion to the *competent authority*, assessing the continued compatibility of those waivers with the requirements established in *MiFIR* and any regulations made pursuant to it. The *FCA* will cooperate with *ESMA* in relation to the continued effect of existing waivers.~~  
~~[deleted]~~

...

### 3.26 Proposals to make regulatory provision

...

Disapplication of duty to notify proposal to make regulatory provision

- 3.26.4 R The duty in section 300(B)(1) of the *Act* does not apply to any of the following:
- (1) any *regulatory provision* which is required under ~~*EU law*~~ or any enactment or rule of law in the *United Kingdom*; or

...

...

Delete the text of REC 4.2B (Exercise of passport rights by a UK RIE). The text is not shown but the section is marked [deleted] as shown below.

### 4.2B Exercise of passport rights by a UK RIE **[deleted]**

Amend the following as shown.

**4.2D Suspension and removal of financial instruments from trading by the FCA**

...

4.2D.10 G ~~Under sections 313CC (2) and (3) of the Act, if the FCA receives notice that a competent authority of another EEA State has suspended or removed a financial instrument from trading on a trading venue or systematic internaliser pursuant to articles 32.2, 52.2 or 69.2 of MiFID, the FCA must require any trading venue or systematic internaliser falling under its jurisdiction as defined in section 313D of the Act, and which trades the same instrument, to suspend or remove the instrument from trading if the suspension or removal was due to suspected market abuse; a take over bid; or the non disclosure of inside information about the issuer or the instrument. The same applies in relation to a derivative which relates to or is referenced to the financial instrument. The FCA must revoke the requirement if the other EEA State informs the FCA it has lifted the suspension or removal. [deleted]~~

4.2D.11 G ~~The FCA receives notice for the purposes of REC 4.2D.10G when it is provided by a competent authority of another EEA State or ESMA in accordance with section 313CC(4) of the Act. [deleted]~~

**4.2E Information: compliance of UK recognised bodies with EU specified requirements**

4.2E.1 G (1) Under section 293A of the Act, the FCA may require a UK recognised body to give such information as it reasonably requires in order to satisfy itself that the UK recognised body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the Act by the Treasury.

...

**4.9 Disciplinary measures**

4.9.1 G (1) Under sections 312E and 312F of the Act, if the FCA considers that a recognised body has contravened a requirement imposed by the FCA under any provision of the Act that relates to a RIE, or under any provision of the Act whose contravention constitutes an offence the FCA has power to prosecute, or by a qualifying EU provision specified by the Treasury it may:

- (a) publish a statement to that effect; or
- (b) impose on the body a financial penalty of such amount as it considers appropriate.

...

...

## 6 Overseas Investment Exchanges

### 6.1 Introduction and legal background

- 6.1.1 G (1) ... ; or
- (2) ~~(in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or [deleted]~~
  - (3) ~~(in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under article 34(6)3 of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or *organised trading facility*) or article 53(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or [deleted]~~

...

...

Delete the text of REC 6A (EEA market operators in the United Kingdom). The text is not shown but the chapter is marked [deleted] as shown below.

## 6A EEA market operators in the United Kingdom [deleted]



## Annex E

### Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

*[Editor's note: Only the changes proposed in this instrument are shown in this Annex. The changes proposed in [CP18/28] are shown as having been made.]*

#### 1 Introduction

##### 1.1 Application and purpose

- 1.1.1 R (1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
...	
<i>full-scope UK AIFM of an <del>ELTIF</del> <u>LTIF</u></i>	Chapters 1, 3, 4.2 and 10
...	
<i>depository of a <del>UK ELTIF</del> <u>an LTIF</u> managed by a full-scope UK AIFM</i>	Chapters 1, 3 and 4.2
<i><del>depository of a UK ELTIF</del> managed by a full-scope <del>EEA</del> AIFM</i>	<del>Chapters 1, 3 and 4.2</del>
...	

...

#### 4 European Specialist AIF Regimes

##### 4.1 Application

- 4.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

Type of firm	Applicable sections
--------------	---------------------

<i>Full-scope UK AIFM of a <del>UK ELTIF</del> <u>an LTIF</u>.</i>	<i>FUND 4.2 (<del>ELTIFs</del> <u>LTIFs</u>)</i>
<i>Full-scope UK AIFM of an EEA <del>ELTIF</del>.</i>	<i><del>FUND 4.2 (ELTIFs)</del></i>
<i>UK depository of a <del>UK ELTIF</del> <u>an LTIF</u>.</i>	<i>FUND 4.2 (<del>ELTIFs</del> <u>LTIFs</u>)</i>

## 4.2 **ELTIFs** LTIFs

### Application

4.2.1 R This section applies to:

- (1) a *full-scope UK AIFM* of: an LTIF; and
  - (a) a ~~UK ELTIF~~; or
  - (b) an ~~EEA ELTIF~~; and
- (2) a *UK depository* of a ~~UK ELTIF~~ an LTIF.

### The ~~ELTIF~~ LTIF Regulation

- 4.2.2 G (1) The ~~ELTIF regulation~~ LTIF regulation lays down uniform rules on the authorisation, investment policies and operating conditions of *UK AIFs* or ~~EEA AIFs~~, or compartments of those *AIFs*, that are marketed in the ~~EEA~~ UK as ~~European~~ long-term investment funds (~~ELTIFs~~) (LTIFs).
- (2) ~~The ELTIF regulation is a directly applicable EU regulation.~~  
[deleted]

### Interaction between the ~~ELTIF~~ LTIF regulation and ~~AIFMD~~ the UK AIFM regime

- 4.2.3 G (1) To be eligible to manage a ~~UK ELTIF~~ an LTIF, an *AIFM* needs to be a full-scope UK AIFM:
  - (a) a ~~full-scope UK AIFM~~; or
  - (b) a ~~full-scope EEA AIFM~~.
- (2) This means that the *AIFM* and the *depository* of a ~~UK ELTIF~~ an LTIF need to comply with the applicable requirements of:

- (a) AIFMD UK AIFM regime; and
- (b) the ~~ELTIF regulation~~ LTIF regulation.

Specific depositary provisions where an ~~ELTIF~~ LTIF is marketed to retail investors

- 4.2.4 G (1) Article 29 of the ~~ELTIF regulation~~ LTIF regulation contains specific provisions concerning the *depositary* of an ~~ELTIF~~ LTIF that is *marketed to retail clients* which have the effect of amending the corresponding provisions of the provisions implementing AIFMD in the United Kingdom.
- (2) Article 29 of the ~~ELTIF regulation~~ LTIF regulation is replicated in ~~FUND 4.2.5EU~~ FUND 4.2.5UK.
- (3) These specific provisions and the corresponding references in AIFMD (as implemented before exit day), as well as the relevant provisions ~~and UK transposition in the AIFMD UK regulation and rules~~ are summarised in FUND 4.2.6G.
- (4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disapplied in FUND 4.2.7R.

4.2.5

EU  
UK

**Specific provisions concerning the depositary of an ~~ELTIF~~ LTIF marketed to retail investors**

1.	By way of derogation from article 21(3) of Directive 2011/61/EU, <del>the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in article 23(2) of Directive 2009/65/EC</del> <u>Despite the provisions in rule 3.11.10 of the Investment Funds sourcebook, the depositary of an LTIF marketed to retail investors must be an entity of the type referred to in rule 6.6A.8 or 6.6B.11 of the Collective Investment Schemes sourcebook.</u>
1A.	<u>Paragraph 1B applies to the depositary of an LTIF to which the EEA Passport Rights (Amendment etc, and Transitional Provisions) (EU Exit) Regulations 2018 apply.</u>
1B.	<u>The requirement for an LTIF to comply with section 243(5) and (5A) or 261D(5) of FSMA or regulation 15(8)(a) of the Open-Ended Investment Companies Regulations 2001, as amended from time to time, in relation to a depositary does not apply until the end of the period determined in accordance with regulation 17 (period during which regulation 8 or 11 is to apply) of the EEA Passport Rights (Amendment etc, and Transitional Provisions) (EU Exit) Regulations 2018.</u>

2.	By way of derogation from the second subparagraph of article 21(13) and article 21(14) of Directive 2011/61/EU, the depositary of an <del>ELTIF</del> <u>LTIF</u> Despite regulations 30 and 32 of the AIFM Regulations, the depositary of an <u>LTIF</u> marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.	
3.	The liability of the depositary referred to in <del>article 21(12) of Directive 2011/61/EU</del> <u>regulation 30 of the AIFM Regulations</u> shall not be excluded or limited by agreement where the <del>ELTIF</del> <u>LTIF</u> is marketed to retail investors.	
4.	Any agreement that contravenes paragraph 3 shall be void.	
5.	The assets held in custody by the depositary of <del>an ELTIF</del> <u>an LTIF</u> shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.	
	The assets held in custody by the depositary of <del>an ELTIF</del> <u>an LTIF</u> are only allowed to be reused provided that:	
	(a)	the reuse of the assets is executed for the account of <del>the ELTIF</del> <u>the LTIF</u> ;
	(b)	the depositary is carrying out the instructions of the manager of <del>the ELTIF</del> <u>the LTIF</u> on behalf of <del>the ELTIF</del> <u>the LTIF</u> ;
	(c)	the reuse is for the benefit of <del>the ELTIF</del> <u>the LTIF</u> and in the interests of the unit- or shareholders; and
	(d)	the transaction is covered by high quality and liquid collateral received by <del>the ELTIF</del> <u>the LTIF</u> under a title transfer arrangement.
	The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.	
	[ <b>Note:</b> article 29 of the <del>ELTIF regulation</del> <u>LTIF regulation</u> ]	

Summary of specific provisions concerning the depositary of an ~~ELTIF~~ LTIF marketed to retail investors

4.2.6

G

	<b><u>ELTIF regulation</u> <u>LTIF regulation</u></b>	<b>AIFMD reference</b>	<b>UK transposition <u>Relevant provisions in AIFMD UK regulation and FCA rules</u></b>
(1)	Article 29(1) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(3) of AIFMD	<del>FUND 3.11.10R to FUND 3.11.15G and FUND 3.11.18R</del>
(2)	Article 29(2) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Second paragraph of article 21(13) and 21(14) of AIFMD	Regulations 30(4) and (5) and 32 of the AIFMD UK regulation (Note 1)
(3)	Article 29(3) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(12) of AIFMD	Regulations 30(1) to (3) and 31(1) of the AIFMD UK regulation (Note 2)
(4)	Article 29(5) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(10) third paragraph of AIFMD	FUND 3.11.24R
<p><b>Note 1:</b> <del>The AIFMD UK regulation was Regulations 30(4) and 32 do not apply to the <u>depository of a UK LTIF which is marketed to retail investors under Chapter V of the LTIF regulation</u>. This follows from regulations 30(7) and 32(3) of the AIFMD UK regulation which were amended by The European Long-term Investment Funds Regulations 2015 (SI 2015/1882) so that these regulations do not apply to a <u>depository of an EEA ELTIF or a UK ELTIF that is marketed to retail clients under Chapter V of the ELTIF Regulation (see regulations 30(7) and 32(3) of the AIFMD UK regulation)</u> and The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 (SI XXXX/XXXX).</del></p>			
<p><b>Note 2:</b> ...</p>			

Disapplication of FUND depository provisions for an ~~ELTIF~~ LTIF marketed to retail investors

4.2.7

R The following provisions do not apply when an ~~ELTIF~~ LTIF is marketed to a retail client:

- (1) *FUND 3.11.10R to FUND 3.11.15G* (Eligible depositaries for UK AIFs); and
- (2) ~~*FUND 3.11.18R* (Eligible depositaries for EEA AIFs); and [deleted]~~
- (3) *FUND 3.11.24R* (Reuse of assets).

Documentation and information required to market an ~~*ELTIF*~~ LTIF

- 4.2.8 G (1) To market an ~~*ELTIF*~~ LTIF an AIFM is required to:
- (a) notify ~~its competent authority~~ the FCA in accordance with ~~article 31 of AIFMD~~ regulation 54 of the UK AIFMD regulation, if it wishes to *market* the ~~*ELTIF*~~ LTIF in the ~~Home State of the AIFM UK~~ (see article 31(1) of the ~~*ELTIF regulation*~~ LTIF regulation); and
  - (b) ~~notify its competent authority in accordance with article 32 of AIFMD, if it wishes to market the ELTIF in a Host State of the AIFM (see article 31(2) of the ELTIF regulation); and [deleted]~~
  - (c) provide the following additional documentation and information to ~~its competent authority~~ the FCA (see article 31(4) of the ~~*ELTIF regulation*~~ LTIF regulation):
    - (i) the prospectus of the ~~*ELTIF*~~ LTIF;
    - (ii) the key information document of the ~~*ELTIF*~~ LTIF in the event that it is *marketed to retail clients*; and
    - (iii) information on the facilities referred to in article 26 of the ~~*ELTIF regulation*~~ LTIF regulation.
- (2) To *market* an ~~*ELTIF*~~ LTIF, a *full-scope UK AIFM* should submit a notice to the *FCA* using the forms in:
- (a) *FUND 3 Annex 1D* (Notification of intention to market an AIF in the United Kingdom) to *market* an ~~*ELTIF*~~ LTIF in the *United Kingdom*; and
  - (b) ~~*SUP 13 Annex 8BR* (Passporting: AIFMD) to market an ELTIF in an EEA State other than the United Kingdom; and [deleted]~~
  - (c) *FUND 4 Annex 1R* (Additional documentation and information to market an ~~*ELTIF*~~ LTIF) (as required by *FUND 4.2.9R*).

- 4.2.9 R The *AIFM* of an ~~ELTIF~~ LTIF must submit a notice to the *FCA* using the form in *FUND 4 Annex 1R* (Additional documentation and information to market an ~~ELTIF~~ LTIF) to market the ~~ELTIF~~ LTIF.

Interaction between ~~ELTIFs~~ LTIFs and authorised funds

- 4.2.10 G (1) The requirements in relation to an ~~ELTIF~~ LTIF are set out in the ~~ELTIF regulation~~ LTIF regulation rather than in *FCA rules*.
- (2) (a) As a result, the *Glossary* term of an *authorised fund* has only limited application to an ~~ELTIF~~ LTIF.
- (b) This is to avoid all the requirements for an *authorised AIF* applying to an *AIFM* or *depository* of an ~~ELTIF~~ LTIF.
- (3) (a) The *Glossary* term of an *authorised fund* only applies to a ~~UK-ELTIF~~ an LTIF (other than a *body corporate* that is not a *collective investment scheme*) in *FEES 6* and *COMP*.
- (b) This is to allow the *rules* and *guidance* in *FEES 6* and *COMP* to apply to a ~~UK-ELTIF~~ an LTIF (other than a *body corporate* that is not a *collective investment scheme*) in the same way as other types of *fund* that are authorised by the *FCA*.
- 4.2.11 G (1) However, a *full-scope UK AIFM* of a ~~UK-ELTIF~~ an LTIF needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.
- (2) Similarly, the *depository* of a ~~UK-ELTIF~~ an LTIF needs to obtain the *permission of acting as trustee or a depository of an AIF* that is an *authorised AIF*.
- (3) (a) Where the requirements for an *AIFM* or a *depository* of an ~~ELTIF~~ LTIF are concerned, an ~~ELTIF~~ LTIF bears more of a resemblance to an *authorised AIF* than an *unauthorised AIF*.
- (b) As a result, *firms* that do not have the *permission to manage an AIF* that is an *authorised AIF* or *act as a trustee or depository of an AIF* that is an *authorised AIF* will need to vary their *permission* to be able to act as the *AIFM* or *depository* of an ~~ELTIF~~ LTIF.

**4 Annex 1R Additional documentation to market an ~~ELTIF~~ LTIF**

## Annex F

### Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, unless otherwise indicated underlining indicates new text and striking through indicates deleted text.

[*Editor's note:* Only the changes proposed in this instrument are shown in this Annex. The changes proposed in [CP18/28] are shown as having been made.]

#### **1 Introduction**

##### **1.1 Applications and purpose**

Application

1.1.1 G ...

1.1.1A R ~~This sourcebook does not apply to an *incoming ECA provider* acting as such. [deleted]~~

...

#### **4 Investor Relations**

...

##### **4.2 Pre-sale notifications**

...

Information to be provided on securities financing transactions and total return swaps

...

4.2.5B UK [*Editor's note:* In due course, the text reproduced here will be amended in line with any amendments made to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012]

...

##### **4.5 Reports and accounts**

...



Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

...

4.5.8AB UK [*Editor's note*: In due course, the text reproduced here will be amended in line with any amendments made to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012]

...

## **Appendix 2R Modifications to the KII Regulation for KII-compliant NURS**

...

### **CHAPTER I**

#### **SUBJECT MATTER AND GENERAL PRINCIPLES**

...

##### *Article 1A*

##### **Definitions**

[deleted]

##### *Article 2*

##### **General principles**

...

### **CHAPTER II**

#### **FORM AND PRESENTATION OF KEY INVESTOR INFORMATION**

##### *SECTION 1*

##### *Title of document, order of contents and headings of sections*

##### *Article 4*

##### **Title and content of document**

...

12. Authorisation details shall consist of the following statement:

*'This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority'.*

~~In cases where the *KII compliant NURS* is managed by an *authorised fund manager* exercising rights under Article 33 of Directive 2012/61/EU (AIFMD), an additional statement shall be included:~~

~~*'[Name of authorised fund manager] is authorised in [name of Member State] and regulated by [identity of competent authority]'.*~~

**EXITING THE EUROPEAN UNION: LISTING, PROSPECTUS AND DISCLOSURE  
SOURCEBOOKS (AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Listing Rules sourcebook (LR)	Annex A
Prospectus Rules sourcebook (PR)	Annex B
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex C

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Listing, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

#### 1 Preliminary: All securities

##### 1.1 Introduction

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA guidelines: Alternative Performance Measures dated 5 October 2015 (ESMA/2015/1415).

...

##### 1.4 Miscellaneous

...

Use of an RIS

...

- 1.4.12 R Where a *listing rule* requires an *issuer* who is not subject to *DTR* 6.3.1R to use the services of an *RIS*, the *issuer* must comply with the provisions of *DTR* 6.3, except in relation to information which is required to be disclosed under ~~the *Transparency Directive*~~, articles 17 and 19 of the *Market Abuse Regulation* or the *DTR*.

##### 1.5 Standard and Premium Listing

Standard and premium listing explained

- 1.5.1 G ...

- (2) A *listing* that is described as a *standard listing* sets requirements that are based on the minimum ~~EU directive~~ standards set out in the UK provisions which implemented *CARD* and the *TD*. A *listing* that is described as a *premium listing* will include requirements that exceed those required under ~~relevant EU directives~~ the UK provisions which implemented *CARD* and the *TD*.

...

...

## 2 Requirements for listing: All securities

### 2.1 Preliminary

...

#### Refusal of applications

...

2.1.3 G Under the *Act*, the *FCA* may also refuse an application for *admission* if it considers that:

...

- (2) for *securities* already listed in ~~another EEA State~~ a third country, the *issuer* has failed to comply with any obligations under that listing.

...

### 2.2 Requirements for all securities

...

#### Admission to trading

2.2.3 R Other than in regard to *securities* to which *LR 4* applies, to be *listed, equity shares* must be admitted to trading on a *regulated market* for *listed securities* ~~operated by a RIE~~. All other *securities* must be admitted to trading on a *RIE's* market for *listed securities*.

...

#### Prospectus

2.2.10 R (1) This *rule* applies if under the *Act* ~~or under the law of another EEA State~~:

- (a) a *prospectus* must be approved and published for the *securities*; or
- (b) the *applicant* is permitted and elects to draw up a *prospectus* for the *securities*.

~~(2)~~ To be *listed*:

- ~~(a)~~ a *prospectus* must have been approved by the *FCA* and published in relation to the *securities*; ~~or~~

- (b) if another *EEA State* is the *Home Member State* for the *securities*, the relevant competent authority must have supplied the *FCA* with:
  - (i) a certificate of approval;
  - (ii) a copy of the *prospectus* as approved; and
  - (iii) (if applicable) a translation of the *summary* of the *prospectus*.

...

### 3 Listing applications: All securities

...

#### 3.3 Shares

...

Documents to be provided 48 hours in advance

3.3.2 R The following documents must be submitted, in final form, to the *FCA* by midday two *business days* before the *FCA* is to consider the application:

...

- (2) ~~one of:~~
  - (a) the *prospectus* or *listing particulars*, that has been approved, by the *FCA*; ~~or~~
  - (b) a copy of the *prospectus*, a certificate of approval and (if applicable) a translation of the *summary* of the *prospectus*, if another *EEA State* is the *home Member State* for the *shares*; ~~or~~
  - (c) [deleted]

...

...

#### 3.4 Debt and other securities

...

Documents to be provided 48 hours in advance

3.4.4 R An *applicant* must submit, in final form, to the *FCA* by midday two *business days* before the *FCA* is to consider the application:

...

(2) ~~either:~~

(a) the *prospectus* or *listing particulars* that has been approved by the *FCA*; ~~or,~~

(b) a copy of the ~~*prospectus*~~, a certificate of approval and (if applicable) a translation of the ~~*summary*~~ of the ~~*prospectus*~~, if another ~~*EEA State*~~ is the ~~*home Member State*~~ for the ~~*securities*~~;

...

...

Exempt public sector issuers

3.4.9 R ~~A *public sector issuer*~~ An *issuer* that seeks *admission* of *debt securities* referred to in paragraphs 2 and 4 of Schedule 11A of the *Act* must submit to the *FCA* in final form a completed Application for Admission of Securities to the Official List.

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FCA*'s website.

...

3.4.9B G ~~A *public sector issuer*~~ An *issuer* referred to in *LR 3.4.9R* that is not required to produce a *prospectus* or *listing particulars* must confirm on its application form that no *prospectus* or *listing particulars* are required.

...

## 4 Listing particulars for professional securities market and certain other securities: All securities

### 4.1 Application and Purpose

Application

4.1.1 R This chapter applies to an *issuer* that has applied for the *admission* of:

...



- (2) any other *specialist securities* for which a *prospectus* is not required under the ~~*prospectus directive Act*~~ or the *prospectus rules*.

...

## 4.2 Contents and format of listing particulars

...

### Summary

- 4.2.2 R (1) The *listing particulars* must contain a *summary* that complies with the requirements in section 87A(5) and (6) of the *Act* and ~~PR 2.1.4 EU UK~~ to PR 2.1.7 R (as if those requirements applied to the *listing particulars*).

...

...

### Minimum information to be included

- 4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:

...

- (5) for an issue of *securities* by the government of a ~~non-EEA State~~ third country or a local or regional authority of a ~~non-EEA State~~ third country, the *schedule* applicable to *securities* issued by third countries and their regional and local authorities; and

...

...

### Responsibility for listing particulars

...

- 4.2.13 R ...
- (2) An *issuer* that is ~~the~~ a government of a ~~non-EEA State~~ or a local or regional authority of a ~~non-EEA State~~ is not required under paragraph (1)(a) to state that it accepts responsibility for the *listing particulars*.

...

### 4.3 Approval and publication of listing particulars

...

Filing and publication of listing particulars etc

- 4.3.5 R An *issuer* must ensure that after *listing particulars* or *supplementary listing particulars* are approved by the *FCA*, the *listing particulars* or *supplementary listing particulars* are filed and published as if the relevant requirements in *PR 3.2*, the *PD Regulation* and ~~Commission Delegated Regulation (EU) 2016/301~~ the *Prospectus RTS Regulation 2* applied to them.

### 4.4 Miscellaneous

Supplementary listing particulars

...

- 4.4.2 R An *issuer* must ensure that after *supplementary listing particulars* are approved by the *FCA*, the *supplementary listing particulars* are filed and published as if the requirements in *PR 3.2*, the *PD Regulation* and ~~Commission Delegated Regulation (EU) 2016/301~~ the *Prospectus RTS Regulation 2* applied to them.

...

## 5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

### 5.4A Transfer between listing categories: Equity shares

...

~~Directive obligations~~ Obligations under the Act and Prospectus Rules

- 5.4A.15 G An *issuer* may take steps, in connection with a transfer, which require it to consider whether a *prospectus* is necessary, for example, if the *company* or its capital is reconstituted in a way that could amount to an *offer of transferable securities to the public*. The *issuer* and its advisers should consider whether ~~directive obligations~~ under the Act and the prospectus rules may be triggered.

...

### 5.5 Miscellaneous

...

Suspension, cancellation or restoration by overseas exchange or authority

...

5.5.3 G ...

- (4) If an *overseas* exchange or ~~competent authority~~ *overseas authority* requests the *FCA* to suspend, cancel or restore the *listing of securities*, the *FCA* will, wherever practical, contact the *issuer* or its *sponsor* before it suspends, cancels or restores the *listing*. Therefore, *issuers* are encouraged to contact the *FCA* at the same time as they contact their home exchange.

...

...

**6 Additional requirements for premium listing (commercial company)**

...

**6.14 Shares in public hands**

6.14.1 R Where an *applicant* is applying for the *admission* of a *class* of *equity shares* to *premium listing*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public ~~in one or more EEA States~~.

[Note: article 48 of the *CARD*]

6.14.2 R For the purposes of *LR* 6.14.1R:

- (1) ~~account may also be taken of holders in one or more states that are not EEA States, if the shares are listed in the state or states; [deleted]~~

...

...

6.14.5 G ...

- (2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

- (a) ~~shares of the same class that are held (even though they are not listed) in states that are not EEA States; [deleted]~~

...

## 6.15 Shares of ~~a non-EEA~~ a third country company

- 6.15.1 R The *FCA* will not admit *shares* of an *applicant* incorporated in a ~~non-EEA State~~ a third country that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[**Note:** article 51 of the *CARD*]

...

## 8 Sponsors: Premium listing

...

### 8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *securities* must appoint a *sponsor* on each occasion that it:

- (1) is required to submit any of the following documents to the *FCA* in connection with an application for *admission* of *securities* to *premium listing*:

...

- (b) ~~a certificate of approval from another competent authority; or~~ [deleted]

...

...

...

### 8.4 Role of a sponsor: transactions

Application for admission

- 8.4.1 R *LR 8.4.2R* to *LR 8.4.4G* apply in relation to an application for *admission* of *securities* to *premium listing* if an *applicant* does not have *securities* already admitted to *premium listing*, the conditions in *LR 6.1.1R(1)*, *LR 6.1.1R(2)*, *LR 21.2.5R(1)*, *LR 21.2.5R(2)*, *LR 21.6.13R(1)* or *LR 21.6.13R(2)* do not apply and, in connection with the application, the *applicant* is required to submit to the *FCA*:

...

- (2) ~~a certificate of approval from another competent authority;~~  
~~or [deleted]~~

...

8.4.2 R *A sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* ~~unless the home Member State of the applicant is not, or will not be, the United Kingdom;~~

...

...

Application for admission: further issues

...

8.4.8 R *A sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3* (Listing applications), unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* ~~unless the home Member State of the applicant is not, or will not be, the United Kingdom;~~ and

...

Further issues: procedure

8.4.9 R *A sponsor* must:

- (1) submit a completed Sponsor's Declaration on an Application for Listing to the *FCA* either:

...

- (b) at a time agreed with the *FCA* if the *FCA* ~~is not approving the prospectus or did not approve the prospectus~~ or if it is determining whether a document is an equivalent document;

...

...

## 9 Continuing obligations

...

### 9.2 Requirements with continuing application

...

Compliance with the disclosure requirements and transparency rules

9.2.5 G A listed company, whose *equity shares* are admitted to trading on a regulated market ~~in the United Kingdom~~, should consider the obligations under the *disclosure requirements*.

...

9.2.6B R A listed company that is not already required to comply with the *transparency rules* ~~(or with corresponding requirements imposed by another EEA Member State)~~ must comply with *DTR 4*, *DTR 5* and *DTR 6* as if it were an *issuer* for the purposes of the *transparency rules*.

...

## 9.8 Annual Financial Report

...

Annual financial report

...

9.8.7A R (1) An overseas company with a *premium listing* ~~that is not required to comply with requirements imposed by another EEA State that correspond to *DTR 7.2* (Corporate governance statements)~~ must comply with *DTR 7.2* (Corporate governance statements) as if it were an *issuer* to which that section applies.

(2) An overseas company with a *premium listing* which complies with *LR 9.8.7R* will be taken to satisfy the requirements of *DTR 7.2.2R* and *DTR 7.2.3R*, but ~~(unless it is required to comply with requirements imposed by another EEA State that correspond to *DTR 7.2*)~~ must comply with all of the other requirements of *DTR 7.2* as if it were an *issuer* to which that section applies.

...

## 10 Significant transactions: Premium listing

...

### 10 Annex 1G The Class Tests

...

Figures used to classify assets and profits

8R

...

- (3) (a) The figures of the *listed company* must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which have been notified to a ~~RIS~~ under LR 10.4 or LR 10.5.

...

...

## 14 Standard listing (shares)

...

### 14.2 Requirements for listing

...

Shares in public hands

14.2.2

- R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public ~~in one or more EEA States.~~
- (2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not EEA States, if the *shares* are listed in the state or states. [deleted]~~

...

14.2.3

- G The *FCA* may modify LR 14.2.2R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. ~~For that purpose, the *FCA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not EEA States.~~

[Note: Article 48 CARD]

...

Shares of a ~~non-EEA~~ third country company

- 14.2.4 R The *FCA* will not admit *shares* of a *company* incorporated in a ~~non-EEA State~~ third country that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[**Note:** Article 51 *CARD*]

...

### 14.3 Continuing obligations

Admission to trading

- 14.3.1 R Other than in regard to *securities* to which *LR 4* applies, the *listed equity shares* of a *company* must be admitted to trading on a *regulated market for listed securities* ~~operated by a RIE~~.

...

Disclosure Requirements and Transparency Rules

- 14.3.11 G A *company* whose *shares* are admitted to trading on a *regulated market in the United Kingdom*, should consider its obligations under the *disclosure requirements and transparency rules*.

...

Registrar

- 14.3.15 R (1) ~~This rule applies to an overseas company for whom the United Kingdom is a host Member State for the purposes of the Transparency Directive. [deleted]~~

...

- 14.3.15A G ~~An overseas company for whom the United Kingdom is the home Member State for the purposes of the Transparency Directive should see LR 14.3.22G and LR 14.3.23R. [deleted]~~

...

Compliance with the transparency rules

...

- 14.3.23 R A *listed company* that is not already required to comply with the *transparency rules* ~~(or with corresponding requirements imposed by another EEA Member State)~~ must comply with *DTR 4*, *DTR 5* and



*DTR 6* as if it were an *issuer* for the purposes of the *transparency rules*.

- 14.3.24 R A *listed company* that is not already required to comply with *DTR 7.2* (Corporate governance statements), ~~or with corresponding requirements imposed by another *EEA State*~~, must comply with *DTR 7.2* as if it were an *issuer* to which that section applies.

...

## 15 Closed-Ended Investment Funds: Premium listing

...

### 15.2 Requirements for listing

...

Shares of a ~~non-EEA company~~ a third country company

- 15.2.1A R The *FCA* will not admit *shares* of a *company* incorporated in a ~~non-EEA State~~ third country that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[Note: Article 51 *CARD*]

...

## 17 Debt and debt-like securities: Standard listing

...

### 17.3 Requirements with continuing application

...

Annual accounts

...

- 17.3.4 R ...
- (3) The annual report and accounts must:
- (a) have been prepared in accordance with the *issuer's* national law and, in all material respects, with national accounting standards or ~~IAS~~ UK-adopted IFRS; and
  - (b) have been independently audited and reported on, in accordance with:

- (i) the auditing standards applicable in an ~~EEA State~~ the UK; or
- (ii) an equivalent auditing standard.

17.3.5 G ...

- (3) An *issuer* incorporated or established in a ~~non-EEA State~~ third country which is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, may draw up its accounts to this equivalent standard.

...

#### Disclosure requirements and transparency rules

17.3.8 G An *issuer*, whose *securities* are admitted to trading on a *regulated market* ~~in the United Kingdom~~, should consider the obligations referred to under articles 17 and 18 of the *Market Abuse Regulation*.

...

### 17.5 Requirements for states, regional and local authorities and public international bodies

...

#### Compliance with transparency rules

17.5.2 R (1) This *rule* applies to a state, a regional or local authority and a *public international body* with *listed debt securities* ~~for whom the United Kingdom is its home Member State for the purposes of the Transparency Directive~~.

...

...

### 18 Certificates representing certain securities: Standard listing

...

### 18.2 Requirements for listing

...

#### Certificates representing equity securities of an overseas company

18.2.8 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares* of an *overseas company*, a sufficient number of certificates must, no later than the time

of *admission*, be distributed to the public ~~in one or more EEA States.~~

- (2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not EEA States, if the certificates are listed in the state or states. [deleted]~~

...

- 18.2.9 G The *FCA* may modify *LR* 18.2.8R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of certificates of the same *class* and the extent of their distribution to the public. ~~For that purpose, the *FCA* may take into account certificates of the same *class* that are held (even though they are not listed) in states that are not EEA States.~~

[Note: Article 48 *CARD*]

...

## 18.4 Continuing obligations

...

Annual accounts continuing obligations

- 18.4.3A R ...

- (3) The annual report and accounts must:
- (a) have been prepared in accordance with the *issuer's* national law and, in all material respects, with national accounting standards or ~~IAS~~ UK-adopted IFRS; and
  - (b) have been independently audited and reported on, in accordance with:
    - (i) the auditing standards applicable in ~~an EEA State~~ the UK; or
    - (ii) an equivalent auditing standard.

...

## 21 Sovereign Controlled Commercial Companies: Premium listing

...

### 21.6 Requirements for listing: Certificates representing shares

...

Certificates in public hands

21.6.18 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares*, a sufficient number of certificates must, no later than the time of *admission*, be distributed to the public ~~in one or more EEA States~~.

(2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not EEA States, if the certificates are listed in the state or states.~~  
[deleted]

...

21.6.19 G ...

(2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

(a) ~~certificates of the same class that are held (even though they are not listed) in states that are not EEA States;~~ [deleted]

...

...

Certificates of a ~~non-EEA company~~ third country

21.6.21 R The *FCA* will not admit *certificates representing shares* of an *applicant* incorporated in a ~~non-EEA State~~ third country where the *class of equity shares* which the certificates represent is not listed either in its country of incorporation or in the country in which a majority of its *equity shares* are held, unless the *FCA* is satisfied that the absence of listing is not due to the need to protect investors.

[**Note:** article 51 of *CARD*]

Additional requirements for the certificates

...

21.6.23 R To be *listed*, the *certificates representing shares* must be admitted to trading on a *regulated market* for *listed securities* ~~operated by a RIE~~.

...

**21.8 Continuing obligations: Certificates representing shares**

...

Additional requirements: compliance with the disclosure requirements and transparency rules

21.8.14 G *A listed company, whose certificates representing shares are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under the disclosure requirements.*

...

21.8.17 R *A listed company that is not already required to comply with DTR 4, DTR 5 and DTR 6 (or with corresponding requirements imposed by another EEA Member State) must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer of shares for the purposes of the transparency rules.*

...

**Appendix 1 Relevant definitions**

**App 1.1 Relevant definitions**

1.1.1 **Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

[Editor’s note: In due course, terms reproduced here will be amended in line with any amendments made to the relevant terms in the *Glossary*.]

...

After TR 13 (Transitional Provisions for the UK Corporate Governance Code) insert the following new TR 14. The text is not underlined.

**TR 14 Transitional Provisions for prospectuses approved by an EEA State before exit day**

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
-----	--	-----	----------------------------	--	---

1.	<i>LR</i> 2.2.1R, <i>LR</i> 3.3.2R, <i>LR</i> 3.3.6R, <i>LR</i> 3.4.4R, <i>LR</i> 8.2.1R, <i>LR</i> 8.4.1R and <i>LR</i> 8.4.9R.	R	For the purposes of these rules references to a <i>prospectus</i> include a prospectus referred to under regulation 38 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2018.  [ <i>Editor's note:</i> In due course, the text of regulation 38 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2018 will be published by HMT.]	From [ <i>exit day</i> ] for a period of 12 months.	[ <i>Exit day</i> ]
----	---	---	--	---	---------------------

## Annex B

### Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 1 Preliminary

### 1.1 Preliminary

#### Application

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA Guidelines on Alternative Performance Measures, 5 October 2015(ESMA/2015/1415)

- 1.1.1 R (1) ~~PR 2, PR 3, PR 4.2, PR 5.1, PR 5.3.1 UK to PR 5.3.3G and PR 5.5~~ only apply (subject to paragraph (2)) in relation to:
- (a) an offer, or a request for admission to trading of transferable securities, in respect of which section 85 of the Act applies (other than an exempt offer under section 86 of the Act) ~~and in relation to which the United Kingdom is the Home State;~~
  - (b) an offer, or a request for admission to trading of transferable securities, where under section 87 of the Act a person has elected to have a prospectus in relation to the transferable securities; and
  - (c) an offer in the United Kingdom, or a request for admission to trading of transferable securities, not referred to in paragraphs (a) or (b), ~~in relation to which the United Kingdom is the Home State.~~
- (2) ~~PR 2, PR 3, PR 4.2, PR 5.3.1UK to PR 5.3.3G also apply in relation to an offer, or a request for admission to trading of transferable securities, where another competent authority of an EEA State has transferred the function of approving the prospectus to the FCA.~~  
[deleted]

...

#### Provisions implementing the Prospectus Directive

- 1.1.6 G The FCA considers that the following documents together determine the effect of the UK provisions which implemented the Prospectus Directive:

- (1) *Part 6 of the Act;*
- (2) *the PD Regulation;*
- (3) *these rules;*
- (4) *the ESMA Prospectus Recommendations;*
- (5) *the ESMA Prospectus Questions and Answers;*
- (6) *the ESMA Prospectus Opinions; and*
- (7) *the Prospectus RTS Regulations.*

...

## 1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 UK Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the *FCA* will be required:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

Exempt securities – offers of securities to the public

- 1.2.2 R In accordance with section 85(5)(b) of the *Act*, section 85(1) of the *Act* does not apply to *offers* of the following types of *transferable securities*:
- (1) shares issued in substitution for shares of the same class already issued, if the issue of the new shares does not involve any increase in the issued capital;
  - (2) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation
  - (3) *transferable securities* offered, allotted or to be allotted in connection with a merger or division, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation;
  - (4) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which the dividends are paid, if a document is made available containing information on the



number and nature of the shares and the reasons for and details of the *offer*;

- (5) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking if:
- (a) the *company* has its head office or registered office in the ~~EU~~ UK, provided a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and details of the *offer*; or
  - (b) the *company* is established outside the ~~EU~~ UK and has *transferable securities* that are *admitted to trading*, provided a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and details of the *offer*; or
  - (c) the *company* is established outside the ~~EU~~ UK and has *transferable securities* ~~admitted to trading~~ admitted to trading on a third country market provided that:
    - (i) a document is made available containing adequate information, including the number and nature of the *transferable securities*; and
    - (ii) the reasons for and details of the *offer* in ~~a language customary in the sphere of international finance~~ English; and
    - (iii) the ~~European Commission~~ Treasury has adopted an equivalence decision ~~for the purpose of article 4(1) of the PD~~ regarding the third country market concerned.

[**Note:** article 4(1) *PD*]

Exempt securities – admission to trading on a regulated market

- 1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:
- (1) ~~*transferable securities* referred to in article 1(5)(a) of the *Prospectus Regulation*~~ *transferable securities fungible with transferable securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of transferable securities already admitted to trading on the same regulated market;*

- (2) shares issued in substitution for shares of the same class already *admitted to trading* on the same *regulated market*, if the issue of the shares does not involve any increase in the issued capital;
- (3) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation;
- (4) *transferable securities* offered, allotted or to be allotted in connection with a merger or a division, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation;
- (5) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which the dividends are paid, if the shares are of the same class as the shares already *admitted to trading* on the same *regulated market* and if a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (6) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, if the *transferable securities* are of the same class as the *transferable securities* already *admitted to trading* on the same *regulated market* and if a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and detail of the offer;
- (7) ~~shares referred to in article 1(5)(b) of the *Prospectus Regulation*~~ shares resulting from the conversion or exchange of other *transferable securities* or from the exercise of the rights conferred by other *transferable securities*, where the resulting shares are of the same class as the shares already *admitted to trading* on the same *regulated market*, provided that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already *admitted to trading* on the same *regulated market*, subject to PR 1.2.3AR;
- (8) *transferable securities* already *admitted to trading* on another *regulated market*, on the following conditions:
  - (a) that these *transferable securities*, or *transferable securities* of the same class, have been *admitted to trading* on that other *regulated market* for more than 18 months;
  - (b) that, for *transferable securities* first admitted to trading after the 31 December 2003, the *admission to trading* on that other

*regulated market* was associated with an approved prospectus made available to the public in accordance with Article 14 of the *prospectus directive*;

- (c) that, except where (b) applies, for *transferable securities* first *admitted to listing* after 30 June 1983, listing particulars were approved in accordance with the requirements of Directive 80/390/EEC or Directive 2001/34/EC;
  - (d) that the ongoing obligations for trading on that other *regulated market* have been fulfilled;
  - (e) that the *person* requesting the *admission to trading* under this exemption makes a summary document available to the public in English ~~a language accepted by the competent authority of the EEA State of the regulated market where admission is sought;~~
  - (f) that the summary document referred to in paragraph (e) is made available to the public in the ~~EEA State of the regulated market where admission to trading is sought~~ United Kingdom in the manner set out in ~~Article 14 of the prospectus directive~~ PR 3.2.4R; and
  - (g) that the contents of the summary document comply with ~~article 5(2) of the prospectus directive~~ section 87A(5) and (6) of the Act, Article 24 of the PD Regulation and PR 2.1.7R. Also the document must state where the most recent *prospectus* can be obtained and where the financial information published by the *issuer* pursuant to its ongoing disclosure obligations is available;
- (9) ~~*transferable securities* referred to in article 1(5)(c) of the Prospectus Regulation~~ *transferable securities* resulting from the conversion or exchange of other *transferable securities*, *own funds* or *eligible liabilities* by a resolution authority due to the exercise of a power referred to in the law of the *United Kingdom* or any part of the *United Kingdom* which was relied on immediately before *exit day* to implement Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU.

[**Note:** article 4(2) of the *PD*, points (a), (b) and (c) of the first subparagraph of article 1(5) of the *Prospectus Regulation* and the second subparagraph of article 1(5) of the *Prospectus Regulation*]

- 1.2.3A EU ~~Points (a), (b) and (c) of the first subparagraph of Article 1(5) of the Prospectus Regulation and the second subparagraph of Article 1(5) of the Prospectus Regulation provide that:~~

~~Article 1~~

## Subject matter, scope and exemptions

...

5. ~~The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:~~

- ~~(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market;~~
- ~~(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;~~
- ~~(c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU;~~

...

The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already ~~admitted to trading~~ *admitted to trading* on the same ~~regulated market~~ *regulated market* as referred to in ~~point (b) of the first subparagraph~~ *PR 1.2.3R(7)* shall not apply in any of the following cases:

- (a) where a *prospectus* was drawn up in accordance with ~~either this Regulation or Directive 2003/71/EC~~ *these rules and Part VI of the Act* upon the *offer to the public or admission to trading* on a *regulated market* of the ~~securities~~ *transferable securities* giving access to the shares;
- (b) where the ~~securities~~ *transferable securities* giving access to the shares were issued before 20 July 2017;
- (c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments

issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;

- (d) where the shares qualify as eligible own funds or eligible basic own funds as defined in the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Section 3 of Chapter VI of Title I of Directive 2009/138/EC of the European Parliament and of the Council, and result from the conversion of other ~~securities~~ *transferable securities* which was triggered for the purposes of fulfilling the obligations to comply with the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC.

...

## 2 Drawing up the prospectus

### 2.1 General contents of prospectus

General contents of prospectus

- 2.1.1 UK Sections 87A(2), (2A), (3) and (4) of the *Act* provide for the general contents of a *prospectus*:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

Summary

- 2.1.2 UK Sections 87A(5) and (6) of the *Act* set out the requirement for a *summary* to be included in a *prospectus*:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

...

Contents of summary

- 2.1.4 EU Article 24 of the *PD Regulation* provides for how the contents of the  
UK *summary* are to be determined:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

2.1.5 G [deleted]

2.1.6 R The *summary* must be in the language in which the *prospectus* was originally drawn up English.

[**Note:** article 19.2 *PD*]

**Note:** *PR* 4.1 sets out *rules* about the language in which the *prospectus* must be drawn up.

**Note:** Article 19.2 of the *prospectus directive* also allows the competent authority of a *Host State* to require that the *summary* be translated into its official language(s). The *FCA* as competent authority of a *Host State* requires a *summary* to be translated into English under *PR* 4.1.6R.

2.1.7 R The *summary* must also contain a warning to the effect that:

- (1) it should be read as an introduction to the *prospectus*;
- (2) any decision to invest in the *transferable securities* should be based on consideration of the *prospectus* as a whole by the investor; and
- (3) ~~where a claim relating to the information contained in a *prospectus* is brought before a court, the plaintiff investor might, under the national legislation of the *EEA States*, have to bear the costs of translating the *prospectus* before the legal proceedings are initiated; and [deleted];~~
- (4) civil liability attaches to those *persons* who are responsible for the *summary* including any translation of the *summary*, but only if the *summary* is misleading, inaccurate or inconsistent when read together with the other parts of the *prospectus* or it does not provide, when read together with the other parts of the *prospectus*, *key information* in order to aid investors when considering whether to consider an *offer* further as set out in section 90(12) of the *Act*.

[**Note:** articles 5.2 and 6.2 *PD*]

## 2.2 Format of prospectus

...

2.2.7 R The *prospectus* can, at the choice of the *issuer*, *offeror* or *person* requesting admission, consist of a *base prospectus* containing all relevant information concerning the *issuer* and the *transferable securities* to be *offered* or to be *admitted to trading* if it relates to one of the following types of *transferable securities*:

- (1) *non-equity transferable securities*, including warrants in any form, issued under an *offering programme*; or

- (2) *non-equity transferable securities* issued in a continuous or repeated manner by *credit institutions*:
- (a) where the sums deriving from the issue of the *transferable securities*, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from *transferable securities* until their maturity date;
  - (b) where, in the event of the insolvency of the related *credit institution*, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the UK provisions which implemented the provisions of Directive 2001/24/EC on the reorganisation and winding up of credit institutions.
- [**Note:** article 5.4 PD]

...

- 2.2.10 ~~EU~~ UK Articles 25 and 26 of the *PD Regulation* provide for the format of *prospectuses* and base prospectuses:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

- 2.2.11 ~~EU~~ UK The *PD Regulation* provides for categories of information to be included in the base *prospectus* and final terms.

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

## 2.3 Minimum information to be included in a prospectus

### Minimum information

- 2.3.1 ~~EU~~ UK Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:

**Note:** the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3*.

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

- 2.3.1A ~~EU~~ UK Articles 26a, 26b and 26c respectively provide for a proportionate disclosure regime for rights issues (as defined by the *PD Regulation*); for small and medium-sized enterprises and *companies* with reduced market capitalisation; and for issues by *credit institutions* referred to in Article 1 (2) (j) of the PD.

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

...

## 2.4 Incorporation by reference

Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the ~~competent authority of the Home State or filed with or notified to it in accordance with the *prospectus directive* or the *TD FCA*~~ or filed with it or notified to it in accordance with the law of the UK, or any part of the UK, which was relied on immediately before *exit day* to implement the *prospectus directive* or the *TD*.

[Note: article 11.1 *PD*].

- (2) [deleted]

- 2.4.2 G Information under the UK provisions which implemented the *TD* that may be incorporated by reference includes, for example, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, half yearly reports and reports on payments to governments.

...

- 2.4.6 ~~EU~~  
UK Article 28 of the *PD Regulation* provides examples of information that may be incorporated by reference:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

## 2.5 Omission of information

...

Omission of information from prospectus

- 2.5.1A UK Section 87A(2A) of the *Act* provides that information about certain guarantors may be omitted from a prospectus:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

- 2.5.2 UK Section 87B(1) of the *Act* sets out when the *FCA* may authorise the omission of information from a *prospectus*:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

Request to omit information



2.5.3 G Article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 sets out requirements regarding the submission of requests to omit information from a *prospectus*. The *FCA* considers that a reasoned request for this purpose would:

- (1) be in writing from the *applicant*;
- (2) identify the specific information concerned and the specific reasons for its omission; and
- (3) state why in the *applicant's* opinion one or more of the grounds in section 87B(1) of the *Act* applies.

[**Note:** Extracts of article 2 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 are reproduced for the convenience of readers in ~~PR 3.1.-1EU~~ PR 3.1.-1UK.]

### 3 Approval and publication of prospectus

#### 3.1 Approval of prospectus

Prospectus review process

3.1.-1 EU Articles 2, 3 and 4 of ~~Commission Delegated Regulation (EU) 2016/301~~  
UK Prospectus RTS Regulation 2 provide that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Prospectus RTS Regulation 2.]

Applying for approval

3.1.1 R [deleted]

3.1.1A R If the order of disclosure items in the *prospectus* does not coincide with the order set out in the schedules and building blocks in the *PD Regulation*, an *applicant* must provide the *FCA* with a cross reference list identifying the pages where each disclosure item can be found in the *prospectus*.

[**Note:** Articles 25(4) and 26(3) of the *PD Regulation* and article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2]

...

Timeframe for submission

3.1.3 R (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):

- (a)
- (i) a completed Form A;
  - (ii) a completed Publication Form; and
  - (iii) a completed Issuer Contact Details Form.

[**Note:** Article 2(2)(e) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2. These forms are available on the UKLA section of the *FCA*'s website.]

- (b) the relevant fee; and

[**Note:** *FEES* 3 sets out the relevant fee payable to the *FCA*.]

- (c) the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2).

[**Note:** Extracts of article 2 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 are reproduced for the convenience of readers in ~~PR 3.1.1EU~~ PR 3.1.1UK.]

- (2) The date referred to in paragraph (1) is:

- (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
- (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an *offer*; or
- (c) as soon as practicable in the case of a *supplementary prospectus*.

- (3) The *applicant* must submit the final version of the draft *prospectus* and the additional information set out in Article 4 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 to the *FCA* before midday on the day on which approval is required to be granted.

[**Note:** Article 4 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 is reproduced for the convenience of readers in ~~PR 3.1.1EU~~ PR 3.1.1UK.]

...

## Request for certificate of approval

- 3.1.6 G If an *applicant* wishes the *FCA* to provide a certificate of approval to another competent authority at the time the *prospectus* is approved, it should note the requirements set out in *PR 3.1.1* EU and (*PR 5.3.2R*. As provided by article 18(1) of the *PD*, a request may still be submitted to the *FCA* after the *prospectus* has been approved (*PR 5.3.2R* sets out the requirements for such a request). [deleted]

## Approval for prospectus

- 3.1.7 UK Section 87A(1) of the *Act* provides for the approval of a *prospectus* by the *FCA*:

[**Note:** Section 87C of the *Act* sets out time limits for the *FCA* to notify an applicant of its decision on an application for approval.]

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

- 3.17A EU Article 5(2) and (4) of ~~Commission Delegated Regulation (EU) 2016/301~~  
UK *Prospectus RTS Regulation 2* provide that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Prospectus RTS Regulation 2*.]

...

## Transfer to another competent authority

- 3.1.12 R (1) ~~A person seeking to have the function of approving a *prospectus* transferred to the competent authority of another *EEA State* must make a written request to the *FCA* at least 10 working days before the date the transfer is sought.~~

(2) The request must:

- (a) set out the reasons for the proposed transfer;
- (b) state the name of the competent authority to whom the transfer is sought; and
- (c) include a copy of the draft *prospectus*. [deleted]

- 3.1.13 G The *FCA* will consider transferring the function of approving a *prospectus* to the competent authority of another *EEA State*:

- (1) if requested to do so by the *issuer*, *offeror* or *person* requesting admission or by another competent authority; or

- (2) ~~in other cases if the FCA considers it would be more appropriate for another competent authority to perform that function.~~ [deleted]

...

#### Service of Notice Regulations

- 3.1.17 G Regulation 7 of The Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the FCA. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the FCA for approval because of the provisions set out in ~~PR 3.1.1EU~~ PR 3.1.1UK.

### 3.2 Filing and publication of prospectus

...

#### Method of publishing

- 3.2.4 R A *prospectus* is deemed to be made available to the public for the purposes of PR 3.2.2R to PR 3.2.3R when published either:
- (1) by insertion in one or more newspapers circulated throughout, or widely circulated in, the ~~EEA States in which the offer is made or the admission to trading is sought~~ United Kingdom; or
  - (2) in a printed form to be made available, free of charge, to the public at the offices of the *regulated market* on which the *transferable securities* are being *admitted to trading*, or at the registered office of the *issuer* and at the offices of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or
  - (3) in electronic form on the *issuer's* website or, if applicable, on the website of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or
  - (4) in an electronic form on the website of the *regulated market* where the *admission to trading* is sought.

[Note: article 14.2 PD]

...

- 3.2.6A EU ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS  
UK Regulation 2 provides that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the Prospectus RTS Regulation 2.]

...

### 3.3 Advertisements

...

- 3.3.3A EU Article 11 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus  
UK RTS Regulation 2 provides that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Prospectus RTS Regulation 2*.]

...

- 3.3.7 EU Article 12 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus  
UK RTS Regulation 2 provides that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Prospectus RTS Regulation 2*.]

### 3.4 Supplementary prospectus

Supplementary prospectus

- 3.4.1 UK *Section 87G* of the *Act* provides that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

Amendments to summary

- 3.4.2 R A *supplementary prospectus* must also if necessary include an amendment or supplement to the *summary*, ~~and any translations of the *summary*~~, to take into account the new information.

**[Note:** article 16.1 *PD*]

**Note:** Sections 87Q(4) and (5) of the *Act* set out the rights of investors to withdraw their acceptances after a *supplementary prospectus* is published.

...

Minimum situations in which a supplementary prospectus must be submitted for approval

- 3.4.4 EU ~~Commission Delegated Regulation (EU) No 382/2014 supplementing~~  
UK ~~Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus~~ Prospectus RTS Regulation 1 provides that:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Prospectus RTS Regulation 1*.]

## 4 Use of languages and third country issuers

### 4.1 Use of languages

#### Language

4.1.1 R ~~If an offer is made, or admission to trading is sought, only in the United Kingdom and the United Kingdom is the Home State, the A prospectus must be drawn up in English.~~

~~[Note: article 19.1 PD]~~

4.1.2 R ~~If an offer is made, or admission to trading is sought, in more than one EEA State including the United Kingdom and the United Kingdom is the Home State, the prospectus must be drawn up in English and must also be made available either in a language accepted by the competent authorities of each Host State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.3 PD]~~

4.1.3 R (1) ~~If an offer is made, or admission to trading is sought, in one or more EEA States excluding the United Kingdom and the United Kingdom is the Home State, the prospectus must be drawn up in a language accepted by the competent authorities of those EEA States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.2 PD]~~

(2) ~~For the purpose of the scrutiny by the FCA where the United Kingdom is the Home State, the prospectus must be drawn up either in English or in another language customary in the sphere of international finance, at the choice of the issuer, offeror or person requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.2 PD]~~

4.1.4 R ~~If admission to trading of non-equity transferable securities whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) is sought in the United Kingdom or in one or more other EEA States, the prospectus must be drawn up in either a language accepted by the competent authorities of the Home State and Host States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.4 PD]~~

## English Language

- 4.1.5 G ~~English is a language accepted by the FCA where the *United Kingdom* is a *Home State* or *Host State*. [deleted]~~

## Language customary in the sphere of international finance

- 4.1.5A G ~~The FCA will consider a language to be customary in the sphere of international finance if documents in that language are accepted for scrutiny and filing in at least three international capital markets in each of the following:~~

- ~~(1) Europe;~~
- ~~(2) Asia; and~~
- ~~(3) The Americas. [deleted]~~

## Summary to be translated into English

- 4.1.6 R ~~If:~~
- ~~(1) an offer is made in the *United Kingdom*;~~
  - ~~(2) a *prospectus* relating to the *transferable securities* has been approved by the competent authority of another *EEA State* and the *prospectus* contains a *summary*; and~~
  - ~~(3) the *prospectus* is drawn up in a language other than English that is customary in the sphere of international finance;~~

~~the offeror must ensure that the *summary* is translated into English. [deleted]~~

~~[Note: article 19.2 PD]~~

## 4.2 Third country issuers

## Approval of prospectus drawn up in accordance with third country laws

- 4.2.1 R ~~If a *prospectus* relating to an issuer that has its registered office in a country that is not an *EEA State* the *United Kingdom* is drawn up in accordance with the legislation of that country, the FCA may, if the *United Kingdom* is the *Home State* in relation to the issuer, approve the *prospectus* if it is satisfied that:~~

- ~~(1) the *prospectus* has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO disclosure standards; and~~

- (2) the information requirements, including information of a financial nature, are equivalent to the requirements under *Part 6* of the *Act*, the *PD Regulation* and these *rules*.

[**Note:** article 20.1 *PD*]

...

## 5 Other provisions

...

### 5.3 Certificate of approval

- 5.3.1 UK Sections 87H and 87I of the *Act* provide:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *Act*.]

Requests to the FCA to supply a certificate of approval

- 5.3.2 R (1) ~~This rule applies to a request by a person to the FCA to supply information referred to in section 87I of the Act to the competent authority of a relevant Host State.~~

(2) The request must be in writing and must include:

- (a) ~~the relevant prospectus as approved (if it has already been approved); and~~
- (b) ~~a translation of the summary if required by the competent authority of a relevant host State.~~

~~[Note: See PR 3.1. 1EU for the additional requirements where a request is made prior to the approval of a prospectus] [deleted]~~

- 5.3.3 G ~~The FCA will inform the person who made the request as soon as practicable after it has supplied the information to the other competent authority. [deleted]~~

Certificate received from another competent authority

- 5.3.4 G ~~If the FCA receives information referred to in section 87H from another competent authority it will as soon as practicable give notice on the FCA website that it has received the information. [deleted]~~

### 5.5 Persons responsible for a prospectus

...

Rules only apply if UK is Home State



5.5.2 R ~~The rules in this section only apply in respect of a *prospectus* if the *United Kingdom* is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates. [deleted]~~

...

## **Appendix 1 Relevant definitions**

### **App 1.1**

1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

[Editor's note: In due course, terms reproduced here will be amended in line with any amendments made to the relevant terms in the *Glossary*.]

...

## **Appendix 3 Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks**

### **App 3.1**

3.1.1 The following *schedules* and *building blocks* and tables of combinations are copied from the *PD Regulation*:

[Editor's note: In due course, the text reproduced here will be amended in line with any amendments made to the *PD Regulation*.]

PR Transitional Provisions  
TR

## Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
3.	<u>PR 2.4.1R</u> <u>(1)</u>	<u>R</u>	<u>An issuer whose home Member State for the purposes of the Prospectus Directive was, immediately before exit day, not the United Kingdom, may incorporate information in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of that Member State or filed with that competent authority or notified to it in accordance with the Prospectus Directive or the TD.</u>	<u>[From [exit day] to [to be confirmed]</u>	<u>[Exit day]</u>
4.	<u>PR 1 to 5</u>	<u>R</u>	<u>For the purposes of these rules references to a prospectus include a prospectus referred to under regulation 38 of the Official Listing of Securities, Prospectus and</u>	<u>[From [exit day] to [to be confirmed]</u>	<u>[Exit day]</u>

		<p><u>Transparency</u>  <u>(Amendment etc.)</u>  <u>(EU Exit)</u>  <u>Regulations 2018.</u></p> <p><i>[Editor's note: In due course, the text of regulation 38 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2018 will be published by HMT.]</i></p>		
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## Annex C

### Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Introduction

##### 1.1 Application and purpose (Disclosure guidance)

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA guidelines: ESMA Guidelines on Alternative Performance Measures, 5 October 2015 (ESMA/2015/1415).]

...

##### 1A Introduction (Transparency rules)

##### 1A.1 Application and purpose (Transparency rules)

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’, 5 October 2015 (ESMA/2015/1415). See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

...

Purpose

- 1A.1.3 G The original purpose of the *transparency rules* ~~is~~ was to implement the *Transparency Directive* and to make other rules to ensure there is adequate transparency of and access to information in the UK financial markets.

...

##### 1B Introduction (Corporate governance)

##### 1B.1 Application and purpose (Corporate governance)

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’, 5 October 2015 (ESMA/2015/1415). See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

Purpose: Audit committees

- 1B.1.1 G The original purpose of the requirements in *DTR 7.1* ~~is~~ was to implement parts of the *Audit Directive* which require *issuers* that are required to appoint a *statutory auditor* to appoint an audit committee or have a body performing equivalent functions.

...

#### Exemptions

- 1B.1.3 R *DTR 7.1* does not apply to:
- (1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to:
    - (a) ~~*DTR 7.1*, or to requirements implementing article 39 of the *Audit Directive* in any other *EEA State*~~; and
    - (b) articles 11(1), 11(2) and 16(5) of the *Audit Regulation*;

[**Note:** article 39(3)(a) of the *Audit Directive*]

...

- (4) any *issuer* which is:
  - (a) a UK UCITS; or
  - (b) an *AIF*.

[**Note:** article 39(3)(b) of the *Audit Directive*]

Purpose: Corporate governance statements

- 1B.1.4 G The original purpose of the requirements in *DTR 7.2* ~~is~~ was to implement parts of the *Accounting Directive* (including that Directive as applied to banking and insurance companies) which require companies to publish a corporate governance statement.

...

#### Exemptions

- 1B.1.6 R The *rules* in *DTR 7.2.2R*, *7.2.3R*, *7.2.7R* and *7.2.8AR* do not apply to an *issuer* which has not issued *shares* which are *admitted to trading* unless it has issued *shares* which are traded on ~~an~~ a UK MTF.
- [**Note:** article 20(4) of the *Accounting Directive*]

...

## 2 Disclosure and control of inside information by issuers

...

## 2.2 Disclosure of inside information

...

2.2.1A EU [article 17(1) of the *Market Abuse Regulation*]  
UK

...

## 2.5 Delaying disclosure of inside information

...

2.5.1A EU [article 17(4), (5) and (8) of the *Market Abuse Regulation*]  
UK

2.5.1B G *Issuers* should be aware that *ESMA* has issued guidelines under article 17(11) of the *Market Abuse Regulation* which contain a non-exhaustive indicative list of the legitimate interests of *issuers* to delay disclosure of *inside information* and situations in which delayed disclosure is likely to mislead the public: see the *ESMA MAR delayed disclosure guidelines*. ~~The *ESMA MAR delayed disclosure guidelines* are available here: [https://www.esma.europa.eu/sites/default/files/library/2016-1478\\_mar\\_guidelines\\_-\\_legitimate\\_interests.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf).~~

...

2.5.6A EU [article 17(8) of the *Market Abuse Regulation*]  
UK

...

## 2.6 Control of inside information

...

2.6.2A EU [article 17(7) of the *Market Abuse Regulation*]  
UK

...

## 2.8 Insider lists

Requirement to draw up insider lists

2.8.1A EU [article 18(1)(c) of the *Market Abuse Regulation*]  
UK

...

2.8.2A EU [article 18(1)(c) of the *Market Abuse Regulation*]  
UK

...

2.8.3A EU [article 18(3) of the *Market Abuse Regulation*]  
UK

...

2.8.4A EU [article 18(4) of the *Market Abuse Regulation*]  
UK

...

2.8.5A EU [article 18(5) of the *Market Abuse Regulation*]  
UK

...

2.8.9A EU [article 18(2) of the *Market Abuse Regulation*]  
UK

...

2.8.10 EU [article 18(2) of the *Market Abuse Regulation*]  
A UK

...

### **3 Transactions by persons discharging managerial responsibilities and their connected persons**

...

#### **3.1**

...

3.1.2-A EU [article 19(1) of the *Market Abuse Regulation*]  
UK

...

3.1.3A EU [article 19(6) of the *Market Abuse Regulation*]  
UK

...

## **4 Periodic Financial Reporting**

## 4.1 Annual Financial Report

### Application

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on enforcement of financial information, 10 July 2014/ESMA/2014/807 [https://www.esma.europa.eu/sites/default/files/library/2015/11/2014\\_807\\_-\\_final\\_report\\_on\\_esma\\_guidelines\\_on\\_enforcement\\_of\\_financial\\_information.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2014_807_-_final_report_on_esma_guidelines_on_enforcement_of_financial_information.pdf)]

4.1.1 R Subject to the exemptions set out in DTR 4.4 (Exemptions) this section applies to an issuer:

- (1) whose *transferable securities* are admitted to trading; ~~and~~
- (2) whose *Home State* is the *United Kingdom*.

...

### Audited financial statements

4.1.6 R (1) If an *issuer* is required to prepare consolidated accounts according to ~~the Seventh Council Directive 83/349/EEC~~, the audited financial statements must comprise:

- (a) consolidated accounts prepared in accordance with UK-adopted IFRS, and
- (b) accounts of the parent *company* prepared in accordance with the national law of the ~~EEA State in which the parent company is incorporated~~ UK.

[**Note:** article 4(3) of the *TD*].

- (2) If an *issuer* is not required to prepare consolidated accounts, the audited financial statements must comprise accounts prepared in accordance with the national law of the ~~EEA State in which the issuer is incorporated~~ UK.

[**Note:** article 4(3) of the *TD*].

### Auditing of financial statements

4.1.7 R (1) ~~If an issuer is required to prepare consolidated accounts, the~~ The financial statements must be audited in accordance with ~~Article 37 of the Seventh Council Directive 83/349/EEC~~ Part 16 of the Companies Act 2006.

- (2) ~~If an issuer is not required to prepare consolidated accounts the financial statements must be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC.~~ [deleted]



...

[**Note:** article 4(4) of the *TD*]

- (4) An *issuer* which is a UK-traded ~~non-EEA~~ third country company within the meaning of section 1241 of the Companies Act 2006 must ensure that the *person* who provides the audit report is:

...

(b) eligible for appointment as a *statutory auditor* under section 1212 of the Companies Act 2006; ~~or,~~

(c) ~~an EEA auditor within the meaning of section 1261 of the Companies Act 2006.~~ [deleted]

[**Note:** Article 45(4) of the *Audit Directive*]

...

- 4.1.11 R The management report required by *DTR* 4.1.8R must also give an indication of:

...

- (4) the information concerning acquisitions of own *shares* prescribed by the UK provisions which implemented article 24(2) of Directive 2012/30/EU;

...

[**Note:** article 4(5) of the *TD*]

...

## 4.2 Half-yearly financial reports

### Application

- 4.2.1 R Subject to the exemptions set out in *DTR* 4.4 (Exemptions) this section applies to an *issuer*:

(1) whose *shares* or *debt securities* are admitted to trading; ~~and~~

(2) whose ~~Home State~~ is the *United Kingdom*.

...

### Preparation and content of condensed set of financial statements

- 4.2.4 R (1) If an *issuer* is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with *IAS IAS 34 as contained in UK-adopted IFRS*.  
[**Note:** article 5(3) of the *TD*]

...

...

#### Responsibility statements

- 4.2.10 R ...
- (4) A *person* making a responsibility statement will satisfy the requirement in (3) (a) above to confirm that the condensed set of financial statements gives a true and fair view of the assets, liabilities, financial position and profit or loss of the *issuer* (or the undertakings included in the consolidation as a whole) by including a statement that the condensed set of financial statements have been prepared in accordance with:
- (a) *IAS IAS 34 as contained in UK-adopted IFRS*; or
  - (b) for *UK issuers* not using *UK-adopted IFRS*, Financial Reporting Standard 104: Interim Financial Reporting issued by the Financial Reporting Council; or
  - (c) for all other *issuers* not using *UK-adopted IFRS*, a national accounting standard relating to interim reporting,

...

...

### 4.3A Reports on payments to governments

#### Application

- 4.3A.1 R Subject to the exemptions set out in *DTR 4.4 (Exemptions)* this section applies to an *issuer*:
- (1) active in the extractive or logging of primary forest industries; and
  - (2) whose *transferable securities* are *admitted to trading*; ~~and~~
  - (3) ~~whose *Home State* is the *United Kingdom*. [deleted]~~
- 4.3A.2 R In this section references to an “*issuer active in the extractive or logging of primary forest industries*” are to an *issuer* which is:

- (1) ~~active in the extractive industry as defined in article 41(1) of the *Accounting Directive* a mining or quarrying undertaking; or~~
- (2) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a logging undertaking.~~

In this section “mining or quarrying undertaking”, “logging undertaking”, “payment” and “government” have the meanings given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

- 4.3A.3 G An *issuer* is considered to be active in the extractive or logging of primary forest industries if any of its subsidiary undertakings are:
- (1) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a mining or quarrying undertaking; or~~
  - (2) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a logging undertaking.~~

In this ~~guidance~~ section “subsidiary undertaking” has the meaning given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

[**Note:** article 44(1) of the *Accounting Directive*]

...

#### Content of reports on payments to governments

- 4.3A.7 R (1) ~~The report on payments to governments must be prepared in accordance with Chapter 10 of the *Accounting Directive*. [deleted]~~

...

- 4.3A.7 R (1) The report on payments to governments must state the following information in relation to the relevant activities:
- (a) the government to which each payment has been made, including the country of that government;
  - (b) the total amount of payments made to each government;
  - (c) the total amount per type of payment made to each government; and
  - (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project.

- (2) If an issuer is required to prepare consolidated accounts, the relevant activities referred to in (1) are those of:
- (a) the issuer; and
- (b) any subsidiary undertaking of the issuer.
- (3) If an issuer is not required to prepare consolidated accounts, the relevant activities referred to in (1) are those of the issuer.
- (4) Where the issuer, or, where applicable, any of its subsidiary undertakings, makes a payment that is not attributable to a specific project, that payment may be disclosed in the report without splitting or disaggregating the payment to allocate it to a specific project.
- (5) A payment need not be taken into account in the report if:
- (a) it is a single payment of an amount less than £86,000; or
- (b) it forms part of a series of related payments within a financial year whose total amount is less than £86,000.
- (6) Payments, activities and projects may not be artificially split or aggregated to avoid the application of this section.
- (7) The disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned.
- (8) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined.
- (9) In this rule “relevant activities”, “project” and “director” have the meanings given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209)

4.3A.7 R  
B

- (1) Payments made by a subsidiary undertaking may be excluded from the report on payments to governments where:
- (a) severe long-term restrictions substantially hinder the exercise of the rights of the issuer over the assets or management of that subsidiary undertaking;
- (b) the information necessary for the preparation of the report cannot be obtained without disproportionate expense or undue delay; or
- (c) the shares of that undertaking are held exclusively with a view to subsequent resale.

(2) The issuer may only exclude payments by a subsidiary undertaking under (1) (a) to (c) where the subsidiary undertaking is excluded from the consolidated group accounts on the same basis.

4.3A.8 G The FCA considers a report on payments to governments which is prepared in accordance with the Reports on Payments to Governments Regulations 2014 (SI 2014/3209) to be in compliance with ~~DTR 4.3A.7R(1)~~ 4.3A.7AR and 4.3A.7BR.

#### 4.4 Exemptions

##### Public sector issues

4.4.1 R The rules on annual financial reports (DTR 4.1) and half-yearly financial reports (DTR 4.2) do not apply to:

...

(3) a public international body of which at least one ~~EEA State~~ state is a member;

...

(6) ~~EEA States'~~ national central banks.

[Note: article 8(1)(a) of the TD]

##### Debt issuers

...

4.4.4 R The rules on half-yearly financial reports do not apply to an issuer already existing on 31 December 2003 which exclusively issue *debt securities* unconditionally and irrevocably guaranteed by the ~~issuer's Home Member State~~ UK or by a regional or local authority of ~~that state~~ the UK, on a *regulated market*.

[Note: article 8(3) of the TD]

...

##### ~~Non-EEA States~~ Third countries – Equivalence

4.4.8 R An issuer whose registered office is in a ~~non-EEA State~~ third country is exempted from the rules on:

...

if the law of the ~~non-EEA State~~ third country in question lays down equivalent requirements or the issuer complies with requirements of the law of a ~~non-EEA State~~ third country that the FCA considers as equivalent.

[**Note:** article 23(1) of the *TD*]

- 4.4.9 G The *FCA* maintains a published list of ~~non-EEA States~~ *third countries*, for the purpose of ~~article 23.1 of the TD~~ *DTR 4.4.8R*, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~non-EEA State~~ *third country* are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR 6*:

...

...

## 5 Vote Holder and Issuer Notification Rules

### 5.1 Notification of the acquisition or disposal of major shareholdings

- 5.1.1 R In this chapter:

- (1) references to an “*issuer*”, in relation to *shares* admitted to trading on a *regulated market*, are to an *issuer* whose ~~Home State is the United Kingdom~~ *shares* are admitted to trading on a *regulated market*;
- (2) references to a “*non-UK issuer*” are to an *issuer* whose *shares* are admitted to trading on a *regulated market* ~~and whose Home State is the United Kingdom~~ other than:

...

...

- 5.1.2 R A *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within *DTR 5.3.1R* (1) (or a combination of such holdings) if the percentage of those voting rights:

...

and in the case of an issuer which is not incorporated in ~~an EEA State~~ the *UK* a notification under (2) must be made on the basis of equivalent events and disclosed information.

[**Note:** articles 9(1), 9(2), 13(1) and 13a(1) of the *TD*]

...

- 5.1.4 R (1) References to a *market maker* are to a *market maker* which:
- (a) (subject to (3) below) is authorised by ~~its Home State under MiFID~~ the *FCA* or the *PRA* under the *UK* provisions which implemented *MiFID*;

...

[**Note:** articles 9(5) and 9(6) of the *TD*]

- (2) A *market maker* relying upon the exemption for *shares* or financial instruments within *DTR 5.3.1R(1)* held by it in that capacity must notify the *competent authority* of the *Home Member State* of the *issuer FCA*, at the latest within the time limit provided for by *DTR 5.8.3R*, that it conducts or intends to conduct market making activities on a particular *issuer* (and shall equally make such a notification if it ceases such activity).
- (3) References to a *market maker* also include a *third country investment firm* and a *credit institution* when acting as a *market maker* and which, in relation to that activity, is subject to regulatory supervision under the laws of an ~~EEA State~~ the UK.

#### Aggregation of Holdings

- 5.1.4A ~~EU~~ UK ~~Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings~~ The *TD Major Holdings Regulation* provides that:

...

#### Article 2

##### **Aggregation of holdings**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ [*DTR 5.1.3R(3) and (4)*], holdings under UK law corresponding to Articles 9, 10 and 13 of that Directive 2004/109/EC shall be aggregated.

#### Aggregation of holdings in the case of a group

- 5.1.4B ~~EU~~ UK ~~Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings~~ The *TD Major Holdings Regulation* provides that:

...

#### Article 3

##### **Aggregation of holdings in the case of a group**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ [*DTR 5.1.3R(3) and (4)*] in the case of a group of companies, holdings shall be aggregated at group level

according to the principle laid down in ~~Article 10(e) of that Directive~~ DTR 5.2.1R(e).

Certain voting rights to be disregarded (except at 5% 10% and higher thresholds)

5.1.5 R ...

- (2) For the purposes of *DTR 5.1.5R(1)(a)*, a *person* (“A”) may lawfully manage *investments* belonging to another if:
- (a) A can manage those *investments* in accordance with a *Part 4A permission*;
  - (b) ~~A is an EEA firm other than one mentioned in sub-paragraphs (c) or (e) of paragraph 5 of Schedule 3 to the Act and can manage those investments in accordance with its EEA authorisation; [deleted]~~
  - (c) A can, in accordance with section 327 of the *Act*, manage those *investments* without contravening the prohibition contained in section 19 of the *Act*; or
  - (d) ~~A can lawfully manage those investments in another EEA State and would, if he were to manage those investments in the UK, require a Part 4A permission; or [deleted]~~
  - (e) A can lawfully manage those *investments* in a ~~non-EEA State~~ third country and would, if he were to manage those *investments* in the *UK*, require a *Part 4A permission*.

## 5.2 Acquisition or disposal of major proportions of voting rights

...

5.2.4 R *DTR 5.1.2R* and case (c) of *DTR 5.2.1R* do not apply in respect of voting rights attaching to *shares* provided to or by ~~a member of the European System of Central Banks~~ the Bank of England in carrying out ~~their~~ its functions as ~~a monetary authorities~~ authority, including *shares* provided to or by ~~any such member~~ the Bank of England under a pledge or repurchase of similar agreement for liquidity granted for monetary policy purposes or within a payments system provided:

...

[Note: article 11 of the *TD*.]

...

## 5.3 Notification of voting rights arising from the holding of certain financial instruments

...



- 5.3.2A G ~~The *FCA* maintains a published~~ An indicative list of financial instruments that are subject to notification requirements according to ~~article 13(1b) of the *TD* is published by *ESMA* DTR 5.1.3R.~~
- [**Note:** article 13(1b) of the *TD*]
- 5.3.2B EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing~~  
UK ~~Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings~~ The *TD Major Holdings Regulation* provides that:
- ...
- Article 6
- Client-serving transactions**
- The exemption referred to in ~~Article 9(6) of Directive 2004/109/EC~~ [DTR 5.1.3R(4)] shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings
- 5.3.2C G ~~The exemption referred to in article 9(6) of Directive 2004/109/EC is set out in *DTR 5.1.3R(4)*. [deleted]~~
- 5.3.3 G (1) For the purposes of *DTR 5.3.1R(1)(a)* ~~and to give effect to Directive 2004/109/EC (TD)~~, financial instruments within *DTR 5.3.1R(1)(a)* should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, financial instruments financial instruments within *DTR 5.3.1R(1)(a)* should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.
- [**Note:** Recital 13 of the *TD implementing Directive*]
- ...
- ...
- 5.3.3B EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing~~  
UK ~~Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings~~ The *TD Major Holdings Regulation* provides that:
- ...

## Article 4

**Financial instruments referenced to a basket of shares or an index**

1. Voting rights referred to in ~~Article 13(1a)(a) of Directive 2004/109/EC [DTR 5.3.3AR]~~ in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

(a) the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1% or more of voting rights attached to shares of that issuer;

(b) the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2. Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.

5.3.3C EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing~~  
UK ~~Directive 2004/109/EC of the European Parliament and of the Council with~~  
~~regard to certain regulatory technical standards on major holdings~~ The TD  
Major Holdings Regulation provides that:

...

## Article 5

**Financial instruments providing exclusively for a cash settlement**

1. ~~The number of voting rights referred to in Article 13(1a)(b) of Directive 2004/109/EC [DTR 5.3.3AR]~~ relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.

...

6. The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the applicable thresholds provided for in ~~Article 9(1) of Directive 2004/109/EC [DTR 5.1.2R]~~.

...

**5.4 Aggregation of managed holdings**

- 5.4.1 R (1) The *parent undertaking* of a *management company* shall not be required to aggregate its holdings with the holdings managed by the *management company* ~~under the conditions laid down in~~ in accordance with the UK provisions which implemented the UCITS Directive, provided such *management company* exercises its voting rights independently from the *parent undertaking*.
- ...
- 5.4.2 R (1) The *parent undertaking* of an *investment firm* authorised by the FCA or the PRA under the UK provisions which implemented MiFID shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of ~~Article 4(1), point 8, of MiFID~~ Article 2(7) of the MiFID Org Regulation, provided that:
- ...
- ...
- ...
- 5.4.5 R Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in ~~Article 13 of the TD~~ DTR 5.3.1R, it must notify to the FCA only the list referred to in paragraph (1) of DTR 5.4.4R.
- [**Note:** article 10(3) of the *TD implementing Directive* and article 13 of the TD]
- ...
- 5.4.9 R Undertakings whose registered office is in a ~~third country~~ *third country* which would have required ~~authorisation in accordance with Article 6(1) of the UCITS directive~~ a Part 4A permission to carry on the regulated activity specified under article 51ZA of the Regulated Activities Order or with regard to portfolio management authorisation under point 4 of section A of Annex 1 to MiFID paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* if it had its registered office or, only in the case of an *investment firm*, its head office within the ~~EEA UK~~, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this rule provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.
- [Article 23(6) TD]
- 5.4.10 R A ~~third country~~ *third country* shall be deemed to set conditions of independence equivalent to those set out in this rule where under the law of that country, a *management company* or *investment firm* is required to meet the following conditions:

...

- 5.4.11 R A *parent undertaking* of a ~~third country~~ *third country* undertaking must comply with the notification requirements in *DTR 5.4.4R(1)* and *DTR 5.4.5R* and in addition:

...

[**Note:** article 23 of the *TD implementing Directive*]

...

## 5.8 Procedures for the notification and disclosure of major holdings

...

- 5.8.2 R ...

- (2) The notification must be made to the *issuer* of each of the underlying *shares* to which the financial instrument relates and, in the case of *shares* admitted to trading on a *regulated market*, to ~~each competent authority of the Home States of such issuers~~ the FCA.

...

[**Note:** articles 11(3), (4) and (5) of the *TD implementing Directive*]

...

## 5.11 ~~Non-EEA State~~ Third country issuers

- 5.11.1 R An *issuer* whose registered office is in a ~~non-EEA State~~ *third country* will be treated as meeting equivalent requirements to those set out in *DTR 5.8.12 R (2)* (*issuer* to make public notifications of major shareholdings by close of third day following receipt) provided that the period of time within which the notification of the major holdings is to be effected to the *issuer* and is to be made public by the *issuer* is in total equal to or shorter than seven *trading days*.

[**Note:** article 19 of the *TD implementing Directive*]

- 5.11.2 R An *issuer* whose registered office is in a ~~non-EEA State~~ *third country* will be treated as meeting equivalent requirements in respect of treasury *shares* to those set out in *DTR 5.5.1R* provided that:

- (1) if the *issuer* is only allowed to hold up a maximum of 5% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the ~~third country~~ *third country* whenever this the maximum threshold of 5% of the voting rights is reached or crossed;

- (2) if the *issuer* is allowed to hold up to maximum of between 5% and 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the ~~*non-EEA State*~~ *third country* whenever this maximum threshold and or the 5% threshold of the voting rights are reached or crossed;
- (3) if the *issuer* is allowed to hold more than 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the ~~*non-EEA State*~~ *third country* whenever the 5% or 10% thresholds of the voting rights are reached or crossed. Notification above the 10% threshold is not required for this purpose.

[**Note:** article 20 of the *TD implementing Directive*]

- 5.11.3 R An *issuer* whose registered office is in a ~~*non-EEA State*~~ *third country* will be treated as meeting equivalent requirements to those set out in *DTR 5.6.1R* (Disclosure by *issuers* of total voting rights) provided that the *issuer* is required under the law of the ~~*non-EEA State*~~ *third country* to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

[**Note:** article 21 of the *TD implementing Directive*]

- 5.11.4 R An *issuer* whose registered office is in a ~~*non-EEA State*~~ *third country* is exempted from *DTR 5.5.1R*, *DTR 5.6.1R* and *DTR 5.8.12R(2)* if:
- (1) the law of the ~~*non-EEA State*~~ *third country* in question lays down equivalent requirements; or
  - (2) the *issuer* complies with requirements of the law of a ~~*non-EEA State*~~ *third country* that the *FCA* considers as equivalent.

[**Note:** article 23(1) of the *TD*]

- 5.11.5 G The *FCA* maintains a published list of ~~*non-EEA State*~~ *third countries*, for the purpose of ~~article 23.1 of the *TD*~~ *DTR 5.11.4R*, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~*non-EEA State*~~ *third country* are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR 6*:

...

...

## **6 Continuing obligations and access to information**

### **6.1 Information requirements for issuers of shares and debt securities**

Application

- 6.1.1 R (1) Subject to the exemptions set out in *DTR 6.1.16R - DTR 6.1.19R* this section applies in relation to an *issuer* whose ~~*Home State*~~ is the ~~*United Kingdom*~~ *transferable securities are admitted to trading*.

...

...

- 6.1.4 R An *issuer* of *shares* or *debt securities* must ensure that all the facilities and information necessary to enable holders of *shares* or *debt securities* to exercise their rights are available in the ~~*Home State*~~ *UK* and that the integrity of data is preserved.

[Note: articles 17(2) and 18(2) of the TD]

...

- 6.1.15 R ~~If only holders of *debt securities* whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) are to be invited to a meeting, the *issuer* may choose as a venue any *EEA State*, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that *EEA State*.~~ [deleted]

[Note: article 18(3) of the TD]

#### ~~Non-EEA State~~ Third country exemption

- 6.1.16 R An *issuer* whose registered office is in a ~~non-EEA State~~ *third country* is exempted from *DTR 6.1.3R* to *DTR 6.1.15R* if:
- (1) the law of the ~~non-EEA State~~ *third country* in question lays down equivalent requirements; or
  - (2) the *issuer* complies with requirements of the law of a ~~non-EEA State~~ *third country* that the *FCA* considers as equivalent.

[Note: article 23(1) of the TD]

- 6.1.17 G The *FCA* maintains a published list of ~~non-EEA State~~ *third countries*, for the purpose of ~~article 23.1 of the TD~~ *DTR 6.1.16R*, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~non-EEA State~~ *third country* are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR 6*:

...

#### Regional and local authority exemption

- 6.1.18 R A regional or local authority with securities admitted to trading is not required to comply with the following:

...

(2) *DTR 6.1.14 R to ~~DTR 6.1.15 R~~.*

[**Note:** article 1(3) of the TD]

Exemption for issuers of convertible securities, preference shares and depository receipts

6.1.19 R *DTR 6.1.3R to DTR 6.1.8R and DTR 6.1.12R to ~~DTR 6.1.15R~~ DTR 6.1.14R do not apply to:*

...

## 6.2 Filing information and use of language

Application

6.2.1 R This section applies to:

(1) an *issuer*:

~~(a) whose transferable securities are admitted to trading; and~~

~~(b) whose Home State is the United Kingdom; and~~

...

...

Language

6.2.4 R *If transferable securities are admitted to trading only in the United Kingdom and the United Kingdom is the Home State, regulated Regulated information must be disclosed in English.*

[**Note:** article 20(1) of the TD]

6.2.5 R *If transferable securities are admitted to trading in more than one EEA State including the United Kingdom and the United Kingdom is the Home State, regulated information must be disclosed:*

(1) ~~in English; and~~

(2) ~~either in a language accepted by the competent authorities of each Host State or in a language customary in the sphere of international finance, at the choice of the issuer. [deleted]~~

[**Note:** article 20(2) of the TD]

- 6.2.6 R (1) ~~If transferable securities are admitted to trading in one or more EEA States excluding the United Kingdom and the United Kingdom is the Home State, regulated information must be disclosed either:~~
- ~~(a) in a language accepted by the competent authorities of those Host States; or~~
  - ~~(b) in a language customary in the sphere of international finance,~~
- (2) ~~either in a language accepted by the competent authorities of each Host State or in a language customary in the sphere of international finance, at the choice of the issuer. [deleted]~~

~~[Note: article 20(3) of the TD]~~

- 6.2.7 R If transferable securities are admitted to trading without the issuer's consent:
- (1) ~~DTR 6.2.4R to DTR 6.2.6R do~~ does not apply to the issuer; and
  - (2) ~~DTR 6.2.4R to DTR 6.2.6R apply~~ applies to the person who has requested such admission without the issuer's consent.

~~[Note: article 20(4) of the TD]~~

- 6.2.8 R ~~If transferable securities whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) are admitted to trading in the United Kingdom or in one or more EEA States, regulated information must be disclosed to the public in either a language accepted by the competent authorities of the Home State and Host States or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer's consent, has requested such admission. [deleted]~~

~~[Note: article 20(6) of the TD]~~

English Language

- 6.2.9 G ~~English is a language accepted by the FCA where the United Kingdom is a Home State or Host State. [deleted]~~

### 6.3 Dissemination of information

Application

- 6.3.1 R This section applies to:
- (1) an issuer:
    - ~~(a)~~ whose transferable securities are admitted to trading; and



(b) ~~whose *Home State* is the *United Kingdom*;~~

[**Note:** article 21(1) of the TD]

(2) a *person* who has applied, without the *issuer's* consent, for the admission of its *transferable securities* to trading on a *regulated market*; ~~and~~

[**Note:** article 21(1) of the TD]

(3) ~~*transferable securities* that are *admitted to trading* only in the *United Kingdom* which is the *Host State* and not in the *Home State*.~~  
[deleted]

[**Note:** article 21(3) of the TD]

...

6.3.3A R ~~Where an *issuer* or *person* uses an *RIS* other than an *RIS* which is a:~~

(1) a *primary information provider*; or

(2) an *EEA approved incoming information society service*; or

(3) a *person* to whom *DTR TP 1.22* applies, for as long as *DTR TP 1.22* remains in force;

~~the *issuer* or *person* must comply with *DTR 6.3.3BR*.~~ [deleted]

6.3.3B R (1) ~~An *issuer* or *person* to which this rule applies must provide an annual written confirmation to the *FCA* that all *regulated information* disseminated by an *RIS* not specified in *DTR 6.3.3AR (1)* to *DTR 6.3.3AR(3)* in the previous financial year was disseminated in accordance with the minimum standards contained in *DTR 6.3.4 R* to *DTR 6.3.8R*.~~

(2) ~~The confirmation required by *DTR 6.3.3BR(1)* must:~~

(a) ~~be provided by:~~

(i) ~~in the case of an *issuer*, the audit committee or the body referred to in *DTR 7.1.1R*; or~~

(ii) ~~in the case of a *person* which is not an *issuer* but is a *body corporate*, the audit committee or the board of directors; or~~

(ii) ~~in the case of an *person* which is not an *issuer* or a *body corporate*, a *person* with corresponding powers to a *director*;~~

- (b) ~~set out the basis for making the confirmation, including the steps taken to determine its accuracy; and~~
- (c) ~~be supported by records which are:~~
  - (i) ~~sufficient to reasonably demonstrate the basis for making the confirmation; and~~
  - (ii) ~~capable of timely retrieval.~~

### ~~Address for correspondence~~

~~**Note:** The FCA's address for correspondence in relation to *DTR 6.3* is:~~

~~Primary Market Monitoring~~

~~Markets Division~~

~~The Financial Conduct Authority~~

~~12 Endeavour Square~~

~~London~~

~~E20 1JN~~

~~Fax: 020 7066 8349 [deleted]~~

- 6.3.3C G ~~In addition to the annual confirmation referred to in *DTR 6.3.3BR*, the FCA may request information from an *issuer* or *person* under section 89H of the Act on an ad hoc basis to verify that *regulated information* disseminated by an *RIS* not specified in *DTR 6.3.3R(1)* to (3) has been disseminated in accordance with *DTR 6.3.4R* to *DTR 6.3.8R*. [deleted]~~

- 6.3.4 R *Regulated information* must be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the ~~*Home Member State*~~ and in other ~~*EEA States*~~ UK.

[**Note:** article 12(2) of the *TD implementing directive*]

...

### Disclosure of information in a ~~non-EEA State~~ third country

- 6.3.10 R (1) Information that is disclosed in a ~~non-EEA State~~ third country which may be of importance to the public in the ~~EEA~~ UK must be disclosed in accordance with the provisions set out in *DTR 6.2* and *DTR 6.3*.

...

[**Note:** article 23(3) of the TD]

## 6.4 Disclosure of Home State

### Application

- 6.4.1 R In respect of *transferable securities* which are *admitted to trading on a regulated market*, this section applies to:
- (1) ~~an issuer whose Home State is the United Kingdom in accordance with the first indent of article 2.1(i)(i) of the TD; and~~
  - (2) ~~an issuer who chooses the United Kingdom as its Home State in accordance with:~~
    - (a) ~~the second indent of article 2.1(i)(i) of the TD; or~~
    - (b) ~~article 2.1(i)(ii) of the TD; or~~
    - (c) ~~article 2.1(i)(iii) of the TD. [deleted]~~

### Disclosure of Home State

- 6.4.2 R ~~An issuer must disclose that its Home State is the United Kingdom in accordance with DTR 6.2 and DTR 6.3. [deleted]~~

[**Note:** article 2.1(i) of the TD]

- 6.4.3 R ~~An issuer must disclose its Home State to the competent authority of:~~
- (1) ~~where applicable, the EEA State where it has its registered office;~~
  - (2) ~~the Home State; and~~
  - (3) ~~each Host State. [deleted]~~

[**Note:** article 2.1(i) of the TD]

- 6.4.4 R ~~Where an issuer has not disclosed its Home State as defined by the second indent of article 2.1(i)(i) of the TD or article 2.1(i)(ii) of the TD in accordance with DTR 6.4.2R and DTR 6.4.3R within a period of three months from the date the issuer's securities are first admitted to trading on a regulated market, the Home State shall be:~~

- (1) ~~the EEA State where the issuer's securities are admitted to trading on a regulated market; or~~
- (2) ~~where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one EEA State, those EEA States shall be the issuer's Home State until a subsequent~~

choice of a single *Home State* has been made and disclosed by the issuer in accordance with *DTR 6.4.2R* and *DTR 6.4.3R*. [deleted]

[**Note:** article 2.1(i) of the *TD*]

**6**  
**Annex**  
**1R**

**Classes and sub-classes of regulated information**

	<b>Classification of regulated information</b>	<b>Description</b>
1.	Periodic regulated information	
1.1	Annual financial and audit reports	all information disclosed under <del>article 4</del> of the <i>Transparency Directive DTR 4.1</i>
1.2	Half yearly financial reports and audit reports/limited reviews	all information disclosed under <del>article 5</del> of the <i>Transparency Directive DTR 4.2</i>
1.3	Payments to governments	all information disclosed under <del>article 6</del> of the <i>Transparency Directive DTR 4.3A</i>
2.	Ongoing regulated information	
2.1	<del>Home Member State</del> [deleted]	all information disclosed under <del>article 2(1)(i)</del> of the <i>Transparency Directive</i> [deleted]

2.2	Inside information	all information disclosed under article 17 or article 19 of the <i>Market Abuse Regulation</i>
2.3	Major shareholding notifications	all information disclosed under <del>article 12 of the</del> <i>Transparency Directive</i> <u>DTR 5.1.2R</u>
2.4	Acquisition or disposal of the issuer's own shares	all information disclosed under <del>article 14 of the</del> <i>Transparency Directive</i> <u>DTR 5.5.1R</u>
2.5	Total number of voting rights and capital	all information disclosed under <del>article 15 of the</del> <i>Transparency Directive</i> <u>DTR 5.6.1R</u>
2.6	Changes in the rights attaching to the classes of shares or securities	all information disclosed under <del>article 16 of the</del> <i>Transparency Directive</i> <u>DTR 6.1.9R or DTR 6.1.10R</u>
3.	Additional regulated information required to be disclosed under the laws of a <del>Member State</del> <u>the United Kingdom</u>	

3.1	Additional regulated information required to be disclosed under the laws of <del>a Member State</del> <u>the United Kingdom</u>	all information not falling within the sub-classes set out in points 1.1 to 1.3 and in points 2.1 to 2.6, but which the <i>issuer</i> , or any other <i>person</i> who has applied for the admission of securities to trading on a <i>regulated market</i> without the <i>issuer's</i> consent, has disclosed under <i>LR</i> or <i>DTR</i>
-----	---	---

## 7 Corporate Governance

### 7.1 Audit committees

Audit committees and their functions

...

7.1.3 R An *issuer* must ensure that, as a minimum, the relevant body must:

...

- (6) ~~except when article 16(8) of the *Audit Regulation* is applied,~~ be responsible for the procedure for the selection of *statutory auditor(s)* and recommend the *statutory auditor(s)* to be appointed in accordance with article 16 of the *Audit Regulation*.

[Note: article 39(6) of the *Audit Directive*]

...

### 7.2 Corporate governance statements

...

7.2.6 R The corporate governance statement must contain the information required by paragraph 13(2)(c), (d), (f), (h) and (i) of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (information about share capital ~~required under~~

Directive 2004/25/EC (the Takeover Directive)) where the *issuer* is subject to the requirements of that paragraph.

[**Note:** article 20(1)(d) of the *Accounting Directive*]

...

## 8 Primary Information Providers

...

### 8.2 Approval as a primary information provider

#### Application for approval as a primary information provider

8.2.1 R A *person* wishing to be included on the *list of primary information providers*, must apply to the *FCA* for approval as a *primary information provider* by submitting the following to the *FCA*:

...

(2) details of all the arrangements that it has established or it intends to establish with *media operators* in the *United Kingdom* ~~and other~~ *EEA States* for the dissemination of *regulated information*;

...

...

### 8.4 Continuing obligations

#### Arrangements with media operators

8.4.1 R A *primary information provider* must establish and maintain adequate arrangements with *media operators* in the *United Kingdom* ~~and other~~ *EEA States* for the dissemination of *regulated information*.

8.4.2 R The purpose of *DTR* 8.4.1R is to ensure that a *primary information provider* can disseminate *regulated information* to as wide a public as possible, as close to simultaneously as possible, in the *United Kingdom* ~~and other~~ *EEA States*. In considering whether a *primary information provider* has satisfied the requirements in *DTR* 8.4.1R, the *FCA* will consider the number and nature of arrangements that the *primary information provider* has with *media operators*.

...

## TP 1 Disclosure and transparency rules

## Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision		(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...						
3	4.1.6 and 4.2.4	R	An <i>issuer</i> need not prepare its financial statement in accordance with <del>DTR 4.1.6R</del> or <del>DTR 4.2.4R</del> for any financial year beginning before 1 January 2007 if:		From 20 January 2007	
			(a)	the <i>issuer's</i> registered office is in a <i>non-EEA State</i> ; and		
			(b)	the <i>issuer</i> prepares its financial statements in accordance with internationally accepted standards. <del>[deleted]</del>		
			[ <del>Note: article 23.2 TD</del> ]			
...						
4	4.2.4	R	(1)	This provision applies to an <i>issuer</i> :	From 20 January 2007	
			(a)	whose <i>debt securities</i> only are admitted to trading; and		
			(b)	whose <i>Home State</i> is the <i>United</i>		



				<u>Kingdom whose home Member State for the purposes of the Transparency Directive was, immediately before exit day, the United Kingdom</u>		
			(2)	An issuer is not required to disclose financial statements in accordance with DTR 4.2.4R(1) for the financial year beginning on or after 1 January 2006.		
				[Note: article 30.1 TD]		
...						
20	DTR 6.1.15R	R	<del>Where only holders of debt securities whose denomination per unit amount to at least 50,000 euros or for debt securities denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, are to be invited to a meeting, the issuer may choose as a venue any EEA State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that EEA State, and only where those debt securities have already been admitted to trading on a regulated market in the EU before 31 December 2010.</del>	<del>From 1 July 2012 for as long as the debt securities to which (20) applies are outstanding.</del>	1 July 2012	

			[deleted] [Note: article 18 TD]		
21	DTR 6.2.8R	R	Where <i>debt securities</i> whose denomination per unit amount to at least 50,000 euro, or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, and such <i>debt securities</i> are <i>admitted to trading</i> in one or more <i>EEA States</i> , <i>regulated information</i> must be disclosed to the public in either a language accepted by the competent authorities of the <i>Home State</i> and <i>Host States</i> or in a language customary in the sphere of international finance, at the choice of the <i>issuer</i> or of the <i>person</i> who, without the <i>issuer's</i> consent, has requested such admission. [deleted] [Note: article 20 TD]	From 1 July 2012 for as long as the <i>debt securities</i> to which (21) applies are outstanding.	1 July 2012
...					
26	DTR 6.4.2R, DTR 6.4.3R and DTR 6.4.4R	R	For an <i>issuer</i> whose securities are already admitted to trading on a <i>regulated market</i> and whose choice of <i>Home State</i> as referred to in the second indent of article 2.1(i)(i) of the <i>TD</i> or in article 2.1(i)(ii) of the <i>TD</i> has not been disclosed prior to 27 November 2015, the period of three months will start on 27 November 2015.  An <i>issuer</i> that has made a choice of <i>Home State</i> as	From 26 November 2015	26 November 2015

			referred to in the second indent of article 2.1(i)(i) of the <i>TD</i> , or in article 2.1(i)(ii) or article 2.1(i)(iii) of the <i>TD</i> and has communicated that choice to the <i>competent authorities</i> of the <i>Home State</i> prior to 27 November 2015 is exempted from the requirements under <i>DTR 6.4.2R</i> and <i>DTR 6.4.3R</i> , unless such an <i>issuer</i> chooses another <i>Home State</i> after 27 November 2015. [deleted]		
27	<i>DTR 1B.1.3R</i> and <i>DTR 7.1</i>	R	(1) <i>DTR 1B.1.3R</i> and <i>DTR 7.1</i> do not apply to an <i>issuer</i> in respect of a financial year beginning before 17 June 2016.  (2) In respect of a financial year beginning before 17 June 2016 an <i>issuer</i> must instead comply with the requirements in <i>DTR App 1</i> for that financial year unless it is an <i>issuer</i> listed in <i>DTR App 1.1.4</i> . [expired]	From 17 June 2016 to 30 September 2018	17 June 2016
...					
<u>31</u>	<u><i>DTR 4.1.6R</i></u>	<u>R</u>	(1) <u><i>DTR 4.1.6R</i> does not apply to an <i>issuer</i> in respect of a financial year beginning before <i>exit day</i>.</u>	<u>[From [<i>exit day</i>] to [to be confirmed]</u>	<u>[<i>Exit day</i>]</u>
			(2) <u>In respect of a financial year beginning before <i>exit day</i>:</u>		
			(a) <u>if an <i>issuer</i> is required to prepare consolidated</u>		

					accounts, the audited financial statements must comprise:		
					(i) <u>consolidated accounts prepared in accordance with EU-adopted IFRS, and</u>		
					(ii) <u>accounts of the parent company prepared in accordance with the law of the UK (if the issuer is incorporated in the UK) or with the national law of the EEA State in which the issuer is incorporated (if the issuer is incorporated in the EEA).</u>		
				(b)	<u>if an issuer is not required to prepare consolidated</u>		

				<p><u>accounts, the audited financial statements must comprise accounts prepared in accordance with the law of the UK (if the issuer is incorporated in the UK) or with the national law of the EEA State in which the issuer is incorporated (if the issuer is incorporated in the EEA).</u></p>		
32	<u>DTR 4.1.7R (4)</u>	<u>R</u>	(1)	<p><u>DTR 4.1.7R(4) does not apply to an issuer which is a UK-traded third country company within the meaning of section 1241 of the Companies Act 2006 in respect of a financial year beginning before <i>exit day</i>.</u></p>	<u>[From [<i>exit day</i>] to [to be confirmed]</u>	<u>[<i>Exit day</i>]</u>
			(2)	<p><u>In respect of a financial year beginning before <i>exit day</i>, an issuer which is a UK-traded third country company within the meaning of section 1241 of the Companies Act 2006 must ensure that the person who provides the audit report is:</u></p>		

				(a) <u>on the register of third country auditors kept for the purposes of regulation 6 of the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672); or</u>		
				(b) <u>eligible for appointment as a statutory auditor under section 1212 of the Companies Act 2006; or</u>		
				(c) <u>an EEA auditor within the meaning of paragraph 20A of Schedule 10 to the Companies Act 2006.</u>		
<u>33</u>	<u>DTR 4.2.4R(1)</u>	<u>R</u>	(1)	<u>DTR 4.2.4R(1) does not apply to an issuer in respect of a financial year beginning before <i>exit day</i>.</u>	<u>[From [<i>exit day</i>] to [to be confirmed]</u>	<u>[<i>Exit day</i>]</u>
			(2)	<u>In respect of a financial year beginning before <i>exit day</i>, if an issuer is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with IAS</u>		

				<u>34 as contained in EU-adopted IFRS.</u>		
<u>34</u>	<u>DTR 4.2.10R(4)</u>	<u>R</u>	<u>(1)</u>	<u>DTR 4.2.10R(4) does not apply to an issuer in respect of a financial year beginning before exit day.</u>	<u>[From [exit day] to [to be confirmed]</u>	<u>[Exit day]</u>
			<u>(2)</u>	<u>In respect of a financial year beginning before exit day, a person making a responsibility statement will satisfy the requirement in DTR 4.2.10R(3) (a) to confirm that the condensed set of financial statements gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer (or the undertakings included in the consolidation as a whole) by including a statement that the condensed set of financial statements have been prepared in accordance with:</u>		
			<u>(a)</u>	<u>IAS 34 as contained in EU-adopted IFRS; or</u>		
			<u>(b)</u>	<u>for UK issuers not using EU-adopted IFRS, Financial Reporting Standard 104: Interim Financial</u>		

				<u>Reporting issued by the Financial Reporting Council; or</u>		
				(c) <u>for all other issuers not using EU-adopted IFRS, a national accounting standard relating to interim reporting,</u>		
				<u>provided always that a person making such a statement has reasonable grounds to be satisfied that the condensed set of financial statements prepared in accordance with such a standard is not misleading.</u>		
<u>35</u>	<u>DTR 1B.1.3R(1) and DTR 7.1</u>	<u>R</u>	(1)	<u>DTR 1B.1.3R(1) does not apply to an issuer in respect of a financial year beginning before exit day.</u>	<u>[From [exit day] to [to be confirmed]</u>	<u>[Exit day]</u>
			(2)	<u>In respect of a financial year beginning before exit day DTR 7.1 does not apply to any issuer which is a subsidiary undertaking of a parent undertaking where the parent undertaking is subject to:</u>		



				(a)	<u>DTR 7.1, or to requirements implementing article 39 of the Audit Directive in any EEA State; and</u>		
				(b)	<u>articles 11(1), 11(2) and 16(5) of the Audit Regulation, or to articles 11(1), 11(2) and 16(5) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.</u>		

...

**Appendix 1 Audit Committees for certain issuers [deleted]**

~~DTR-App  
1.1.1~~

App 1.1.1	In respect of a financial year beginning before 17 June 2016, <i>DTR TP 27</i> requires an <i>issuer</i> to comply with the requirements in this appendix in relation to their audit committee unless it is an <i>issuer</i> listed in App 1.1.4.
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App 1.1.2	To assist <i>issuers</i> , this appendix adopts the text of <i>DTR 7.1</i> before it was amended by the Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016 in order to cover <i>issuers</i> in respect of a financial year beginning before 17 June 2016.		
App 1.1.3	7.1	<b>Audit committees</b>	
	Audit committees and their functions		
	7.1.1	R	An <i>issuer</i> must have a body which is responsible for performing the functions set out in <i>DTR 7.1.3R</i> . At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.
	7.1.2	G	The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.
	7.1.3	R	An <i>issuer</i> must ensure that, as a minimum, the relevant body must:
			(1) monitor the financial reporting process;
			(2) monitor the effectiveness of the <i>issuer's</i> internal control, internal audit where applicable, and risk management systems;
			(3) monitor the statutory audit of the annual and consolidated accounts;
			(4) review and monitor the independence of the <i>statutory auditor</i> , and in particular the provision of additional services to the <i>issuer</i> .
	7.1.4	R	An <i>issuer</i> must base any proposal to appoint a <i>statutory auditor</i> on a recommendation made by the relevant body.
	[ <b>Note:</b> Article 41.3 of the <i>Audit Directive</i> ]		
	7.1.5	R	The <i>issuer</i> must make a statement available to the public disclosing which body carries out the functions required by <i>DTR 7.1.3R</i> and how it is composed.
	[ <b>Note:</b> Article 41.5 (part) of the <i>Audit Directive</i> ]		

	7.1.6	G	<del>An issuer may include the statement required by DTR 7.1.5R in any statement it is required to make under DTR 7.2 (Corporate governance statements).</del>
	7.1.7	G	<del>In the FCA's view, compliance with provisions A.1.2, C.3.1, C.3.2, C.3.3 and C.3.8 of the UK Corporate Governance Code will result in compliance with DTR 7.1.1R to DTR 7.1.5R.</del>
App 1.1.4	This appendix does not apply to:		
	(1)		<del>any issuer which is a subsidiary undertaking of a parent undertaking where the parent undertaking is subject to DTR 7.1, or to requirements implementing Article 41 of the Audit Directive in any other EEA State; or</del>
			<del>[Note: Article 41.6(a) of the Audit Directive]</del>
	(2)		<del>any issuer the sole business of which is to act as the issuer of asset backed securities provided the entity makes a statement available to the public setting out the reasons for which it considers it is not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee; or</del>
			<del>[Note: Article 41.6(c) of the Audit Directive]</del>
	(3)		<del>a credit institution whose shares are not admitted to trading and which has, in a continuous or repeated manner, issued only debt securities provided that:</del>
		(a)	<del>the total nominal amount of all such debt securities remains below 100,000,000 Euros; and</del>
		(b)	<del>the credit institution has not been subject to a requirement to publish a prospectus in accordance with section 85 of the Act.</del>
			<del>[Note: Article 41.6(d) of the Audit Directive]</del>

**EXITING THE EUROPEAN UNION: REGULATORY GUIDES (AMENDMENTS)  
INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to material outside the Handbook**

- C. The following material outside the Handbook listed in column (1) below is amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
The Enforcement Guide (EG)	Annex A
The Unfair Contract Terms Regulatory Guide (UNFCOG)	Annex B

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Regulatory Guides (Amendments) Instrument 201[X].

By order of the Board  
[date]

**Editor's notes**

- (1) The amendments proposed in this instrument relate to the statutory instruments and policy notes set out in Annex 3 of the accompanying consultation paper and other matters arising from the UK's withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.
- (2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 3 of the consultation paper.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 1 October 2018, and as amended by the proposed near final rules set out in PS18/15 ('Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules). These proposed rules come into force on 10 December 2018.
- (4) If additional amendments are made to the relevant Handbook text before exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day.

## Annex A

### Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Introduction

##### 1.1 Overview

...

1.1.2 In the areas set out below, the *Act* expressly requires the *FCA* to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.

...

(3-A) section 131FA requires the *FCA* to publish a statement of its policy on the conduct of certain interviews in response to requests from ~~EEA~~ overseas regulators; and

...

...

#### 2 The FCA's approach to enforcement

...

##### 2.2 Case selection and referral criteria

...

2.2.6 In all cases, before it proceeds with an investigation, the *FCA* will satisfy itself that there are grounds to investigate under the statutory provisions that give the *FCA* powers to appoint investigators. Another consideration will be whether the *FCA* ~~is under a Community obligation to take~~ has any agreements in place regarding taking action on behalf of, or otherwise ~~to provide~~ providing assistance to, ~~an authority from another EU member state~~ other authorities. *EG* 2.5.1 discusses the position where other authorities may have an interest in a case. If the statutory test is met, the *FCA* will consider what is the most efficient and effective way of achieving its statutory objectives of protecting consumers, enhancing market integrity and promoting competition. A referral to Enforcement for an investigation will be made if the *FCA* considers that an investigation, rather than an alternative regulatory response, is the right course of action given all the circumstances. Enforcement action and other regulatory tools can be used together and are not mutually exclusive. To assist in making the decision to refer a matter for

investigation, the *FCA* has developed referral criteria that set out a range of factors it may consider when deciding whether to appoint enforcement investigators. The criteria are not exhaustive, and all the circumstances of a particular case are taken into account. Not all the criteria will be relevant to every case, and additional considerations may apply in certain cases. Any one of the factors alone may warrant the appointment of investigators and in some cases, including cases where *breaches* are self-reported, the misconduct may be so serious that there is no credible alternative to referral.

...

## **2.6. Assisting overseas regulators**

2.6.1 The *FCA* views co-operation with its overseas counterparts as an essential part of its regulatory functions. Section 354A of the *Act* imposes a duty on the *FCA* to take such steps as it considers appropriate to co-operate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas. In fulfilling this duty the *FCA* may share information which it is not prevented from disclosing, including information obtained in the course of the *FCA*'s own investigations, or exercise certain of its powers under *Part XI* of the *Act*. Further details of the *FCA*'s powers to assist overseas regulators are provided at *EG* 3.7.1 – 3.7.4 (Investigations to assist overseas authorities), *EG* 3.8.1 – 3.8.4 (Information requests and investigations to assist ~~EEA~~ overseas regulators in relation to short selling), ~~*EG* 3.8A (Information requests and entry of premises under warrant to assist EEA regulators in relation to the Market Abuse Regulation)~~, *EG* 4.7.1 (Use of statutory powers to require the production of documents, the provision of information or the answering of questions), *EG* 4.11.9 – 4.11.11 (Interviews in response to a request from an overseas regulator ~~or EEA regulator~~), and *EG* 8.6.1 – 8.6.8 (Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission, or to impose requirements on a firm in support of an overseas regulator: the *FCA*'s policy). The *FCA*'s statement of policy in relation to interviews which representatives of overseas regulators ~~or EEA regulators~~ attend and participate in is set out in *DEPP* 7.

...

## **3 Use of information gathering and investigation powers**

...

### **3.2A Information requests (section 122A)**

3.2A.1 The *FCA* may use its section 122A power to require information and documents from an *issuer*, a *person discharging managerial responsibilities* or a *person* closely associated with a *person discharging managerial responsibilities* to support its supervisory and its enforcement functions, including those under the *Market Abuse Regulation* ~~or any directly applicable EU regulation made under the *Market Abuse*~~.

...

### 3.2B Information requests (section 122B)

3.2B.1 The *FCA* may use its section 122B power to require information and documents from a person to support both its supervisory and its enforcement functions under the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*, supplementary market abuse legislation (as defined in Part 8 of the Act) or under the *auction regulation*.~~

~~[Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for application of the power in relation to functions under the *auction regulation*]~~

...

### 3.4 Investigations into general and specific concerns (sections 167 and 168)

3.4.1 Where the *FCA* has decided that an investigation is appropriate (see chapter 2) and it appears to it that there are circumstances suggesting that contraventions or offences set out in section 168 may have happened, the *FCA* will normally appoint investigators pursuant to section 168. Where the circumstances do not suggest any specific breach or contravention covered by section 168, but, the *FCA* still has concerns about a *firm*, an *appointed representative*, or a recognised investment exchange ~~or an unauthorised incoming ECA provider~~, such that it considers there is good reason to conduct an investigation into the nature, conduct or state of the *person's* business or a particular aspect of that business, or into the ownership or control of an *authorised person*, the *FCA* may appoint investigators under section 167.

...

### 3.7 Investigations to assist overseas authorities (section 169)

...

3.7.2 ~~If the overseas regulator is a competent authority and makes a request in pursuance of any Community obligation, section 169(3) states that the *FCA* must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with that obligation. [deleted]~~

3.7.3 Section 169(4) and (5) set out factors that the *FCA* may take into account when deciding whether to use its investigative powers. ~~However, these provisions do not apply if the *FCA* considers that the use of its investigative powers is necessary to comply with a Community obligation.~~

...

### 3.8 Information requests and investigations to assist EEA overseas regulators in relation to short selling



...

3.8.3 The *FCA*'s power to conduct investigations to assist ~~EEA~~ *overseas regulators* in respect of the *short selling regulation* is contained in section 131FA of the *Act*. The section provides that at the request of an ~~EEA~~ *overseas regulator* or ESMA, the *FCA* may either use its power under section 131E to require the production of information, or appoint a person to investigate any matter.

3.8.4 ~~Section 131FA states that the *FCA* must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with an obligation under the *short selling regulation*.~~  
[deleted]

EG 3.8A is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

**3.8A Information requests and entry of premises under warrant to assist EEA regulators in relation to the Market Abuse Regulation or the auction regulation** [deleted]

Amend the following as shown.

## **4 Conduct of investigations**

...

### **4.7 Use of statutory powers to require the production of documents, the provision of information or the answering of questions**

4.7.1 The *FCA*'s standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice, for example:

...

- (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the *FCA* will usually seek information voluntarily.
- (3) In some cases, the *FCA* is asked by *overseas regulators* or ~~EEA regulators~~ to obtain documents or conduct interviews on their behalf.

In these cases, the *FCA* will not necessarily adopt its standard approach as it will consider with the *overseas regulator* ~~or EEA regulator~~ the most appropriate method for obtaining evidence for use in their country.

...

#### 4.11 Approach to interviews and interview procedures

...

Interviews in response to a request from an overseas regulator or EEA regulator

4.11.9 Where the *FCA* has appointed an investigator in response to a request from an *overseas regulator* ~~or EEA regulator~~, it may, under sections 169(7) or 131FA of the *Act* ~~respectively~~, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the *FCA* may only use this power if it is satisfied that any information obtained by an *overseas regulator* ~~or EEA regulator~~ as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the *Act* (sections 169(8) and 131FA ~~respectively~~).

4.11.10 The factors that the *FCA* may take into account when deciding whether to make a direction under section 169(7) include the following:

...

- (4) costs, ~~where no Community obligation is involved~~, and the availability of resources; and

...

4.11.11 Under sections 169(9) and 131FA respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators* ~~or EEA regulators~~. The statement is set out in *DEPP 7*.

...

EG 6.3 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

## 6 Publicity

...

### 6.3 Decisions against ECA providers ~~[deleted]~~

...

Amend the following as shown.

## 7 Financial penalties and other disciplinary sanctions

...

### 7.2 Alternatives to sanctions

7.2.1 The *FCA* also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

...

(4) where the *FCA* considers it necessary for the purpose of the exercise by it of functions under the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*~~ supplementary market abuse legislation (as defined in Part 8 of the *Act*), the *FCA* may suspend trading in a *financial instrument* under section 122I of the *Act*;

(4a) ~~where the *FCA* considers it necessary for the purpose of the exercise by it of functions under the *auction regulation* the *FCA* may suspend trading in *emission auction products* under section 122I of the *Act*;~~

~~[Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for power in relation to *emission auction products*] [deleted]~~

(5) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or any other provision that was made in accordance with the *Prospectus Directive* has been infringed, the *FCA* may:

(a) suspend or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or

(b) suspend or prohibit admission of transferable securities to trading on a regulated market as set out in section 87L of the *Act*;

...

## 8 Variation and cancellation of permission and imposition of requirements on the *FCA*'s own initiative and intervention against incoming firms

...

## 8.6 Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy

8.6.1 The *FCA* has a power under section 55Q to vary, or alternatively cancel, a *firm's Part 4A permission*, or to impose requirements on a *firm*, in support of an *overseas regulator*. Section 55Q(4), (5) and (6) ~~set~~ sets out matters the *FCA* may, or must, take into account when it considers whether to exercise these powers. ~~The circumstances in which the *FCA* may consider varying a *firm's Part 4A permission* or imposing requirements in support of an *overseas regulator* depend on whether the *FCA* is required to consider exercising the power in order to comply with a Community obligation. This reflects the fact that under section 55Q, if a relevant *overseas regulator* acting under prescribed provisions has made a request to the *FCA* for the exercise of its *own initiative power* to vary or cancel a *Part 4A permission* or to impose requirements, the *FCA* must consider whether it must exercise the power in order to comply with a Community obligation.~~

8.6.2 ~~Relevant Community obligations which the *FCA* may need to consider include those under the Capital Requirements Directive, the *Solvency II Directive*, the Investment Services Directive/Markets in Financial Instruments Directive, the Insurance Mediation Directive and the *Market Abuse Regulation*. Each of these legislative acts imposes general obligations on the relevant *EEA competent authority* to cooperate and collaborate closely in discharging their functions under the legislative acts. [deleted]~~

8.6.3 ~~The *FCA* views this cooperation and collaboration as essential to effective regulation of the international market in financial services. It will therefore exercise its *own initiative powers* wherever:~~

- ~~(1) an *EEA Competent authority* requests it to do so; and~~
- ~~(2) it is satisfied that the use of the power is appropriate (having regard to the considerations set out at paragraphs 8.2.1 to 8.2.6) to enforce effectively the regulatory requirements imposed under the *Single Market Directives* or other Community obligations. [deleted]~~

8.6.4 ~~The *FCA* will actively consider any other requests for assistance from relevant *overseas regulators* (that is requests in relation to which it is not obliged to act under a Community obligation). Section 55Q, which sets out matters the *FCA* may take into account when it decides whether to vary or cancel a *firm's Part 4A permission* or to impose requirements on a *firm* in support of the *overseas regulator*, applies in these circumstances.~~

...

EG 8.7 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

**8.7 The FCA’s policy on exercising its power of intervention against incoming firms under section 196 of the Act [deleted]**

Amend the following as shown.

**9 Prohibition Orders and withdrawal of approval**

...

**9.3 Prohibition orders and withdrawal of approval - approved persons**

...

9.3.2 When the *FCA* decides whether to make a *prohibition order* against an *approved person* and/or withdraw their approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

(3) Whether, and to what extent, the *approved person* has:

...

(b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or any qualifying ~~EU~~ provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order.

...

**10 Injunctions**

...

**10.2 Section 380 (injunctions for breaches of relevant requirement<sup>9</sup>) and section 381 (injunctions in cases of market abuse): the FCA’s policy**

<sup>9</sup>Under sections 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying ~~EU~~ provision specified, or of

a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

...

EG 10.5 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

## **10.5 Section 198: the FCA’s policy [deleted]**

Amend the following as shown.

## **11 Restitution and redress**

...

### **11.5 Other relevant powers**

11.5.1 The *FCA* may apply to the court for an *injunction* if it appears that a *person*, whether *authorised* or not, is reasonably likely to breach a relevant requirement<sup>12</sup>, or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached one of those requirements or has engaged in *market abuse* and is likely to continue doing so.

<sup>12</sup>Under section 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying ~~EU~~ provision specified, or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 380(8) to (12) of the *Act*.

11.5.2 The *FCA* may consider taking disciplinary action using a range of powers as well as seeking restitution, if a *person* has breached a relevant requirement<sup>13</sup> of the *Act* or ~~any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*, *onshored regulation*,~~ or has engaged in *market abuse*.

<sup>13</sup>Under section 204A(2), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is

imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of section 204A(2) by the Treasury by order or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 204A(3) of the *Act*.

...

## **13 Insolvency**

...

### **13.7 Petitioning for compulsory winding up of a company already in voluntary winding up**

...

13.7.4 ~~Where the *FCA* is requested by a *Home State regulator* of an *EEA firm* or a *Treaty firm* to present a petition for the compulsory winding up of that firm, the *FCA* will first need to consider whether the presentation of the petition is necessary in order to comply with a Community obligation. [deleted]~~

...

EG 14.3 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

## **14 Collective Investment Schemes**

...

**14.3 Exercise of the powers in respect of recognised schemes: section 267 of the Act - power to suspend promotion of a scheme recognised under section 264: the FCA’s policy [deleted]**

EG 19.8 and 19.9 are deleted in their entirety. The deleted text is not shown but the sections are marked deleted, as shown below.

...

## **19 Non-FSMA powers**

...

**19.8 Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 [deleted]**

**19.9 Electronic commerce activity directions: the FCA’s policy [deleted]**

Amend the following as shown.

**19.10 Enterprise Act 2002**

...

19.10.2 The Enterprise Act identifies two types of breach which trigger the Part 8 enforcement powers. These are referred to as:

- (1) “domestic infringements”, which are breaches of particular UK enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied:
  - (a) to or for a person in the UK; or
  - (b) by a person with a place of business in the UK; and
- (2) “~~Community Schedule 13~~ infringements”, which are breaches of the EU legislation listed in Schedule 13 to the Enterprise Act, ~~if directly effective, or of national laws, whether of the UK or not, giving effect to that EU legislation, even where it is directly effective, including provisions of those national laws that provide additional protections, beyond but permitted by that EU legislation.~~

In both cases the breach must, to trigger those powers, harm the collective interests of *consumers*.

19.10.3 ~~The Community legislation falling within the FCA’s scope under the Enterprise Act is:~~

- ~~the Unfair Terms in Consumer Contracts Directive;<sup>17</sup>~~
- ~~the Comparative and Misleading Advertising Directive;<sup>18</sup>~~
- ~~the E-Commerce Directive;<sup>19</sup>~~
- ~~the Distance Marketing Directive;<sup>20</sup>~~
- ~~the Unfair Commercial Practices Directive;<sup>21</sup> and~~
- ~~the Consumer Credit Directive.<sup>22</sup>~~

<sup>17</sup>~~Directive 93/13/EEC~~

<sup>18</sup>~~Directive 97/55/EC~~

<sup>19</sup>~~Directive 2000/31/EC~~

<sup>20</sup>~~Directive 2002/65/EC~~



<sup>21</sup>~~Directive 2005/29/EC~~

<sup>22</sup>~~Directive 2008/48/EC~~

[deleted]

19.10.4 The *FCA* has powers under Part 8 of the Enterprise Act both as a “designated enforcer” in relation to domestic and ~~Community~~ Schedule 13 infringements and as a “~~CPC~~ Schedule 13 enforcer” which gives the *FCA* and other ~~CPC~~ Schedule 13 enforcers additional powers in relation to Schedule 13 ~~Community~~ infringements under the CRA so that they can meet their obligations as “competent authorities” under Regulation (EC) No.2006/2004 on co-operation between national authorities responsible for enforcement of consumer protection laws (the ~~CPC~~ Regulation).

The *FCA*’s powers as a designated enforcer

19.10.5 As a designated enforcer, the *FCA* has the power to apply to the courts for an enforcement order which requires a *person* who has committed a domestic or ~~Community~~ Schedule 13 infringement or, as to the latter, is likely to commit such an infringement:

- (1) not to engage, including through a company and, as to a domestic infringement, whether or not in the course of business, in the conduct which constituted, or is likely to constitute, the infringement;
- (2) to publish the order and/or a corrective statement;
- (3) to offer compensation or other redress, including the right to terminate relevant contracts, to affected *consumers*;
- (4) where such *consumers* cannot be practically identified, to take measures in the collective interests of *consumers*;
- (5) to take measures intended to prevent or reduce the risk of the relevant conduct occurring or being repeated; and/or
- (6) to take measures intended to enable *consumers* to choose more effectively between *persons* supplying or seeking to supply goods or services;

although it should be noted that the remedies listed under (3) to (6) inclusive are only applicable to conduct taking place or likely to occur after the relevant provisions of the *CRA* came into force.

19.10.6 The *FCA* may also apply, if necessary without notice, for interim enforcement orders where immediate temporary prohibition of the relevant conduct is expedient pending full consideration by the court. Such interim orders can also be sought pre-emptively in relation to ~~Community~~ Schedule 13 infringements, but again only preventing conduct in the course of business.

...

- 19.10.11 The Enterprise Act also makes provision for enforcers and courts to accept undertakings from *persons* who have committed breaches or, in respect of ~~Community~~ Schedule 13 infringements, are considered likely to do so. The undertaking confirms that the *person* will not, amongst other things, commence, continue or repeat the conduct which constituted or, as to a ~~Community~~ Schedule 13 infringement, would constitute the breach, although, as above, such a pre-emptive prohibition will only apply to conduct in the course of business. The undertaking may also confirm that the *person* will compensate consumers and/or take the other measures described in paragraph 19.10.5, above. There is a general expectation that, if a breach of applicable legislation or of a relevant duty is committed, or if a ~~Community~~ Schedule 13 infringement is likely to be committed, enforcers will seek an undertaking from the *person* in question before applying to court for an enforcement order.

...

The FCA's powers as a ~~CPC~~ Schedule 13 enforcer

- 19.10.13 In addition to its powers as a designated enforcer under the Enterprise Act, the *FCA* also has powers, in its capacity as a "~~CPC~~ Schedule 13 enforcer" under the CRA and, therefore, only in respect of ~~Community~~ Schedule 13 infringements, to enter commercial premises with or without a warrant. The *FCA* must give at least two working days' notice of its intention to enter such premises without a warrant unless that is not reasonably practicable. If the *FCA* cannot give a notice in advance, it must produce the notice on the day the premises are entered.

Use of enforcement powers under Enterprise Act

...

- 19.10.15 ~~Further information about the FCA's powers under the CPC Regulations is provided at paragraphs 19.13.1 to 19.13.5 below. [deleted]~~

...

## 19.11 Financial Services (Distance Marketing) Regulations 2004

- 19.11.1 These Regulations ~~give~~ gave effect to the Distance Marketing Directive.<sup>24</sup> Under the Regulations, the *FCA* can enforce breaches of the Regulations concerning "specified contracts". Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.

<sup>24</sup>Directive 2002/65/EC

...

## 19.12 Financial Conglomerates and Other Financial Groups Regulations 2004

19.12.1 These Regulations ~~implement~~ implemented in part the Financial Conglomerates Directive,<sup>25</sup> which ~~imposes~~ imposed certain procedural requirements on the *FCA* as a competent authority under the Directive. These Regulations also ~~make~~ made specific provision about the exercise of certain supervisory powers in relation to financial conglomerates.

<sup>25</sup>Directive 2002/87/EC

19.12.2 The *FCA*'s powers to vary a firm's *Part 4A permission* or to impose requirements under sections 55J and 55L of the *Act* ~~have been~~ were extended under these Regulations. The *FCA* is able to use these powers where it is desirable to do so for the purpose of:

supervision in accordance with the ~~Financial Conglomerates Directive~~ *Financial Groups Directive Regulations*;

acting in accordance with specified provisions of the ~~Capital Requirements Directive~~ *Capital Requirements Regulations 2013*; and

acting in accordance with specified provisions of ~~that~~ that implemented or supplemented the *Solvency II Directive*.

...

EG 19.13 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

## 19.13 The Consumer Protection Co-operation Regulation [deleted]

Amend the following as shown.

## 19.14 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

...

19.14.2 The *FCA* is responsible for monitoring and enforcing compliance with the *Money Laundering Regulations* not only by authorised firms who are within the *Money Laundering Regulations*' scope, but also by what the Regulations describe as "Annex I financial institutions". These are businesses which are not otherwise authorised by us but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive<sup>28</sup>, ~~now~~ then in Annex I of the ~~CRD~~ CRD Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the *Money Laundering Regulations*. The

activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the *FCA*.

<sup>28</sup>Money service businesses are also outside the definition of “Annex I financial institution”, which is set out in Regulation 55(2) of the *Money Laundering Regulations*.

[Note: Directive 2013/36/EU]

19.14.2A The *FCA* is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified under regulation 62(1) of the *Money Laundering Regulations*.

[Note: Regulation (EU) No 2015/847 on information accompanying transfer of funds as amended by the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 (SI 2018/XXXX)]

19.14.3 The *Money Laundering Regulations* add to the range of options available to the *FCA* for dealing with anti-money laundering and anti-terrorist financing failures. These options include:

- to prosecute a relevant person, including but not limited to an authorised firm, ~~or an Annex I financial institution or an auction platform~~, as well as any responsible officer;
- to fine or censure a relevant person, including but not limited to an authorised firm, ~~or an Annex I financial institution or an auction platform~~, as well as any officer knowingly concerned in the breach, under regulation 76 of the *Money Laundering Regulations*;
- to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the *Money Laundering Regulations*; and

to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex I financial institution, or a payment service provider, under regulation 78 of the *Money Laundering Regulations*.

...

## **19.15 The conduct of investigations under the Money Laundering Regulations**

...

19.15.5 When imposing or determining the level of a financial penalty under regulation 76 of the *Money Laundering Regulations*, the *FCA*'s policy includes having regard, where relevant, to relevant factors in *DEPP* 6.2.1G and *DEPP* 6.5 to *DEPP* 6.5D. The *FCA* may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the *Money Laundering Regulations* would be met. In deciding whether a person has failed to comply with a

requirement of the *Money Laundering Regulations*, the *FCA* ~~must consider~~ may have regard to, as appropriate, whether he or she followed any relevant guidance which was issued by a European Supervisory Authority in accordance with articles 17, 18.4 or 48.10 of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, including the Joint Money Laundering Steering Group.

...

## **19.19 Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008**

19.19.1 The Lloyd's Accounting Regulations ~~implement~~ implemented the Audit and Accounts Directives in relation to the Lloyd's insurance market. They ~~aim~~ aimed to increase the transparency of the accounts published by Lloyd's syndicates by imposing requirements in relation to the preparation and disclosure of the accounts. The Regulations give the FCA the power to institute criminal proceedings for an offence committed under the Regulations.

...

## **19.20 Payment Services Regulations 2017**

...

19.20.4 ~~The FCA also has the power to prohibit or restrict the carrying out of certain regulated activities by EEA authorised payment institutions and EEA registered account information service providers. [deleted]~~

...

## **19.21 The conduct of investigations under the Payment Services Regulations**

...

19.21.3 ~~The Payment Services Regulations also apply much of Part 13 of the Act. The effect of this is that the FCA has the power to deal with an EEA authorised payment institution or an EEA registered account information service provider ('incoming firm') that is likely to contravene a requirement which is imposed on it by or under the Payment Services Regulations. Under the Payment Services Regulations the FCA will be able to use the power of intervention to:~~

- ~~(1) impose a requirement on an incoming firm as it considers appropriate; and~~
- ~~(2) impose a variation on the permissions of an incoming firm. [deleted]~~

...

**19.23 Electronic Money Regulations 2011**

...

19.23.2 In addition to its powers that apply to ~~authorised electronic money institutions~~, generally the *FCA* has the power to prohibit or restrict the carrying out of certain ~~regulated activities~~ by *EEA authorised electronic money institutions*. [deleted]

...

EG 19.24 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

**19.24 Cross-Border Payments in Euro Regulations 2010 [deleted]**

EG 19.25 is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

**19.25 Recognised Auction Platforms Regulations 2011 [deleted]**

Amend the following as shown.

**19.26 Derivatives, Central Counterparties and Trade Repositories Regulations 2013**

19.26.1 The *FCA* has information gathering and sanctioning powers under the *Act* which are applicable to breaches of *EMIR requirements* by *authorised persons* or *recognised bodies*. The *OTC derivatives, CCPs and trade repositories regulation* adds to the powers available to the *FCA* for dealing with breaches of *EMIR requirements* and sets out information gathering and sanctioning powers enabling the *FCA* to investigate and take action for breaches of the *EMIR requirements* by *non- authorised counterparties* and for certain breaches of the *OTC derivatives, CCPs and trade repositories regulation* by *authorised persons*. Such powers under the *OTC derivatives, CCPs and trade repositories regulation* or the *Act* do not extend to breaches of article 11(3) and (4) of *EMIR* by PRA-*authorised financial counterparties*. The *FCA* has additional powers in relation to trade repositories under the Trade Repositories EU Exit Regulations 2018 (see EG 19.39).

...

## 19.27 Alternative Investment Fund Managers Regulations 2013

- 19.27.1 The *AIFMD UK regulation* ~~transposes~~ transposed *AIFMD* and ~~makes~~ made the necessary changes to UK legislation in relation to the implementation of the *EuSEF regulation*, the *EuVECA regulation* and the *ELTIF regulation*. It ~~provides~~ provided new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.
- 19.27.2 The *AIFMD UK regulation* includes information gathering and sanctioning powers that enable the *FCA* to investigate and take action for breaches of the regulations and ~~directly applicable EU regulations~~ *onshored regulations*. Specific standalone powers are in the *AIFMD UK regulation* for *unauthorised AIFMs*, by applying relevant sections of the *Act*. Amendments to the *Act*, including those made under the ~~Financial Services and Markets Act (Qualifying EU Provisions) Order 2013~~ Financial Services and Markets Act (Qualifying Provisions) Order 2013 (as amended by the [Financial Services and Markets Act 2000 (Amendment)] (EU Exit) Regulations 2019), extend certain *FCA* powers (e.g. disciplinary powers, injunctions and restitution) so that they apply to contraventions of requirements of the *AIFMD UK regulation* and to contraventions of ~~directly applicable EU regulations~~ *onshored regulations*.

Information gathering and investigation powers

...

- 19.27.4 The ~~new~~ powers under the *AIFMD UK regulation* include powers of direction and the power to revoke the registration of *small registered UK AIFMs*, including a ~~*SEF manager* or *RVECA manager*~~ *EuSEF manager* or a *EuVECA manager* and, in some circumstances, ~~EEA managers of a *qualifying social entrepreneurship fund* or a *qualifying venture capital fund*~~, respectively.
- 19.27.5 The *FCA* will respect the principle of proportionality when taking action against ~~*EuSEF* or *EuVECA managers*~~ *SEF managers* or *RVECA managers* for breaches identified in articles 22 and 21 of the ~~directly applicable *EuSEF regulation* and *EuVECA regulation*~~ *SEF regulation* or *RVECA regulation*, respectively. The *FCA* may take action to ensure compliance with the regulations or prohibit the use of the designation of ~~*EuSEF manager* or *EuVECA manager*~~ *SEF manager* or *RVECA manager* and revoke registration of such managers. The prohibition route is more likely to apply to serious breaches of the ~~EU regulations~~ *onshored regulations* such as in situations where:
- registration has been obtained through false statements or any other irregular means; or
  - there are grounds for concern over the behaviour of a ~~*EuSEF manager* or a *EuVECA manager*~~ *SEF manager* or *RVECA manager* in the

management of a ~~qualifying social entrepreneurship fund~~ SEF or a ~~qualifying venture capital fund~~ RVECA, respectively.

...

### 19.30 The Mortgage Credit Directive Order

19.30.1 The Mortgage Credit Directive (MCD) ~~allows~~ allowed for an exemption not to apply the MCD to buy-to-let lending if there ~~is~~ was in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order 2015 (MCDO) is the vehicle through which the framework for “consumer buy-to-let” (CBTL) mortgages ~~has been~~ was established in order to comply with the MCD.

...

### 19.32 The Payment Accounts Regulations 2015

19.32.1 The *Payment Accounts Regulations 2015* (“the PARs”) ~~implement~~ implemented the Payment Accounts Directive. They entitle *consumers* who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle *consumers* to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.

...

### 19.34 Markets in Financial Instruments Regulations 2017

19.34.1 The *MiFI Regulations* in part ~~implement~~ implemented *MiFID*. The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *MiFI Regulations* (including requirements imposed on persons subject to the *MiFI Regulations* by *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR* or *MiFID*). The *MiFI Regulations* impose requirements on:

- (1) *persons* holding positions in relevant contracts for commodity derivatives trading on *trading venues* and for *economically equivalent OTC contracts*, whether or not the *persons* are authorised; and
- (2) exempt *investment firms* providing services in *algorithmic trading*, *direct electronic access* or acting as a general clearing member or in relation to the synchronisation of business clocks.

The *MiFI Regulations* also give the *FCA* the powers to investigate and enforce breaches of article 28 of *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR*.

...



### 19.35 Data Reporting Services Regulations 2017

19.35.1 The *DRS Regulations* ~~implement~~ implemented *MiFID*. The *FCA* has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the *DRS Regulations* (including requirements imposed on *persons* subject to the *DRS Regulations* by *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR* or *MiFID*). The *DRS Regulations* impose requirements on *data reporting services providers* (“*DRSPs*”) which are entities authorised or verified to provide services of:

- (1) publishing trade reports (“*APA*”);
- (2) reporting details of transactions (“*ARM*”); and
- (3) collecting trade reports (“*CTP*”).

...

### 19.36 The Packaged Retail and Insurance-based Investment Products Regulations 2017

19.36.1 The Packaged Retail and Insurance-based Investment Products Regulations ~~implement~~ implemented the *PRIIPs Regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations, *PRIIPs Regulation* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under the *PRIIPs Regulation*. The *PRIIPs Regulation* imposes requirements on both authorised and unauthorised *persons* who manufacture, advise on, market or sell a *PRIIP*.

...

### 19.37 UK Benchmarks Regulations 2018

...

19.37.1 The *UK Benchmarks Regulations 2018* in part ~~implement~~ implemented the *benchmarks regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Benchmarks Regulations 2018* (including requirements imposed on *persons* subject to the *UK Benchmarks Regulations 2018* by the *benchmarks regulation* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under the *benchmarks regulation*). Our powers in relation to Miscellaneous BM *persons* are set in the *UK Benchmarks Regulations 2018*.

...

### 20 Enforcement of the Consumer Credit Act 1974

## 20.1 Introduction

20.1.1 The *CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*. The *FCA*'s investigation and sanctioning powers include the following:

power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;

power to require information and documents, under section 165 of the *Act*, it reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;

power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;

power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;

~~power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;~~

power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the *Act*) for the contravention of a *CCA Requirement*;

power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;

power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;

power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and

power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

...

## Appendix 2 Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies

### App 2.1 Purpose, status and application of the guidelines

...

Indicators for deciding which agency should take action

App 2.1.9 The following are indicators of whether action by the *FCA* or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

(a) Tending towards action by the *FCA*

Where the suspected conduct in question gives rise to concerns regarding market confidence or protection of consumers of services regulated by the *FCA*.

Where the suspected conduct in question would be best dealt with by:

- criminal prosecution of offences which the *FCA* has powers to prosecute by virtue of the Financial Services and Markets Act 2000 (“the 2000 Act”) (See Appendix paragraph 1.4) and other incidental offences;
- civil proceedings under the 2000 Act (including applications for injunctions, restitution and to wind up firms carrying on regulated activities);
- regulatory action which can be referred to the *Tribunal* (including proceedings for market abuse); and
- proceedings for breaches of Part VI of the *Act*, of *Part 6 rules* or the *Prospectus Rules* or a provision that was otherwise made in accordance with the *Prospectus Directive*.

Where the likely defendants are *authorised persons*, *approved persons* or *conduct rules staff*.

Where the likely defendants are issuers or sponsors of a security admitted to the official list or in relation to which an application for listing has been made.

Where there is likely to be a case for the use of *FCA* powers which may take immediate effect (e.g. powers to vary the permission of an authorised firm or to suspend listing of securities).

Where it is likely that the investigator will be seeking assistance from overseas regulatory authorities with functions equivalent to those of the *FCA*.

Where any possible criminal offences are technical or in a grey area whereas regulatory contraventions are clearly indicated.

Where the balance of public interest is in achieving reparation for victims and prosecution is likely to damage the prospects of this.

Where there are distinct parts of the case which are best investigated with regulatory expertise.

...

...

## Appendix 3 Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies

### App 3.1 The FCA

...

App 3.1.3 Under the 2000 Act the *FCA* has powers to investigate concerns including:

- regulatory concerns about authorised *firms* and individuals employed by them;
- suspected contraventions of the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*~~ supplementary market abuse legislation (as defined in Part 8 of the Act) ~~or for contraventions of the *auction regulation*~~;
- [~~Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for powers in relation to contraventions of the *auction regulation*~~]
- suspected misleading statements and practices under s.397 of the 2000 Act and Part 7 of the Financial Services Act 2012;
- suspected *insider dealing* under of Part V of the Criminal Justice Act 1993;
- suspected contraventions of the general prohibition under s.19 of the 2000 Act and related offences;
- suspected offences under various other provisions of the 2000 Act (see below);
- suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules* or a provision that was otherwise made in accordance with the *Prospectus Directive*.

The *FCA*'s powers of information gathering and investigation are set out in Part XI of the 2000 Act and in s.97 in relation to its Part VI functions.

App 3.1.4 The *FCA* has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons and other individuals under s.66 of the 2000 Act;
- impose penalties on persons that perform controlled functions without approval under s.63A of the 2000 Act;
- impose civil penalties under s.123 of the 2000 Act;
- [~~Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for the application of this power and those below to contraventions of the *auction regulation*~~]
- temporarily prohibit an individual from exercising management functions in *MiFID investment firms* or from dealing in *financial instruments* ~~or~~

~~*emissions auction products*~~ on their own account or on the account of a third party, under s.123A(2) of the 2000 Act;

- ~~temporarily prohibit an individual from making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a *recognised auction platform* under s.123A(2) of the 2000 Act;~~
- permanently prohibit an individual from exercising management functions in *MiFID investment firms* under s.123A(3) of the 2000 Act;
- suspend the permission of an *authorised person* or impose limitations or other restrictions in relation to the carrying on of a *regulated activity* by an *authorised person* under s.123B of the 2000 Act;
- prohibit an individual from being employed in connection with a *regulated activity*, under s.56 of the 2000 Act;
- apply to Court for *injunctions* (or interdicts) and other orders against persons contravening relevant requirements (under s.380 of the 2000 Act) or engaging in *market abuse* (under s.381 of the 2000 Act);
- petition the court for the winding up or administration of companies, and the bankruptcy of individuals, carrying on *regulated activities*;
- apply to the court under ss.382 and 383 of the 2000 Act for restitution orders against persons contravening relevant requirements or persons engaged in *market abuse*;
- require restitution under s.384 of the 2000 Act of profits which have accrued to authorised persons contravening relevant requirements or persons engaged in *market abuse*, or of losses which have been suffered by others as a result of those *breaches*;
- (except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing), Part 7 of the Financial Services Act 2012 and various offences under the 2000 Act including (Note: The *FCA* may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives): carrying on *regulated activity* without authorisation or exemption, under s.23;
- making false claims to be authorised or exempt, under s.24;
- promoting investment activity without authorisation, under s.25;
- breaching a prohibition order, under s.56;
- failing to co-operate with or giving false information to *FCA* appointed investigators, under s.177;
- failing to comply with provisions about influence over authorised persons, under s.191;
- making misleading statements and engaging in misleading practices, under s.397;

- misleading the *FCA*, under s.398;
- various offences in relation to the *FCA* 's Part VI function;
- Fine, issue public censures, suspend or cancel listing for breaches of the Listing Rules by an issuer; and
- Issue public censures or cancel a sponsor's approval.

## Annex B

### Amendments to the Unfair Contract Terms Regulatory Guide

In this Annex, striking through indicates deleted text.

#### 1 The Unfair Contract Terms and Consumer Notices Regulatory Guide

...

#### 1.3 The CRA

Terms and notices to which the CRA applies

1.3.1 G (1) ...

(2) Terms or notices cannot be reviewed for fairness within the meaning of the *CRA* if they reflect:

(a) mandatory statutory or regulatory provisions; or

(b) the provisions or principles of an international convention to which the *United Kingdom* ~~or the EU~~ is a party.

**TRADE REPOSITORIES (GUIDANCE) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/XXXX):
    - (a) Regulation 69 (Statement of policy);
    - (b) Regulation 71 (Powers to issue guidance);
    - (c) Regulation 78 (Application of Part 11 of the Act (information gathering and investigations)); and
    - (d) Regulation 79 (Application of Part 26 of the Act (notices)).

**Commencement**

- C. This instrument comes into force on 29 March 2019 at 11 p.m., immediately after the changes made by the Credit Rating Agencies (Guidance) Instrument 201[X] come into force.

**Amendments to the Handbook**

- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.

**Material outside the Handbook**

- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Trade Repositories (Guidance) Instrument 201[X].

By order of the Board  
[date]



## Annex A

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(7) *Trade Repositories (EU Exit) Regulations*: Where the FCA is exercising its powers to refuse an application for registration of a trade repository under article 58 of EMIR or to refuse an application made by a trade repository to withdraw its registration under article 71(3) of EMIR, it must give a written notice in accordance with article 71a(6) of EMIR. In these circumstances the decision to give a written notice under article 71a(6) will be taken by FCA staff under executive procedures.

Where the FCA is exercising its powers to withdraw the registration of a trade repository on the FCA's own initiative under article 71(1) or (2), it must give a written notice in accordance with article 71a(6). In these circumstances the decision to give a written notice under article 71a(6) will be taken by the RDC.

Upon receipt of a written notice under article 71a(6) the credit rating agency may decide to seek a review or to refer the matter to the Tribunal. If the trade repository decides to seek a review of the decision set out in the article 71a(6) notice, they can make representations to the RDC. If the RDC decides to maintain the original decision, the trade repository may refer the RDC's decision to do so to the Tribunal.

...

## 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

<b>CRA (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>Trade Repositories (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulations 65(a) and 66(a)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 67</u>		<u>RDC</u>
<u>Regulations 65(b) and 65(b)</u>	<u>when the FCA is proposing or deciding to impose a financial penalty under regulation 68</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

...

<b>CRA Regulation</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>Trade Repositories (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 58 to refuse an application for registration of a trade repository</u>		<u>RDC or executive procedures (see DEPP 2.5.18G(7))</u>
<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 71(1) or</u>		<u>RDC</u>

	<u>71(2) to withdraw the registration of a trade repository on its own initiative</u>		<u>(see DEPP 2.5.18G(7))</u>
<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 71(3) to refuse an application made by a trade repository to withdraw its registration</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(7))</u>

...

**Sch 4 Powers Exercised**

...

4.2G	The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
	...
	<u>Regulation 18 (Notices) of the <i>CRA (EU Exit) Regulations</i></u>
	<u>Regulation 69 (Statement of policy) of the <i>Trade Repositories (EU Exit) Regulations</i></u>
	<u>Regulation 71 (Powers to issue guidance) of the <i>Trade Repositories (EU Exit) Regulations</i></u>
	<u>Regulation 78 (Application of Part 11 of the Act (information gathering and investigations) of the <i>Trade Repositories (EU Exit) Regulations</i></u>
	<u>Regulation 79 (Application of Part 26 of the Act (notices) of the <i>Trade Repositories (EU Exit) Regulations</i></u>

## Annex B

### Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.38 (Credit Rating Agencies (CRA) Regulation).  
The text is not underlined.

#### **19.39 Trade Repositories (EU Exit) Regulations**

- 19.39.1 Supervisory and enforcement functions in respect of *trade repositories* under *EU EMIR* were transferred from *ESMA* to the *FCA* through the *Trade Repositories (EU Exit) Regulations* on exit day.
- 19.39.2 The *FCA*'s approach to enforcing under the *Trade Repositories (EU Exit) Regulations* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

#### Conduct of investigations under the Trade Repositories (EU Exit) Regulations

- 19.39.3 The *Trade Repositories (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Trade Repositories (EU Exit) Regulations*, *EMIR* and the *Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018*.
- 19.39.4 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *Trade Repositories (EU Exit) Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *Trade Repositories (EU Exit) Regulations* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

#### Decision making under the Trade Repositories (EU Exit) Regulations

- 19.39.5 The decision making procedures for those decisions under the *Trade Repositories (EU Exit) Regulations* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.
- 19.39.6 The *Trade Repositories (EU Exit) Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain

material as set out in section 394 of the *Act* as applied by the *Trade Repositories (EU Exit) Regulations*.

#### Imposition of penalties under the Trade Repositories (EU Exit) Regulations

- 19.39.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Trade Repositories (EU Exit) Regulations*. The *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.
- 19.39.8 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Trade Repositories (EU Exit) Regulations* to assist us to exercise our functions under the *Trade Repositories (EU Exit) Regulations* in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.
- 19.39.9 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in light of regulation 79 of the *Trade Repositories (EU Exit) Regulations*.

#### Statement of policy in section 169(7) interviews (as implemented by the Trade Repositories (EU Exit) Regulations)

- 19.39.10 The *Trade Repositories (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Trade Repositories (EU Exit) Regulations* the *FCA* will follow the procedures described in *DEPP* 7.

**CREDIT RATING AGENCIES (GUIDANCE) INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018 (SI 2018/XXXX):
    - (a) Regulation [5] (Guidance);
    - (b) Regulation [8] (Statement of policy);
    - (c) Regulation [17] (Information gathering and investigations));
    - (d) Regulation [18] (Notices); and
  - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 29 March 2019 at 11 p.m.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

**Material outside the Handbook**

- F. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the Credit Rating Agencies (Guidance) Instrument 201[X].

By order of the Board  
[date]

## Annex A

### Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*CRA (EU Exit) Regulations*      the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018 (SI 2018/XXXX).

## Annex B

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(6) *CRA Regulation: Where the FCA is exercising its powers to refuse an application for registration under articles [16] or [17], or to refuse an application made by a credit rating agency to withdraw its registration under article [20(3)], it must give a written notice in accordance with article [18(6)]. In these circumstances the decision to give a written notice under Article [18(6)] will be taken by FCA staff under executive procedures.*

Where the FCA is exercising its powers to withdraw the registration of a credit rating agency on the FCA's own initiative under article [20(1)] or [(2)], or to give a direction under article [24(1)], it must give a written notice in accordance with article [18(6)]. In these circumstances the decision to give a written notice under article [18(6)] will be taken by the RDC.

Upon receipt of a written notice under article [18(6)] the credit rating agency may decide to seek a review or to refer the matter to the Tribunal. If the credit rating agency decides to seek a review of the decision set out in the article [18(6)] notice, they can make representations to the RDC. If the RDC decides to maintain the original decision, the credit rating agency may refer the RDC's decision to do so to the Tribunal.

...

## 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

UK Benchmarks Regulations 2018	Description	Handbook reference	Decision maker
--------------------------------	-------------	--------------------	----------------



...			
<u>CRA (EU Exit) Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation [11(1)(a) and 12(1)(a)]</u>	<u>when the FCA is proposing or deciding to impose a penalty under regulation [7]</u>		<u>RDC</u>
<u>Regulation [11(1)(b) and 12(1)(b)]</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation [10]</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

...

<u>UK Benchmarks Regulations 2018</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
...			
<u>CRA Regulation</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Article [18(6) and 18(10)]</u>	<u>when the FCA is exercising its power under article [16] to refuse an application for registration of a <i>credit rating agency</i></u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article [18(6) and 18(10)]</u>	<u>when the FCA is exercising its power under article [17] to refuse an application for registration of a group of <i>credit rating agencies</i></u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article [18(6) and 18(10)]</u>	<u>when the FCA is exercising its power under article [20(1) and 20(2)] to withdraw the registration of a <i>credit rating agency</i> on its own initiative</u>		<u>RDC</u> <u>(see DEPP 2.5.18G(6))</u>

<u>Article [18(6) and 18(10)]</u>	<u>when the FCA is exercising its power under article [20(3)] to refuse an application made by a credit rating agency to withdraw its registration</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article [18(6) and 18(10)]</u>	<u>when the FCA is exercising its power under article [24(1)] to impose a direction to temporarily prohibit a credit rating agency from issuing credit ratings or to suspend the use of credit ratings issued by a credit rating agency</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>

...

**Sch 4 Powers Exercised**

...

4.2G

The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in *DEPP*:

...

Regulation 23 (Application of Part 26 of the Act (notices)) of the *UK Benchmarks Regulations 2018*

Regulation [5] (Guidance) of the *CRA (EU Exit) Regulations*

Regulation [8] (Statement of policy) of the *CRA (EU Exit) Regulations*

Regulation [17] (Information gathering and investigations) of the *CRA (EU Exit) Regulations*

Regulation [18] (Notices) of the *CRA (EU Exit) Regulations*

## Annex C

### Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.37 (UK Benchmarks Regulations 2018). The text is not underlined.

#### **19.38 Credit Rating Agencies (CRA) Regulation**

- 19.38.1 The *CRA Regulation* aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the *United Kingdom* while achieving high levels of investor protection. The *CRA Regulation* imposes requirements including, among other things, obligations on *credit rating agencies* relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.
- 19.38.2 Supervisory and enforcement functions under the *CRA Regulation* were transferred from *ESMA* to the *FCA* through the *CRA (EU Exit) Regulations* on *exit day*.
- 19.38.3 The *FCA's* approach to enforcing under the *CRA Regulation* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

#### Conduct of investigations under the CRA Regulation

- 19.38.4 The *CRA (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *CRA Regulation*.
- 19.38.5 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *CRA Regulation* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in non-criminal investigations under the *CRA Regulation* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

#### Decision making under the CRA Regulation

19.38.6 The decision making procedures for those decisions under the *CRA Regulation* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.38.7 The *CRA Regulation* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *CRA Regulation*.

#### Imposition of penalties under the *CRA Regulation*

19.38.8 When determining whether to take action to impose a penalty or to issue a public censure under the *CRA Regulation*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.

19.38.9 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *CRA Regulation* to assist us to exercise our functions under the *CRA Regulation* in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.

19.38.10 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in light of regulation [18] of the *CRA (EU Exit) Regulations*.

#### Statement of policy in section 169(7) interviews (as implemented by the *CRA (EU Exit) Regulations* 2018)

19.38.11 The *CRA (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *CRA (EU Exit) Regulations* the *FCA* will follow the procedures described in *DEPP* 7.

**EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS)  
INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 62A (Changes to responsibilities of senior managers);
  - (7) section 63ZA (Variation of senior manager’s approval at request of authorised person);
  - (8) section 63ZD (Statement of policy relating to conditional approval and variation);
  - (9) section 63C (Statement of policy);
  - (10) section 63E (Certification of employees by authorised persons);
  - (11) section 63F (Issuing of certificates);
  - (12) section 64A (Rules of conduct);
  - (13) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
  - (14) section 69 (Statement of policy);
  - (15) section 137A (The FCA’s general rules);
  - (16) section 137T (General supplementary powers);
  - (17) section 138D (Action for damages);
  - (18) section 139A (Power of the FCA to give guidance);
  - (19) section 395 (The FCA’s and PRA’s procedures);
  - (20) paragraph 23 of Schedule 1ZA (Fees); and
  - (21) regulations 4 and 5 of the Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [29 March 2019 at 11 p.m.] except as follows:

Annex	Date comes into force
Part 2 of Annex E	[date] 2019 (about six months before 9 December 2019)
Part 2 of Annex A	9 December 2019
Part 3 of Annex E	9 December 2019

## Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Code of Conduct (COCON)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fit and Proper test for Employees and Senior Personnel (FIT)	Annex D
Supervision manual (SUP)	Annex E

### Notes

- E. In this instrument, notes shown as “*Editor’s note:*” are intended for the convenience of the reader and do not form part of the legislative text.

### Citation

- F. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) Instrument 201[X].

By order of the Board  
[date]

### Editor’s notes:

(1) The amendments proposed to come into force in March 2019 are prepared taking into account the changes to the Handbook made by the Individual Accountability (Dual-Regulated Firms) Instrument 2018.

(2) The amendments proposed to come into force after March 2019 are prepared as if the near final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 (the solo-regulated firms instrument) included in Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) were made and in force. The text of the near-final rules is adjusted to take into account the changes to the Handbook made by the Individual Accountability (Dual-Regulated Firms) Instrument 2018 and as described in Note (4).

(3) If a provision to be deleted by the solo-regulated firms instrument is amended as described in note (1), we propose that the deletion should still go ahead. The deletion is not shown in this draft instrument.

(4) If a provision in the Handbook is amended both by this draft instrument as described in note (1) and in the solo-regulated firms instrument, this draft instrument adjusts the

amendments made by the solo-regulated firms instrument accordingly. However if the required changes to the solo-regulated firms instrument would not be significant we do not show them.

(5) When the transitional period for EEA firms in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX]) ends, the FCA proposes to amend the rules in this draft instrument by removing references to EEA SMCR banking firms, EEA SMCR firms and TP firms. Those deletions are not shown.

(6) The text in this instrument takes account of the proposed definitions suggested by CP18/29 'Temporary permissions regime for inbound firms and funds' and changes made by CP18/28 (Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation) (October 2018) as if they were made.

## Annex A

## Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

### Part 1: Comes into force 29 March 2019

#### 1 Application and purpose

...

#### 1 Annex Detailed application of SYSC

1

...

Part 3	Tables summarising the application of the common platform requirements to different types of firm
--------	---

...

#### Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision SYSC 4	COLUMN A ...	COLUMN A+ ...	COLUMN A++ ...	COLUMN B ...
...	...	...	...	...
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	<p><del>Rule applies this section only to:</del></p> <p><del>(1) an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the governing functions with equivalent responsibilities for the</del></p>



			<p><del>firm's non-mainstream regulated activities and other regulated activities;</del></p> <p><del>(2) activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:</del></p> <p><del>(a) an oil market participant;</del></p> <p><del>(b) a service company;</del></p> <p><del>(c) an energy market participant;</del></p> <p><del>(d) a wholly-owned subsidiary of:</del></p> <p><del>(i) a local authority;</del></p> <p><del>(ii) a registered social landlord;</del></p> <p><del>(e) a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity except advising on P2P agreements;</del></p> <p><del>(2A) a credit firm which holds a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;</del></p> <p><del>(3) [deleted]</del></p> <p><del>(4) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).</del></p>
--	--	--	---

				As specified in SYSC 4.4.1AR
...	...	...	...	...

...

**4 General organisational requirements**

...

**4.4 Apportionment of responsibilities**

Application

4.4.1A R This section applies to:

...

- (4) ~~an incoming Treaty firm, an incoming EEA firm~~ a TP firm or a ~~UCITS qualifier~~ TP UCITS qualifier (but only SYSC 4.4.5R(2) applies for these firms); and

...

...

Allocating functions of apportionment and oversight

4.4.5 R A firm must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

...

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
...	...	...
(2) <del>An incoming EEA firm or incoming Treaty firm</del> A <u>TP firm</u> (note:	...	...

only the functions in SYSC 4.4.5R(2) must be allocated)		
...	...	...

#### 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> , a <i>TP firm</i> or <i>UCITS qualifier TP UCITS qualifier</i> ?	...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an a <i>TP firm incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p><del>SYSC 1 Annex 1.1.1R(2) and SYSC 1 Annex 1.1.8R restrict the application of SYSC 4.4.5R for such a firm. Accordingly:</del></p> <p>(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in SYSC 4.4.5R(1).</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 4.4.5R(2). <del>However, the systems and controls that must be overseen are those relating to matters which the appropriate regulator, as Host State regulator, is entitled to regulate (there is guidance on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the firm's activities carried on from its UK branch.</del></p> <p>(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i>; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of</p>

		<p>the <i>firm</i> or the <i>firm's group</i> under SYSC 4.4.5R, row (2).</p> <p>(4) An <i>incoming EEA firm</i> which has provision only for <i>cross border services</i> is not required to allocate either function if it does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>; for example if they fall within the overseas persons exclusions in article 72 of the <i>Regulated Activities Order</i>.</p> <p>See also <del>Questions</del> <u>Question 1 and 15</u>.</p>
...	...	...
15	<p>What about <i>incoming electronic commerce activities</i> carried on from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i>?</p>	<p>SYSC does not apply to an <i>incoming ECA provider</i> acting as such. [deleted]</p>

...

## 22 Regulatory references

### 22.1 Application

...

Territorial scope and overseas firms

...

22.1.5 R This chapter does not apply to:

- (1) an *overseas firm* that does not have an establishment in the *United Kingdom*;
- (2) a *UCITS qualifier* (see section 266 of the Act (Disapplication of rules)) *TP UCITS qualifier*;
- (3) an *AIFM qualifier* a *TP AIFM qualifier*; or
- (4) an *incoming EEA firm* a *TP firm* that is an *EEA* a *pure reinsurer*.

22.1.6 R For an *incoming firm* or ~~any other~~ *overseas firm*, SYSC 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question

(defined as “P” in SYSC 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

...

## 23 Senior managers and certification regime: Introduction and classification

...

## 23 Definition of SMCR firm and different types of SMCR firms

### Annex 1

...

Part Three: Definition of exempt firm

...

3.3 R ~~An incoming EEA firm~~ A TP firm that is ~~an EEA~~ a pure reinsurer is an exempt firm.

Part Four: Definition of banking sector

...

4.4 R A *firm* is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than ~~an incoming firm~~ a TP firm that meets the following conditions:

...

4.5 R An *SMCR banking firm* in SYSC 23 Annex 1 4.4R is ~~a third country~~ an overseas SMCR banking firm.

4.6 R A *firm* is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is ~~an incoming EEA firm or incoming Treaty firm~~ a TP firm that meets the following conditions:

- (1) it has a *branch* in the *United Kingdom*;
- (2) it is not an institution authorised under the *Act* to carry on the *regulated activity* of *effecting contracts of insurance* or *carrying out contracts of insurance*; and
- (3) it meets one of the following conditions:
  - (a) it is a *credit institution* which has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that includes *accepting deposits*; or
  - (b) it meets all the following conditions:

- (i) the institution is an *investment firm*;
- (ii) it has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that covers *dealing in investments as principal*; and
- (iii) when carried on by it, that activity is a *PRA-regulated activity*.

...

**24 Senior managers and certification regime: Allocation of prescribed responsibilities**

...

**24.3 Who prescribed responsibilities should be allocated to**

...

Dividing and sharing management functions between different people

...

24.3.10 G ...

- (2) The *firm* should make the judgement:

...

under:

...

- (e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant ~~and directly applicable EU legislation~~ onshored regulations.

...

...

**24 Annex 1 Which FCA-prescribed senior management responsibilities apply to which kind of firm**

...

Banking sector firms

2.1 R (1) ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(c) ~~a *third country*~~ an overseas SMCR banking firm.

...

2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	<del>Third-country</del> <u>Overseas firm</u>
...	...	...	...	...
<p><b>Note (1):</b> the categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 2.1R. Therefore:</p> <p>...</p> <p>(c) column five (<del>Third-country</del> <u>Overseas firm</u>) refers to SYSC 24 Annex 1 2.1R(2)(c).</p>				
<p>...</p>				

Insurance sector firms

3.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(b) a *firm* falling within paragraph (b) of the definition of *Solvency II firm* (~~third country branch undertaking~~ that would require Part 4A permission as an insurance or reinsurance undertaking if its head office was situated in the *United Kingdom*);

...

...

...

3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of responsibility	Reference letter of responsibility	Solvency II firm	Third country <u>Overseas</u> branches	Other insurance sector	ISPV
...	...	...	...	...	...
<p><b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 3.1R. Therefore:</p> <p>(1) ...;</p> <p>(2) <del>Third country</del> <u>Overseas</u> branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);</p> <p>...</p>					

...

**25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material**

...

**25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms**

Application

25.6.1 R This section applies to an *EEA SMCR firm*.  
G

Purpose

- 25.6.2 G
- (1) ~~The management responsibilities map is an important support to the FCA's functions as Host State competent authority. [deleted]~~
  - (2) ~~Having requirements and powers that apply directly to individuals helps to make the requirements on firms that the FCA is required or entitled to impose as Host State competent authority more effective.~~
  - (3) ~~As explained in SYSC 25.1.6G (Purpose), the management responsibilities map also helps the FCA to operate its powers and requirements for individuals.~~
  - (4) ~~By helping the FCA to better understand how the branch is structured, the management responsibilities map also helps the FCA~~



~~to carry out more effective supervision of conduct of business, money laundering and other *Host State* responsibilities.~~

- 25.6.3 G ~~This chapter is not intended to extend the application of the *common platform requirements* or other parts of *SYSC* to matters which are reserved by an *EU* instrument to the *firm's Home State regulator* in relation to *EEA SMCR firms*. [deleted]~~

FCA-prescribed senior management responsibilities

- 25.6.4 G *SYSC 25.2.3R* (Specific requirements) requires a *management responsibilities map* to cover the allocation of *FCA-prescribed senior management responsibilities*. This is not relevant to an *EEA SMCR firm* as *FCA-prescribed senior management responsibilities* do not apply to it.

Leaving out information already supplied

- 25.6.5 R ~~An *EEA SMCR firm* may exclude from its *management responsibilities map*: [deleted]~~

- ~~(1) any information contained in its *requisite details*;~~
- ~~(2) any information contained in any notice of changes to its *requisite details* under the *EEA Passport Rights Regulations*; and~~
- ~~(3) any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*) if:
 
  - ~~(a) that information was supplied to the *FCA* or the *PRA* as a *Host State competent authority*; and~~
  - ~~(b) the *Single Market Directives* or any other *EU* legislation provides for the supply of that information to the *FCA* or the *PRA* as described in (a).~~~~

- 25.6.6 G ~~Information contained in *SYSC 25.6.5R*(1) and (2) covers: [deleted]~~

- ~~(1) details about the *branch* contained in the notice given by the *firm's Home State competent authority* as part of the process for establishing the *branch* in the *United Kingdom*; and~~
- ~~(2) any updates to that information under the *EEA Passport Rights Regulations*.~~

- 25.6.7 G ~~The *management responsibilities map* of an *EEA SMCR firm* may therefore consist of information: [deleted]~~

- ~~(1) that has changed since its *requisite details* were supplied or were last changed; or~~

(2) that is not covered in the *firm's Home State competent authority's* passport notification.

25.6.8 G The *FCA* expects that an *EEA SMCR firm* that excludes information from its *management responsibilities map* under SYSC 25.6.5R will identify in its *management responsibilities map* the documents supplied to the *FCA* or the *PRA* where the omitted information can be found. [deleted]

25.6.9 G In practice an *EEA SMCR firm* may find it easier to prepare its *management responsibilities map* without omitting any information under SYSC 25.6.5R so that all the information referred to in SYSC 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated document. [deleted]

25.6.10 G SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a *firm* to omit information under SYSC 25.6.5R. It assumes that the *firm* will prepare a single document under SYSC 25.6.9G. However SYSC 25.4 is not intended to take away the right to omit information under SYSC 25.6.5R. [deleted]

...

## 25.9 Handover procedures and material

### Application

25.9.1 R This section applies to a *firm* that meets the following conditions:

(1) it falls within SYSC 25.1.1R (Application and purpose); and

(2) it falls within one of the following categories:

(a) it is a *UK SMCR firm*; or

(b) it is a ~~third country~~ an overseas SMCR banking firm.

25.9.2 R For ~~third country~~ overseas SMCR banking firms, references in this section to an *SMF manager* are references to the *SMF manager* when acting as an *SMF manager* for the *firm's branch* in the *United Kingdom*.

...

## 25 Annex Examples of the business activities and functions of an SMCR firm

### 1G

Business areas and management functions	Explanation
---	-------------

...	...
(10) Market making	This has the same meaning as it does in <i>MIFID</i> ( <del>see the definition of market maker in article 4.1(7))</del> <u>the <i>Glossary</i> definition of <i>market maker</i>.</u>
...	...

## 26 Senior managers and certification regime: Overall and local responsibility

### 26.1 Application

...

Territorial scope

...

26.1.7 R Table: Application of this chapter to ~~a third country~~ an overseas SMCR firm

...

### 26.6 Meaning of local and overall responsibility: General

UK firms

...

26.6.2 G (1) Certain ~~EU legislation requires~~ requirements of the *regulatory system* say that the *governing body* of a ~~firm~~ certain firms should have ultimate responsibility for, and the prime and leading role in, managing the *firm*.

(2) In particular this is the case under:

- (a) ~~article 88 of the *CRD* (Governance arrangements)~~ *SYSC* 4.3A.1R (Management body); and
- (b) ~~article 9 of *MiFID* (management body); and~~ [deleted]
- (c) ~~article 40 of the *Solvency II Directive* (Responsibility of the administrative, management or supervisory body)~~ rule 2.1 in the Part of the *PRA Rulebook* called *Conditions Governing Business* (General Governance Requirements).

(3) ...

...

## 27 Senior managers and certification regime: Certification regime

...

**27.6 Other exclusions**

Single Market Directives

27.6.1 G ~~Under section 63E(7) of the Act, this chapter does not apply to an arrangement which allows an *employee* to perform a function if the question of whether the *employee* is fit and proper to perform the function is reserved under any of the *Single Market Directives* or the *auction regulation* to an authority in a country or territory outside the *United Kingdom*. [deleted]~~

...

**27.8 Definitions of the FCA certification functions**

...

Functions requiring qualifications

...

27.8.11 G (1) ...

(2) SYSC 27.8.10R applies to an *overseas SMCR firm* irrespective of whether the function in TC App 1.1.1R (Activities and Products/Sectors to which TC applies) applies to ~~*incoming EEA firms*~~ *or overseas firms* for the purposes of TC.

(3) ...

...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
(1) <del>A UK</del> <u>An SMCR banking firm</u> <del>A third country SMCR banking firm</del>	Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the <i>firm</i> in column (1) of this row (1).  This includes any <i>person</i> who meets any of the criteria set out in articles 3 to 5 of <del>Commission Delegated Regulation (EU) No 604/2014</del> <u>the <i>Material Risk Takers Regulation</i></u> (criteria to identify categories of staff whose professional

	activities have a material impact on an institution’s risk profile).
(2) <del>An EEA SMCR banking firm</del> For these purposes, sub-paragraphs (i) and (ii) in SYSC 19D.1.1R(1)(d) (application of the dual-regulated firms Remuneration Code) do not apply. <del>[deleted]</del>	In relation to a firm in column (1) of this row (2), the definition of <i>dual-regulated firms Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of firm in the same way as it includes <i>employees</i> of a <i>third country SMCR banking firm</i> .
...	...
Note: For a <i>TP firm</i> in one of the rows of column (1), the definition of the <u>persons included in column (2) applies in the same way as it does to other overseas SMCR firms in that row. The definition of <i>dual-regulated firms Remuneration Code staff</i> applies accordingly.</u>	

...

Client-dealing function

...

27.8.19 R Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
...	...
(5) <del>Acting as a ‘bidder’s representative’ in relation to <i>bidding in emissions auctions</i>. [deleted]</del>	<del>Acting as a ‘bidder’s representative’ has the meaning in sub-paragraph 3 of article 6(3) of the <i>auction regulation</i>.</del>

...

**Part 2: Comes into force 9 December 2019**

Amend the following as shown.

...

## 4 General organisational requirements

...

### 4.4 Apportionment of responsibilities

...

Allocating functions of apportionment and oversight

...

#### 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not a <i>TP firm</i> <del>or TP UCITS qualifier</del> ?	...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to a <i>TP firm</i> <del>or UCITS qualifier</del> ?	...
...	...	...

...

## 23 Definition of SMCR firm and different types of SMCR firms Annex 1

...

Part Three: Definition of exempt firm

...

#### 3.4 R A ~~UCITS qualifier~~ TP UCITS qualifier is an exempt firm (see section 266 of the Act (Disapplication of rules)).

3.5 R ~~An AIFM qualifier~~ A TP AIFM qualifier is an exempt firm.

...

Part ~~Five~~ Six: Definition of limited scope SMCR firm

...

~~5.3~~ 6.3 R A firm listed in the table in SYSC 23 Annex 1 ~~5.4R~~ 6.4R is a *limited scope SMCR firm* if:

- (1) its principal purpose is to carry on activities other than *regulated activities*; and
- (2) it is not a *MiFID investment firm* or an EEA MiFID investment firm that is a TP firm.

...

Part ~~Six~~ Seven: Exclusion from enhanced regime

...

~~6.4~~ 7.4 R ~~A firm is excluded from the enhanced regime if:~~ [deleted]

- (1) ~~it is exempt from MiFID under article 2(1)(j); and~~
- (2) ~~its only permission is bidding in emissions auctions.~~

...

## 24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

### 24 Which FCA-prescribed senior management responsibilities apply to which Annex 1 kind of firm

...

Solo regulated firms

...

4.2 R Table: FCA-prescribed senior management responsibility applying to solo regulated firms

(1)	(2)	(3)	(4)	(5)
-----	-----	-----	-----	-----

Brief description of responsibility	Reference letter of responsibility	UK core firm	<del>Third country</del> <u>Overseas</u> core firm	Enhanced scope firm
...				
<p><b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 4.1R. Therefore:</p> <p>(1) ...</p> <p>(2) <del>Third country</del> <u>Overseas</u> core firm (column four) refers to SYSC 24 Annex 1 4.1R(2)(b); and</p> <p>(3) ...</p>				

...

**26 Senior managers and certification regime: Overall and local responsibility**

**26.1 Application**

...

Territorial scope

...

26.1.7 R Table: Application of this chapter to a ~~third country~~ an overseas SMCR firm

Reference in this chapter	Modification
...	...
chief executive	<i>branch manager or the person performing the head of <del>third country</del> <u>overseas</u> branch function or the PRA's Head of Overseas Branch designated senior management function</i>

...

**27 Senior managers and certification regime: Certification regime**

...

**27.8 Definitions of the FCA certification functions**



...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
...	...
<p>(5) <del>A firm that would fall within SYSC 19A.1 if it applied to an incoming EEA firm</del></p> <p>For these purposes sub-paragraphs (i) and (ii) in SYSC 19A.1.1R(1)(d) (application of the Remuneration Code) do not apply. <del>[deleted]</del></p>	<p>In relation to a firm in column (1), the definition of <i>Remuneration Code staff</i> is extended so that it includes employees of this kind of firm in the same way as it includes employees of an overseas firm in row (4) of this table.</p>
(6) ...	...
(7) <del>An above-threshold non-EEA non-UK AIFM or an incoming EEA AIFM</del>	...
(8) ...	...
(9) <del>A firm that would fall within SYSC 19C.1 if it applied to an incoming EEA firm or an incoming Treaty firm [deleted]</del>	<p>In relation to a firm in column (1), the definition of <i>BIPRU Remuneration Code staff</i> is extended so that it includes employees of this kind of firm in the same way as it includes employees of a third country BIPRU firm in column (1) of row (8) of this table.</p>
(10) ...	...
(11) <del>An EEA UCITS management company [deleted]</del>	<p>In relation to a firm in column (1), the definition of <i>UCITS Remuneration Code staff</i> is extended so that it includes employees of this kind of firm in the same way as it includes employees of firms in row (10) of this table.</p>

Note: For a *TP firm* in one of the rows of column (1), the definition of the *persons* included in column (2) applies in the same way as it does to other *overseas SMCR firms* in that row. The definitions of *dual-regulated firms* *Remuneration Code staff*, *Remuneration Code staff*, *AIFM Remuneration Code staff* and *BIPRU Remuneration Code staff* ~~applies~~ apply accordingly.

...

## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and purpose

##### 1.1 Application

...

Where does it apply?

...

- 1.1.12 R *A person will not be subject to COCON to the extent that it would be contrary to the ~~UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation~~ requirements of an EU measure passed or made before exit day, to the extent that those requirements continue to have effect after exit day under the EUWA.*

...

## Annex C

### Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and purpose

##### 1.1A Application

...

What?

...

- 1.1A.4 G ~~The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER 2.1A.2R* and *FIT 1.2.4AG*. See also *COBS 1 Annex 1, Part 2, 1.1R* (EEA territorial scope rule: compatibility with European law)).~~  
[deleted]

Where?

- 1.1A.5 G The territorial scope of the *approved persons* regime and its application to ~~*incoming EEA firms*~~ is set out in *SUP 10A.1* (see ~~*SUP 10A.1.11R*~~ and ~~*SUP 10A.1.13R*~~).

...

#### 2 The Statements of Principle for Approved Persons

##### 2.1A The Statements of Principle

...

- 2.1A.2 R An *approved person* will not be subject to a *Statement of Principle* to the extent that it would be contrary to the ~~*UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation*~~ requirements of an *EU* measure passed or made before *exit day*, to the extent that those requirements continue to have effect after *exit day* under the *EUWA*.

...

## Annex D

### Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1: Comes into force 29 March 2019

## 1 General

### 1.1 Application and purpose

#### 1.1.1 G FIT applies to:

...

- (3) ~~an EEA firm or a Treaty firm that wishes to establish a branch into the United Kingdom using EEA rights or Treaty rights; or apply for a top-up permission; [deleted]~~

...

...

### 1.2 Introduction

...

- 1.2.4A G (1) ~~Under Article 21(1)(d) of the MiFID Org Regulation and articles 34 and 35 of MiFID, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the firm's Home State. Therefore, in assessing the fitness and propriety of: [deleted]~~

(a) ~~a person to perform a controlled function; or~~

(b) ~~a certification employee;~~

~~solely in relation to the MiFID business of an incoming EEA firm, the FCA will not have regard to that person's competence and capability.~~

- (2) ~~Where the function relates to:~~

(a) ~~matters outside the scope of MiFID; or~~

- (b) ~~business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example *insurance distribution activities* in relation to *life policies*; or~~
- (c) ~~matters within the responsibility of the *FCA* as the *Host State regulator*, for example *money laundering* responsibilities (see the *money laundering reporting function* (CF11 and SMF17)) or (3) below;~~

~~the *FCA* will have regard to a *person's* competence and capability as well as their honesty, integrity, reputation and financial soundness.~~

- (3) ~~The *FCA* will have regard to a natural *person's* competence and capability to the extent they give a *personal recommendation* or information about *financial instruments*, *structured deposits*, *investment services* or *ancillary services* on behalf of a *UK branch* of:~~
  - (a) ~~an *investment firm* authorised under *MiFID*;~~
  - (b) ~~an *AIFM investment firm* carrying out activities under article 6(4) of the *AIFMD* (provision of additional services);~~
  - (c) ~~a *UCITS investment firm* carrying out activities under article 6(3) of the *UCITS Directive* (provision of additional services); or~~
  - (d) ~~a *credit institution*.~~
- (4) ~~(3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of *MiFID*.~~
- (5) ~~(1) to (4) are also relevant to the matters an *EEA SMCR firm* should take into account when assessing any *staff being assessed under FIT*. Where, under (1) to (4):~~
  - (a) ~~the *FCA* will have regard to a *person's* competence and capability, so should a *firm* when assessing any *staff being assessed under FIT*; and~~
  - (b) ~~the *FCA* will not have regard to a *person's* competence and capability, a *firm* need not do so either when assessing any *staff being assessed under FIT*.~~

1.2.4B G ...

1.2.4C G Under article 10(1) and (2) of the *IDD* appropriate knowledge and ability is reserved to the *firm's Home State* (see *SUP-13A Annex 2G*). [deleted]

...

**Part 2: Comes into force 9 December 2019**

Amend the following as shown.

**1 General****1.1 Application and purpose**

...

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that:

(1) an *SMCR firm* should consider when:

...

(e) (in the case an *FCA-authorized person* that is not a *limited scope SMCR firm*) assessing the fitness of a *non-SMF board director subject to competence requirements* under the *competent employees rule*, any ~~directly applicable EU legislation~~ *onshored regulation* or any other requirement of the *regulatory system*.

...

...

## Annex E

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## Part 1: Comes into force 29 March 2019

Amend the following as shown.

## 10A FCA Approved Persons

## 10A.1 Application

...

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R ~~This chapter does not apply to: [deleted]~~

~~(1) an incoming EEA firm; or~~

~~(2) an incoming Treaty firm; or~~

~~(3) a UCITS qualifier;~~

~~if and in so far as the question of whether a person is fit and proper to perform a particular function in relation to that firm is reserved, under any of the Single Market Directives, the Treaty, the UCITS Directive or the auction regulation or the benchmarks regulation, to an authority in a country or territory outside the United Kingdom.~~

10A.1.8 G ~~SUP 10A.1.7R reflects the provisions of section 59(8) of the Act and, in relation to an incoming Treaty firm and a UCITS qualifier, the Treaty and the UCITS Directive. It preserves the principle of Home State prudential regulation. In relation to an incoming EEA firm exercising an EEA right, or an incoming Treaty firm exercising a Treaty right, the effect is to reserve to the Home State regulator the assessment of the fitness and propriety of a person performing a function in the exercise of that right. A member of the governing body, or the notified UK branch manager, of an incoming EEA firm, acting in that capacity, will not therefore have to be approved by the FCA under the Act. [deleted]~~

10A.1.9 G ~~Notwithstanding SUP 10A.1.8G, an incoming EEA firm or incoming Treaty firm will have had to consider the impact of the Host State rules with which it is required to comply when carrying on a passported activity or Treaty activity through a branch in the United Kingdom. An incoming EEA firm will have been notified of those provisions under~~



Part II of Schedule 3 to the Act in the course of satisfying the conditions for *authorisation* in the *United Kingdom*. [deleted]

- 10A.1.10 G ~~An *incoming EEA firm* will have to consider, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.~~ [deleted]

Incoming EEA firms: passported activities from a branch

- 10A.1.11 R (1) Only the following *FCA controlled functions* apply to an ~~*incoming EEA firm*~~ a *TP firm* with respect to its ~~*passport*~~ *passport* ~~*activities*~~ *passport* ~~*activities*~~ (as defined in (2)) carried on from a *branch* in the *United Kingdom*:
- (a) the *money laundering reporting function*;
  - (1)
  - (b) the *significant management function*, in so far as the function relates to:
    - (i) ~~*designated investment business*~~ other than ~~*dealing in investments as principal*~~, disregarding article 15 of the *Regulated Activities Order*; or
    - (a)
    - (ii) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and
    - (b)
  - (c) the *customer function* other than where this relates to the function in *SUP* 10A.10.7R (4) and (7).
  - (3)
- (2) For the purposes of this rule, passported activities of a *TP firm* means *regulated activities* that meet the following conditions:
- (a) they are included in the *permission* of the *TP firm* under the *EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX])*; and
  - (b) the *firm* was entitled to carry them on in the *United Kingdom* immediately before *exit day* by virtue of section 31(1)(b) or (c) of the *Act* as it was in force immediately before *exit day*.

...

Incoming EEA firms etc with top-up permission activities from a UK branch

- 10A.1.13 R In relation to the activities of a *TP firm* ~~for which it has a top-up permission~~ that are included in its *permission* but that are not passported activities (as defined in SUP 10A.1.11R), only the following *FCA controlled functions* apply:

...

...

Appointed representatives

- 10A.1.15 R The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except in relation to *CBTL business* or an *introducer appointed representative*, as they apply to an *FCA-authorized person*:

- (1) the *FCA governing functions*, subject to SUP 10A.1.16R and except for a *tied agent* of ~~an~~ a *firm* that is an *EEA MiFID investment firm* and is also a *TP firm*; and

...

...

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries.

...

- 10A.1.18 R The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm* or an *EEA MiFID investment firm* that is a *TP firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

...

...

Bidders in emissions auctions

- 10A.1.21 G ~~For a *firm* that is exempt from *MiFID* under article 2(1)(j) and whose only permission is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are: [deleted]~~

- (1) ~~the *FCA governing functions*;~~

- (2) ~~the money laundering reporting function; and~~
- (3) ~~the customer function.~~

~~This is because the FCA-approved person regime specifies a number of functions by incorporation of requirements in SYSC; however, a firm carrying on auction regulation bidding is only subject to SYSC to a limited extent in relation to that activity. This means that the FCA required functions do not apply to auction regulation bidding, except for the money laundering reporting function. Similarly, the significant management function does not apply in relation to auction regulation bidding because, in carrying on that activity, a firm is not subject to SYSC 2.1.1R or SYSC 4.1.1R and is not undertaking proprietary trading.~~

...

## 10A.6 FCA governing functions

...

Director function (CF1)

...

- 10A.6.8 R (1) ...
- (2) (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* ~~or is regulated by an EEA regulator.~~

...

...

Non-executive director function (CF2)

...

- 10A.6.13 (1) ...
- (2) However, (1) does not apply if that *parent undertaking* or *holding company* has a *Part 4A permission* ~~or is regulated by an EEA regulator.~~

...

## 10A.8 Systems and controls functions

Systems and controls function (CF28)

...

10A.8.2 R The *systems and controls function* does not apply in relation to:

- (1) ~~*bidding in emissions auctions* carried on by a firm that is exempt from *MiFID* under article 2(1)(j); or [deleted]~~

...

...

Full scope UK AIFM

10A.8.5 G For a full-scope UK AIFM, the requirement to have an *employee* responsible for reporting to the *governing body* of the *firm* or the audit committee for matters in *SUP* 10A.8.1R(2) and *SUP* 10A.8.1R(3) is derived from the ~~AIFMD level 2 regulation~~ AIFMD level 2 regulation, which imposes obligations on such *firms* to have a permanent risk management function and, where appropriate and proportionate for their business, an internal audit function.

...

## 10A.14 Changes to an FCA-approved person's details

Moving within a firm

...

10A.14.4A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the ESMA~~ a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.docx> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

Ceasing to perform an FCA controlled function

...

10A.14.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA Annex III~~ template referred to in *SUP* 10A.14.4AG where there is a change to a member of the

*management body* or a *person* who effectively directs the business.

...

...

## 10A Annex Frequently asked questions 1G

	Question	Answer
	<b>Type of firm</b>	
...	...	...
	<b>Requirements of the regime</b>	
...	...	...
4	Do the <i>FCA controlled functions</i> apply to an <del><i>incoming EEA firm</i></del> <i>overseas firm</i> that is providing <del><i>cross border services</i></del> <u>cross-border services</u> into the <i>United Kingdom</i> from an <u>overseas establishment</u> ?	No. The <i>FCA-approved persons regime</i> does not apply to <del><i>cross border services</i></del> <u>cross-border services</u> ( <i>SUP 10A.1.5R</i> ).
...	...	...

...

## 10C FCA senior managers regime for approved persons in SMCR firms

### 10C.1 Application

...

EEA firms: general application

10C.1.4 R ~~This chapter does not apply to an *SMCR firm* if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* under: [deleted]~~

- (1) ~~the *Single Market Directives*;~~
- (2) ~~the *Treaty*;~~
- (3) ~~the *auction regulation*;~~

- (4) ~~the *benchmarks regulation*.~~
- 10C.1.5 G (1) ~~*SUP 10C.1.4R* reflects the provisions of section 59(8) of the *Act* and, where relevant, the *Treaty*. [deleted]~~
- (2) ~~It preserves the principle of *Home State* prudential regulation.~~
- (3) ~~For an *EEA SMCR firm*, the effect is to reserve to the *Home State regulator* the assessment of fitness and propriety of a *person* performing a function in the exercise of an *EEA right*. A member of the *governing body*, or the notified *UK branch manager*, of an *EEA SMCR firm*, acting in that capacity, will not, therefore, have to be approved by the *FCA* under the *Act*.~~
- (3A) ~~For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to be carrying out *FCA* functions to the extent that the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* ‘key function’.~~
- (4) ~~Aside from (1) to (3A) an *EEA SMCR firm* should have:~~
- (a) ~~considered the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or a *Treaty activity* through a *branch* in the *United Kingdom*;~~
- (b) ~~been notified of those provisions under Part II of Schedule 3 to the *Act* in the course of satisfying the conditions for *authorisation* in the *United Kingdom*; and~~
- (c) ~~considered, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.~~

...

## 10C.8A EEA branch senior manager function (SMF21)

...

10C.8A.2 R ...

- (4) Paragraph (2)(d) only applies in relation to the activities regulated activities of a *firm* for which it has a top-up permission that are not passported activities as defined in (5).

- (5) For the purposes of this rule, passported activities of a TP firm means regulated activities that meet the following conditions:
- (a) they are included in the permission of the TP firm under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX]); and
  - (b) the firm was entitled to carry them on in the United Kingdom immediately before exit day by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before exit day.

...

## 10C.10 Application for approval and withdrawing an application for approval

...

How to apply for approval

...

- 10C.10.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the~~ ESMA a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.doc> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

## 10C.14 Changes to an FCA-approved person's details

...

Ceasing to perform an FCA-designated senior management function

...

- 10C.14.6A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ESMA Annex III template referred to in SUP 10C.10.9AG where there is a change to a member of the

*management body* or a *person* who effectively directs the business.

...

...

**10C Annex 1 What functions apply to what type of firm**

...

Part Three: Functions applying to banking sector firms

- 3.1 R (1) The table in *SUP* 10C Annex 1 3.2R sets out which *FCA controlled function* applies to which type of *SMCR banking firm*.
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- (a) a *UK SMCR banking firm*;
  - (b) an *EEA SMCR banking firm*; and
  - (c) ~~a *third country*~~ an *overseas SMCR banking firm*.

- 3.2 R Table: Controlled functions applying to banking firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) <del>Third-country</del> <u>Overseas</u> firm
...				
<p>Note: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in <i>SUP</i> 10C Annex 1 3.1R. Therefore:</p> <p>(1) column three (UK firm) refers to <i>SUP</i> 10C Annex 1 3.1R(2)(a);</p> <p>(2) column four (EEA firm) refers to <i>SUP</i> 10C Annex 1 3.1R(2)(b); and</p> <p>(3) column five (<del>Third-country</del> <u>Overseas</u> firm) refers to <i>SUP</i> 10C Annex 1 3.1R(2)(c).</p>				

Part Four: Functions applying to insurance sector firms



- 4.1 R (1) The table in SUP 10C Annex 1 4.2R sets out which *FCA controlled function* applies to which type of *SMCR insurance firm*.
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- (a) a *Solvency II firm* not within any other paragraph of this rule;
  - (b) a *Solvency II firm* ~~within paragraph (c) of the Glossary definition of *Solvency II firm* (EEA branch)~~ that is a *TP firm*;
  - (c) a *Solvency II firm* that:
    - (i) is within paragraph (b) of the *Glossary* definition of *Solvency II firm* (third country branch undertaking that would require *Part 4A permission* as an insurance or reinsurance undertaking if its head office was situated in the *United Kingdom*); and
    - (ii) does not fall within SUP 10C Annex 1 4.1R(2)(b);
  - (d) a *small non-directive insurer*;
  - (e) a *firm* in SYSC 23 Annex 1 5.2R (*firms* in run-off); and
  - (f) an *insurance special purpose vehicle*.
- (3) An *insurance special purpose vehicle* only falls into paragraph (2)(f). Subject to that, a *firm* in (2)(e) does not fall into any other paragraph.

...

4.3 R Table: Controlled functions applying to insurance sector firms

(1) Brief description of function	(2) Function number	(3) Solvency II and large NDF	(4) EEA branches	(5) Third country Overseas branches	(6) Small NDF and other	(7) ISPV
...						
Note 1: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 4.1R. Therefore:						

- (a) column three (Solvency II and large NDF) refers to *SUP* 10C Annex 1 4.1R(2)(a);
- (b) column four (EEA branches) refers to *SUP* 10C Annex 1 4.1R(2)(b);
- (c) column five (~~Third country~~ Overseas branches) refers to *SUP* 10C Annex 1 4.1R(2)(c);
- (d) column six (Small NDF and other) refers to *SUP* 10C Annex 1 4.1R(2)(d) and (e); and
- (e) column seven (ISPV) refers to *SUP* 10C Annex 1 4.1R(2)(f).

Note 2: ...

...

## TP 6 Financial Services (Banking Reform) Act 2013: Approved persons

Note to the reader

- 6.1.1-2 G (1) *SUP* TP 6 has not been amended to reflect changes in the *FCA Handbook* and *Glossary* since the beginning of 2018 (except for some changes to *SUP* TP 6.1.1-1G made in 2019). This is because it is made up of transitional provisions that mostly expired before then.
- (2) A small number of provisions may have effect beyond that date. To help the reader, the table in *SUP* TP 6.1.1-1G explains how superseded *Glossary* terms in *SYSC* TP 5 should be interpreted.
- 6.1.1-1 G Table: Meaning of superseded *Glossary* terms

Term in <i>SYSC</i> TP 5	Term that has replaced it
EEA relevant authorised person	<i>EEA SMCR banking firm</i>
non-UK relevant authorised person	an <i>EEA SMCR banking firm</i> or a <del>third-country</del> <u><i>SMCR banking firm</i> an overseas <i>SMCR banking firm</i></u>
...	...
third-country relevant authorised person	<del>third-country</del> <u>overseas <i>SMCR banking firm</i> but not an <i>EEA SMCR banking firm</i></u>
...	...

...

**Part 2: Comes into force [date] 2019 [about six months before 9 December 2019]**

**TP 12 Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms**

...

**12.2 Conversion of existing approvals**

...

12.2.5 R Mapping table: Potential conversion of approval for existing controlled functions into approval for designated senior management functions

<b>Part One (core SMCR firms and limited scope SMCR firms)</b>		
<b>(1) Pre-Implementation Controlled Function</b>	<b>(2) New FCA-designated senior management function</b>	<b>(3) Is notification required?</b>
Executive functions		
...		
Chief executive function	(1) ... (2) Head of <del>third-country</del> <u>overseas</u> branch function (3) ...	...
...		

**Part 3: Comes into force 9 December 2019**

**10A FCA Approved Persons in Appointed Representatives**

**10A.1 Application**

...

Exclusions and modifications

...

10A.1.15A R The *FCA governing functions* do not apply to a *tied agent* of an *EEA MiFID investment firm* that is a TP firm.

...

**10C FCA senior managers regime for approved persons in SMCR firms**

...

**10C.4 Specification of functions**

...

10C.4.3 R Table of FCA-designated senior management functions for SMCR firms

Type	SMF	Description of FCA controlled function
<i>FCA governing functions</i>	...	...
	SMF 19	<i>Head of <del>third country</del> overseas branch function</i>
	...	...
...		

...

**10C.5 FCA governing functions: Executive**

...

Head of ~~third country~~ overseas branch function (SMF 19)

- 10C.5.24 R (1) ...
- (2) The *head of ~~third country~~ overseas branch function* is the function of having responsibility alone or jointly with others, for the conduct of all activities of the *United Kingdom branch* of the *firm* which are subject to the *UK regulatory system*.

...

**10C Annex 1 What functions apply to what type of firm**

...

Part Five: Functions applying to core firms

- 5.1 R (1)
- (2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:
- ...
- (b) an *EEA SMCR firm*; and
- (c) an *overseas SMCR firm* not falling into (b); ~~and~~
- (d) ~~a UK SMCR firm falling into SYSC 23 Annex 1 6.4R (a firm exempt under MiFID whose only permission is bidding in emissions auctions)~~. [deleted]

5.2 R Table: Controlled functions applying to core SMCR firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) Other overseas firm	(6) Emission auction bidder
Governing functions					
<i>Chief executive function</i>	SMF 1	✓	×	×	✓
<i>Executive director function</i>	SMF 3	✓	×	✓	✓
<i>Chair of the governing body function</i>	SMF 9	✓	×	×	✓
<i>Head of <del>third country</del> overseas branch function</i>	SMF 19	×	×	✓	×
<i>Partner function</i>	SMF 27	✓	×	×	✓
Required functions					
<i>Compliance oversight function</i>	SMF 16	✓	×	✓	×
<i>Money laundering reporting function</i>	SMF 17	✓	✓	✓	✓
Other high-level management functions					
<i>EEA branch senior manager function</i>	SMF 21	×	✓	×	×

Note: The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* at SUP 10C Annex 1 5.1R. Therefore:

- (a) column three (UK firm) refers to SUP 10C Annex 1 5.1R(2)(a);
- (b) column four (EEA firm) refers to SUP 10C Annex 1 5.1R(2)(b); and
- (c) column five (Other overseas firm) refers to SUP 10C Annex 1 5.1R(2)(c); ~~and~~
- (d) ~~column six (Emission auction bidders) refers to SUP 10C Annex 1 5.1R(2)(d). [deleted]~~

...

Part Seven: Functions applying to limited scope firms

...

7.8 R Table: Controlled functions applying to limited scope SMCR firms that are sole traders or authorised professional firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) Other overseas firm
Governing functions				
...	...	...	...	...
<i>Head of <del>third country</del> overseas branch function</i>	SMF 19	×	×	✓
...				

**EXITING THE EUROPEAN UNION: TEMPORARY PERMISSION (FINANCIAL SERVICES COMPENSATION SCHEME AND STATUS DISCLOSURE)  
INSTRUMENT 201[X]**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137R (Financial promotion rulers);
  - (3) section 137T (General supplementary powers);
  - (4) section 139A (Power of the FCA to give guidance);
  - (5) section 213 (The compensation scheme); and
  - (6) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. Annex C comes into force on 1 April 2019.
- D. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Compensation sourcebook (COMP)	Annex D

**Notes**

- F. In this instrument, notes shown as “*Editor’s note*:” are intended for the convenience of the reader and do not form part of the legislative text.

**Citation**

- G. This instrument may be cited as the Exiting the European Union: Temporary Permission (Financial Services Compensation Scheme and Status Disclosure) Instrument 201[X].

By order of the Board

[*date*]



**Annex A****Amendments to the Glossary of definitions**

[*Editor's Note:* this Annex takes into account the changes suggested in the proposed Exiting the European Union: Glossary (Amendments) Instrument 201[X] attached to this consultation paper, as if they were made.]

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

*participant firm* (1) a *firm* (including a *TP firm*) other than:

...

(k) a *TP AIFM qualifier*;

(l) a *TP UCITS qualifier*;

(m) a *TP firm* that under section 213(9A) of the *Act* is not to be regarded as a *relevant person*;

...

## Annex B

### Amendments to the General Provisions (GEN)

In this Annex underlining indicates new text and striking through indicates deleted text.

#### 4.1 Application

...

##### Where?

4.1.2 R *GEN 4.3 (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the firm (or by its appointed representative) in the United Kingdom, subject to GEN 4.3.4R (Exception: insurers).*

4.1.2A R *GEN 4.3 (Letter disclosure) applies to a TP firm in relation to activities carried on from an establishment maintained by the TP firm (or by its appointed representative) in the United Kingdom, or carried on by the TP firm (or its appointed representative) into the United Kingdom from an establishment that is not in the United Kingdom, subject to GEN 4.3.4R (Exception: insurers).*

...

4.1.4A R *GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) applies in relation to activities carried on from an establishment maintained by the TP firm (or by its appointed representative) in the United Kingdom or carried on by the TP firm (or its appointed representative) into the United Kingdom from an establishment that is not in the United Kingdom.*

...

#### 4.3 Letter disclosure

##### Disclosure in letters to retail clients

...

4.3.1-A R *A TP firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a retail client, with a view to or in connection with the TP firm carrying on a regulated activity, includes the disclosure in, as the case may be, GEN 4 Annex 1B 1.1R or 1.2R (firms that are not PRA-authorized persons) or, as the case may be, GEN 4 Annex 1B 2.1R or 2.2R (PRA-authorized persons).*

...

**GEN 4 Annex 1B Statutory status disclosure (TP firms)****1 TP firms that are not PRA-authorized persons**

- 1.1 **R** This rule applies to TP firms that are not PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
<u>(1)</u>	<u>A TP firm without a top-up permission</u>	<p>“Deemed authorised and regulated by the Financial Conduct Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</p> <p>(Notes 1, 3 and 4)</p>
<u>(2)</u>	<u>A TP firm with a top-up permission</u>	<p>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</p> <p>(Notes 1, 3 and 4)</p>

- 1.2 **R** This rule applies to TP firms that are not PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
<u>(1)</u>	<u>A TP firm without a top-up permission</u>	<p>“Deemed authorised and regulated by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</p> <p>(Notes 1, 3 and 4)</p>

(2)	<u>A TP firm with a top-up permission</u>	<p><u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
-----	---	---

## 2 TP firms that are PRA-authorized persons

- 2.1 R This rule applies to TP firms that are PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm without a top-up permission</u>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<u>A TP firm with a top-up permission</u>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p>

		(Notes 1, 3 and 4)
--	--	--------------------

- 2.2 R This rule applies to TP firms that are PRA-*authorised persons* in relation to activities carried on by them or their *appointed representative* into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm without a top-up permission</u>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<u>A TP firm with a top-up permission</u>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>

Note 1 = A firm must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.

Note 2 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading

and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Note 3 = A “top-up permission” is a *Part 4A permission* granted to a *firm* which exercised passporting rights, but which activity was outside of the scope of its passport, i.e. where the *regulated activity* in question is not an activity which could be passported.

Note 4 = A *firm* is free to translate the name of its *Home State regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

## Annex C

## Amendments to the Fees manual (FEES)

[*Editor's Note:* this Annex takes into account the changes made by FCA 2018/22, which come into effect on 1 April 2019. It also takes into account the changes suggested in the proposed Exiting the European Union: High Level Standards (Amendment) Instrument 201[X] attached to this consultation paper, as if they were made.]

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 6.5 Compensation costs

## Allocation

...

6.5.6C     R     When identifying the relevant *classes* to which a *TP firm* belongs, the *FSCS* must identify the activity (or activities) in *FEES 6 Annex 3AR* that most closely matches that for which the *TP firm* is treated as having *Part 4A permission*.

...

TP 22     Transitional provisions relating to FSCS levy arrangements for TP firms from 1 April 2019

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>
	<u>Material to which the transitional provision applies</u>		<u>Transitional Provision</u>	<u>Transitional provision: dates in force</u>	<u>Handbook Provisions coming into force</u>
<u>22.1</u>	<u>FEES 6.5.9R</u>	<u>R</u>	<u>The rule referred to in column (2) does not apply to <i>TP firms</i>.</u>	<u>From 1 April 2019, indefinitely</u>	<u>1 April 2019</u>
<u>22.2</u>	<u>FEES TP 22.1R</u>	<u>G</u>	<u>FEES TP 22.1R means that a <i>TP firm</i> that becomes a <i>participant firm</i> part way through a</u>		

			<i>financial year of the compensation scheme will be required to pay a share of a compensation costs levy and a specific costs levy.</i>		
<u>22.3</u>	<u>The changes made to FEES 6 by the Exiting the European Union: Temporary Permission (Financial Services Compensation Scheme and Status Disclosure) Instrument 201[X]</u>	<u>R</u>	<u>The changes in (2) apply to any levy made after 1 April 2019. This is so even if:</u>  <u>(1) the claim against the relevant person or successor in default arose or relates to circumstances arising before that date; or</u>  <u>(2) the relevant person or successor was in default before that date.</u>	<u>From 1 April 2019, indefinitely</u>	<u>1 April 2019</u>



## Annex D

## Amendments to the Compensation Sourcebook (COMP)

[*Editor's Note:* this Annex takes into account the changes made by FCA 2018/22 which come into effect on 1 April 2019. It also takes into account the changes suggested in the proposed Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X] attached to this consultation paper, as if they were made.]

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

## 6.2 Who is a relevant person?

...

6.2.4 G A TP firm that under section 213(9A) of the Act is not to be regarded as a relevant person is not a participant firm. For the purposes of the FCA's compensation rules, this means that most (but not all) TP firms operating in the UK without an establishment are not participant firms.

...

## TP 1 Transitional Provisions

## TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
47	<u>Amendments introduced to COMP by the Exiting the European Union: Temporary Permission (Financial Services Compensation Scheme and Status</u>	<u>R</u>	<u>The amendments referred to in column (2) do not apply: (1) in relation to a claim against a TP firm, or against a successor of a TP firm, that was in</u>	<u>From exit day, indefinitely</u>	<u>exit day</u>

	<p><u>Disclosure)</u> <u>Instrument 201[X]</u></p>	<p><u>default before exit day; or</u></p> <p><u>(2) to any acts or omissions before exit day that give rise to a claim against a TP firm, or against a successor of a TP firm, after exit day;</u></p> <p><u>but nothing in limb (2) of this rule shall limit the ability of the FSCS to pay compensation in respect of a claim against a TP firm or a successor of a TP firm, where it is a relevant person for a reason other than because it is a TP firm.</u></p>		
--	--	---	--	--

**EXITING THE EUROPEAN UNION: FEES AND DISPUTE RESOLUTION:  
COMPLAINTS (AMENDMENTS) INSTRUMENT 201[X]**

**Powers exercised by the Financial Ombudsman Service**

A. The Financial Ombudsman Service Limited:

- (1) makes and amends the rules for the voluntary jurisdiction;
- (2) fixes and varies the standard terms for voluntary jurisdiction participants;

as set out in Annex A and Annex B of this instrument; and

- (3) makes and amends the rules and guidance relating to complaints handling procedures of the Financial Ombudsman Service;
- (4) makes and amends the rules for the voluntary jurisdiction; and
- (5) fixes and varies the standard terms for voluntary jurisdiction participants;

to incorporate changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 201[X], in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 227 (Voluntary jurisdiction);
- (b) paragraph 8 (Information, advice and guidance) of Schedule 17;
- (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17
- (e) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
- (f) paragraph 22 (Consultation) of Schedule 17.

B. The making and amendment of the rules and guidance and the fixing and varying of the standard terms, as set out at paragraph A above, by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

C. The Financial Conduct Authority makes this instrument in the exercise of:

- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
- (2) the following powers and related provisions in the Act:
  - (a) section 137A (The FCA’s general rules);
  - (b) section 137T (General supplementary powers);
  - (c) section 139A (Power of the FCA to give guidance);
  - (d) section 226 (Compulsory jurisdiction);
  - (e) section 234 (Industry funding);
  - (f) paragraph 13 (FCA’s rules) of Schedule 17; and

(g) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).

- D. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at paragraph A above.

### Commencement

F. This instrument comes into force on *[date]*.

### Amendments to the Handbook

G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Fees Manual (FEES)	Annex A
Dispute Resolution: Complaints sourcebook (DISP)	Annex B

H. Changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 201[X] are incorporated by the Financial Ombudsman Service Limited as set out at paragraph A above.

### Notes

I. In Annex B to this instrument, the "notes" (indicated by "Note:") are included for the convenience of readers but do not form part of the legislative text.

### Citation

J. This instrument may be cited as the Exiting the European Union: Fees and Dispute Resolution: Complaints (Amendments) Instrument 201[X].

By order of the Board of the Financial Ombudsman Service Limited  
*[date]*

By order of the Board of the Financial Conduct Authority  
*[date]*

## Annex A

### Amendments to the Fees manual (FEES)

[*Editor's Note:* this Annex takes into account the changes made by Exiting the European Union: High Level Standards (Amendments) Instrument 201[X] which come into effect on 1 April 2019.]

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 5 Financial Ombudsman Service Funding

##### 5.1 Application and Purpose

...

5.1.1C G For the avoidance of doubt, a reference to *firm* in rules in this chapter relating to the *Compulsory Jurisdiction* also includes a reference to a *TP firm*, a *TA EMI firm*, a *TA PI firm* and a *TA RAISP firm*.

...

##### 5.3 The general levy

...

5.3.2A G When identifying the relevant *industry block(s)*, the *TP firm*, *TA EMI firm*, *TA PI firm* or *TA RAISP firm* must identify the activity (or activities) in *FEES 5 Annex 1R* that most closely matches that for which that *firm* is treated as having *Part 4A permission*.

...

5.3.8B R A *VJ participant* which is also a *TP person* will pay 20% of the annual levy required by *FEES 5.3* and *FEES 5 Annex 2R*.

...

#### 5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2019/20

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For authorised payment institutions, registered account information service providers, electronic money issuers (except for small electronic money institutions), the Post Office Limited, the Bank of England, government departments and local authorities, <u>TA EMI firms</u> , <u>TA PI firms</u> and <u>TA RAISP firms</u> , relevant income as described in FEES 4 Annex 11 Part 3	
...		
18-fee-paying electronic money issuers	For all fee-paying electronic money issuers except for small electronic money institutions, and <u>TA EMI firms</u> , average outstanding electronic money, as described in FEES 4 Annex 11 Part 3.	

## Annex B

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### INTRO Introduction

#### INTRO Introduction 1

...

#### Chapter 1: Treating complainants fairly

INTRO DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. ~~Some of these rules also apply to certain *branches of firms* elsewhere in the EEA and certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*.~~

...

#### 1 Treating complainants fairly

#### 1.1 Purpose and application

##### Purpose

1.1.1 G This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments: ~~in the *United Kingdom*, by certain *branches of firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.~~

(1) in the *United Kingdom*; or

(2) in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm*, with respect to services provided into the *United Kingdom*.

1.1.1A G This chapter is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

##### Application to firms

1.1.3 R (1) Subject to *DISP* 1.1.5R, this chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative*:

(a) in the *United Kingdom*; or

(b) in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*.

...

(3) ~~The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*. [deleted]~~

(4) ~~This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for *complaints* from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme* under the freedom to provide *cross border services*. [deleted]~~

...

1.1.3A D The *complaints reporting directions* apply to a *firm* that provides *payment services* or issues *electronic money* in respect of:

(1) *complaints* from *payment service users*; and

(2) *complaints* from *electronic money* holders that are *eligible complainants*

concerning activities carried on from an establishment maintained by the *firm* in the *United Kingdom* (or in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*).

...

1.1.5 R This chapter does not apply to:

...

(5) a *full-scope UK AIFM*, or a *small authorised UK AIFM* or an *incoming EEA AIFM*, for *complaints* concerning *AIFM management functions* carried on for an *AIF* that is a *body corporate* unless it is a *collective investment scheme*;

...



...

Additional requirements for insurance and reinsurance distribution business in the UK

- 1.1.10-A R Where *insurance distribution activities* are carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom* (or in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*), a *firm* must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a person who is not an *eligible complainant*.

...

...

~~Additional IDD requirements for EEA branches of UK firms~~

- 1.1.10-B R ~~Where *insurance distribution or reinsurance distribution* is carried on from a *branch* maintained by a *UK firm* or its *appointed representative* in another *EEA State*, the *firm* must:~~
- ~~(1) have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *customer*; and~~
  - ~~(2) solely in relation to its *insurance distribution business*, adhere to one or more relevant *ADR entities* in that *EEA State* in respect of *consumer disputes*.~~

~~[Note: articles 7(2), 14 and 15(1) of the *IDD*] [deleted]~~

Application to payment services providers that are not firms

- 1.1.10A R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to *payment service providers* that are not *firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*).
- 1.1.10A D The *complaints reporting directions* apply to a *payment service provider* that is not a *firm* in respect of *complaints* from *payment service users* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*).
- B

...

Application to electronic money issuers that are not firms

1.1.10C R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to an *electronic money issuer* that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA EMI firm* with respect to services provided into the *United Kingdom*).

1.1.10C D The *complaints reporting directions* apply to an *electronic money issuer* that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA EMI firm* with respect to services provided into the *United Kingdom*).

...

#### Application to UCITS management companies

1.1.10E R For *complaints* related to *collective portfolio management* services of a *UK UCITS management company* for a *UCITS scheme* ~~or an *EEA UCITS scheme*~~, *DISP 1.1.3R(1)* applies, except where modified as follows:

- (1) the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; ~~and~~
- (2) ~~the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, as modified in (1), also apply where the services are provided from a *branch* in another *EEA State* (and any reference to *respondent* in the *consumer awareness rules* includes such a *branch*):~~ [deleted]

1.1.10F R ~~For *complaints* related to *collective portfolio management* services of an *EEA UCITS management company* for a *UCITS scheme*, *DISP 1.1.3R(1)* applies, except where modified as follows:~~

- (1) ~~where the services are provided from a *branch* in the *United Kingdom*, the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; and~~
- (2) ~~this chapter, except the *consumer awareness rules*, *complaints handling rules*, *complaints record rule* and *complaints data publication rules*, also applies to an *EEA UCITS management company* providing services in the *United Kingdom* under the freedom to provide *cross border services*.~~ [deleted]

...

#### 1.1A Complaints handling requirements for MiFID complaints

Application: Who? What?

...

1.1A.2 R For the *MiFID complaints* of a *third country investment firm*, the provisions marked “~~EU~~ UK” shall apply as *rules*.

1.1A.3 G A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:

...

(4) the activities permitted by the UK provisions which implemented article 6(3) of the *UCITS Directive* when carried on by a *collective portfolio management investment firm*; and

(5) the activities permitted by the UK provisions which implemented article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*.

...

1.1A.5 G In contrast to the other provisions in *DISP 1* which generally apply to *complaints from eligible complainants*, subject to *DISP 1.1A.6R*:

(1) the obligations in this section that apply to the *MiFID complaints* of *MiFID investment firms*, apply to complaints from “clients” as defined in the UK provisions which implemented MiFID (which includes *retail clients*, *professional clients* and (in relation to *eligible counterparty business*) *eligible counterparties*; and

...

1.1A.6 R (1) Only the provisions in this section marked “~~EU~~ UK” and *DISP 1.1A.39R* apply to a *MiFID complaint* received from a *retail client*, *professional client* or an *eligible counterparty* that is not an *eligible complainant*.

...

Application: Where?

1.1A.7 R The table below sets out how *DISP 1.1A* applies to *MiFID complaints* relating to:

(1) the activities of a *MiFID investment firm* carried on from an establishment in the *United Kingdom*; and

(2) the *equivalent business of a third country investment firm* where the complaint is received from a *retail client* or an *elective professional client*.<sup>5</sup>

- (3) ~~activities carried on from a branch of a UK firm in another EEA State; and [deleted]~~
- (4) ~~activities carried on from a branch of an EEA firm in the United Kingdom. [deleted]~~

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms, ~~branches of UK firms and UK branches of EEA firms~~

<b>(1) Provision</b>	<b>(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?</b>	<b>(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?</b>	<b>(4) Provision applies to a branch of a UK firm in another EEA State?</b>	<b>(5) Provision applies to a branch of an EEA firm in the UK?</b>
1.1A.10 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.11R	Yes	Yes	No	<del>Yes</del>
1.1A.12 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.13 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.14G	Yes	Yes	<del>Yes</del>	No
1.1A.15G	Yes	Yes	<del>Yes</del>	No
1.1A.16 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.17 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.18 <del>EU</del> <u>U</u> <u>K</u>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.19G	Yes	Yes	<del>Yes</del>	No

1.1A.20R	Yes	Yes	No	Yes
1.1A.21G	Yes	Yes	No	Yes
1.1A.22R	Yes	Yes	No	Yes
1.1A.23R	Yes	Yes	No	Yes
1.1A.24 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.25 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.26R	Yes	Yes	No	Yes
1.1A.27G	Yes	Yes	No	Yes
1.1A.28R	Yes	Yes	No	Yes
1.1A.29 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.30 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.31R	Yes	Yes	No	Yes
1.1A.32G	Yes	Yes	No	Yes
1.1A.33G	Yes	Yes	No	Yes
1.1A.34G	Yes	Yes	No	Yes
1.1A.35R	Yes	Yes	No	Yes
1.1A.36R	Yes	Yes	No	Yes
1.1A.37 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.38 <u>EUU</u> <u>K</u>	Yes	Yes	Yes	Yes
1.1A.39R	Yes	Yes	No	Yes
1.1A.40R	Yes	Yes	No	No
1.1A.41G	Yes	Yes	No	No
1.1A.42R	No	No	Yes	No
Notes				

(1) The provisions marked “EU” in the table are ‘directly applicable’ which means they apply to all <i>MiFID investment firms</i> in relation to <i>MiFID complaints</i> by virtue of the <i>MiFID Org Regulation</i> . [deleted]
(2) ...

Interpretation of this section

- 1.1A.8 G This section contains a number of provisions marked with the status letters “~~EU~~ UK”, which have been selectively reproduced from the *MiFID Org Regulation*.
- 1.1A.9 G References in column (1) to a word or phrase used in those provisions marked “~~EU~~ UK” have the meaning indicated in column (2) of the table below:

...

Consumer awareness

- 1.1A.10 ~~EU~~ U K Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

...

...

Complaints handling

- 1.1A.12 ~~EU~~ U K Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.
- 1.1A.13 ~~EU~~ U K The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm’s management body.
- 1.1A.14 G The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.

[**Note:** guideline 1(b) and (c) of the ~~complaints handling guidelines~~ Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors, 27 May 2014, JC 2014 43 See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+>

~~+Joint+Committee+~~  
~~+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-~~  
~~a3e4-41e987484e75]~~

- 1.1A.15 G The *firm's* senior management should be responsible for the implementation of the complaints management policy and for monitoring compliance with it.

[**Note:** guideline 1(b) and (c) of the Joint Committee Final Report on guidelines for complaints-handling ~~complaints-handling-guidelines~~ for the securities (ESMA) and banking (EBA) sectors-, 27 May 2014, JC 2014 43 See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+> ~~+Joint+Committee+~~  
~~+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-~~  
~~a3e4-41e987484e75]~~

- 1.1A.16 ~~EU~~  
U  
K Investment firms shall enable clients and potential clients to submit complaints free of charge.

...

- 1.1A.17 ~~EU~~  
U  
K Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.

...

- 1.1A.18 ~~EU~~  
U  
K Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.

...

...

Complaints resolved by close of the third business day

- 1.1A.23 R If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with *DISP* 1.1A.24~~EUUK~~ to *DISP* 1.1A.27G rather than with *DISP* 1.1A.28R to *DISP* 1.1A.34G.

- 1.1A.24 ~~EU~~  
U  
K When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

...

- 1.1A.25 ~~EU~~  
U Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an

K alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation 4 of the *ADR Regulations*~~, or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at [http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF\\_](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF_)]

1.1A.26 R The explanation given by *MiFID investment firms to clients* or potential *clients* in accordance with *DISP 1.1A.25EUUK* must also:

...

1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under *DISP 1.1A.25EUUK* and referred to in *DISP 1.1A.26R* should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

...

Complaints time limits

...

1.1A.29 ~~EU~~  
U  
K When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

...

1.1A.30 ~~EU~~  
U  
K Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation 4 of the *ADR Regulations*~~, or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at [http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF\\_](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF_)]

1.1A.31 R The explanation given by *MiFID investment firms to clients* or potential *clients* in accordance with *DISP 1.1A.30EUUK* must also:

...

1.1A.32 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under *DISP 1.1A.30EUUK* and referred to in *DISP 1.1A.31R* should be set out clearly, comprehensibly, in an easily



accessible way and prominently within the text of those responses.

...

...

#### Complaints records

- 1.1A.37 ~~EU~~ Investment firms shall keep a record of the complaints received and the measures taken for their resolution.  
U  
K

...

#### Complaints reporting

- 1.1A.38 ~~EU~~ Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.  
U  
K

...

...

#### Complaints data publication

...

- 1.1A.41 G The effect of the *complaints data publication rules* and *DISP 1.1A.37*~~EUUK~~ is that, for the purposes of complying with those rules, a *firm's complaints data summary* should include relevant data about any *MiFID complaints* received by the *firm*.

#### ~~ADR entities and branches of UK MiFID investment firms in other EEA States~~

- 1.1A.42 R ~~A branch of a UK MiFID investment firm in another EEA State must adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes concerning investment services and ancillary services.~~  
~~[deleted]~~

~~[Note: article 75 of MiFID]~~

...

## 1.2 Consumer awareness rules

...

- 1.2.2B R ~~To the extent that it applies to an EMD complaint or a PSD complaint, the information specified in DISP 1.2.1R must be available in an official language of each such EEA State where the respondent offers payment services or issues electronic money, or in another language if agreed between the respondent and the payment service user or electronic money~~

holder. ~~[deleted]~~

~~[Note: article 101 of the *Payment Services Directive*]~~

...

Financial Ombudsman Service logo

...

1.2.5A G ~~DISP 1.2.5G does not apply to a branch of a UK UCITS management company in another EEA State. [deleted]~~

...

### 1.3 Complaints handling rules

Complaints handling procedures for respondents

1.3.1 R Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by: a respondent.

(1) ~~a respondent; and~~

(2) ~~a branch of a UK firm in another EEA State.~~

...

...

Particular procedures for UCITS management companies

1.3.1B R ~~A UK UCITS management company must ensure that the procedures it establishes under DISP 1.3.1R for the reasonable and prompt handling of complaints require that:~~

(1) ~~there are no restrictions on unitholders exercising their rights in the event that the UCITS is authorised in an EEA State other than the United Kingdom; and~~

(2) ~~unitholders are allowed to file complaints in any of the official languages of the Home State of the UCITS scheme or EEA UCITS scheme or of any EEA State to which a notification has been transmitted by the competent authority of the scheme's Home State in accordance with article 93 of the UCITS Directive. [deleted]~~

~~[Note: article 15 of the UCITS Directive]~~

...

### 1.9 Complaints record rule

- 1.9.1 R A firm, ~~including, in the case of collective portfolio management services for a UCITS scheme or an EEA UCITS scheme, a branch of a UK firm in another EEA State,~~ a payment service provider or an e-money issuer, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:
- (1) at least five years where the *complaint* relates to *collective portfolio management services* for a *UCITS scheme* ~~or an EEA UCITS scheme~~; and
- ...
- from the date the *complaint* was received.
- ...

...

## 1.10B Payment services and electronic money complaints reporting

- 1.10B.1 D ...
- (2) Once a year an *electronic money institution*, ~~an EEA authorised electronic money institution,~~ a payment institution, ~~or a registered account information service provider~~ ~~or an EEA registered account information service provider~~ must provide the FCA with a complete report concerning complaints received about *payment services* and *electronic money*.
- ...

...

## 1 Annex Application of DISP 1 to type of respondent / complaint 2G

~~1.~~ The table below summarises the application of *DISP 1*. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP 1*.

~~2.~~ In some cases the application of *DISP 1* to *firms* depends on whether responsibility for the matter is reserved under an *EU* instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in *DISP 1*.

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	DISP 1.10B Complaints reporting directions
...								
<i>firm</i> in relation to <i>MiFID</i> complaints concerning <i>MiFID</i> business carried on from an establishment in the <i>UK</i> (or in an <i>EEA State</i> , in the case of a <i>TP firm</i> with respect to services provided into the <i>United Kingdom</i> )	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	<i>DISP</i> 1.7 applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EUUK)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	Does not apply
<i>UK UCITS</i> management company in relation to complaints concerning <i>collective portfolio management</i> services in respect of a <i>UCITS</i> scheme or an <i>EEA UCITS</i> scheme provided under the freedom to provide cross border services	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply

<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme—</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Does not apply	Applies for <i>unitholders</i>	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA State in relation to MiFID complaints</i>	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible</i>	Does not apply	Does not apply	Does not apply	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Does not apply	Does not apply	Does not apply

	<i>counterparties</i> (see also <i>DISP</i> 1.1A.6R)							
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply
<i>incoming branch of an EEA firm in relation to MiFID complaints</i>	Applies for <i>retail clients and professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply

<i>collective portfolio management services in respect of a UCITS scheme</i>								
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	Does not apply	Does not apply	Does not apply	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply	Does not apply
<i>incoming EEA firm providing cross border services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming</i>	Does not apply	Applies for	Applies for	Applies for	Applies for	Does not apply	Does not apply	Applies for

<i>branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>		<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>			<i>payment service users</i>
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised electronic money</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Applies for <i>eligible complainants</i>



<i>institution in relation to complaints concerning issuance of electronic money</i>								
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>a full-scope UK AIFM, or a small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								

<p>an <i>incoming EEA AIFM</i>, for <i>complaints concerning AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the <i>freedom to provide cross-border services</i></p>	<p>Does not apply</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i> (<i>DISP 1.3.4G does not apply</i>)</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i></p>	<p>Does not apply</p>	<p>Does not apply</p>
<p>...</p>								

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

...

2.3.1A R The *Ombudsman* can also consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by:

- (1) an *investment firm* authorised under the UK provisions which implemented MiFID when providing *investment services* or *ancillary services*;
- (2) a *CRD credit institution* when providing one or more *investment services*;
- (3) an *investment firm* authorised under the UK provisions which implemented MiFID or a *CRD credit institution* when selling *structured deposits* to *clients*, or advising *clients* on them;
- (4) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(3) of the *UCITS Directive*; and
- (5) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(4) of the *AIFMD*.

...

...

### 2.5 To which activities does the Voluntary Jurisdiction apply?

...

2.5.4A G ~~DISP 2.5.1R(2)(1)~~ DISP 2.5.1R(2)(c) includes *complaints* about the *EEA* end of ‘one leg’ *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see *DISP 2.6.4R(2)*) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.

...

### 2.6 What is the territorial scope of the relevant jurisdiction?

## Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* carried on from an establishment:
- (a) in the *United Kingdom*; or
  - (b) in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*.
- (2) ~~The *Compulsory Jurisdiction* also covers *complaints* about:~~
- ~~(a) *collective portfolio management* services provided by an *EEA UCITS management company* managing a *UCITS scheme*; and~~
  - ~~(b) *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme*;~~
- ~~from an establishment in another *EEA State* under the freedom to provide *cross border services*. [deleted]~~
- ...
- 2.6.2 G ~~This:~~
- (1) ~~includes *incoming EEA firms*, *incoming EEA authorised payment institutions*, *incoming EEA authorised electronic money institutions* and *incoming Treaty firms*; but~~
  - (2) ~~excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* other than:~~
    - ~~(a) *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* in managing a *UCITS scheme*; and~~
    - ~~(b) *complaints* about *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme*. [deleted]~~

## Voluntary Jurisdiction

- 2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:
- (1) in the *United Kingdom*; or
  - (2) ~~elsewhere~~ in the *EEA* or Gibraltar if the following conditions are met:
    - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
    - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
    - (c) the *VJ participant* has notified appropriate regulators in the place in which the establishment is located ~~its Home State~~ of its intention to participate in the *Voluntary Jurisdiction*.

...

...

## 2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~27 July 2018~~ [commencement date]

This table belongs to *DISP 2.5.1R*.

The activities which were covered by the *Compulsory Jurisdiction* (at [commencement date]) were:

...

- (7) for *investment firms* authorised under the UK provisions which implemented MiFID:

...

...

- (9) for a *collective portfolio management investment firm*:
- (a) when providing the activities permitted by the UK provisions which implemented article 6(3) of the *UCITS Directive*; and
  - (b) when providing the activities permitted by the UK provisions which implemented article 6(4) of the *AIFMD*;

...

...

The activities which (at ~~27 July 2018~~ [commencement date]) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II of the *Regulated Activities Order* (with the addition of *auction regulation bidding* and *administering a benchmark*):

...

(22A) *managing a UK UCITS* (article 51ZA);

...

...

...

#### 4 Standard terms

...

##### 4.2 Standard terms

...

4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':

...

(11) *FEES 5.3.8AR*; ~~and~~

(12) ~~*FEES 5 Annex 2R* and *FEES 5 Annex 3R*~~ *FEES 5.3.8BR*; and

(13) *FEES 5 Annex 2R* and *FEES 5 Annex 3R*.

...

...

#### Sch 1 Record keeping requirements

...

##### Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<del>DISP 1.1A.37EU</del> <u>UK</u>	<i>MiFID complaints</i>	Each <i>MiFID complaint</i>	Not specified [ <b>Note:</b> (see	Not specified [ <b>Note:</b> (see

	<p>subject to <i>DISP</i> 1.1A.</p>	<p>received and the complaint handling measures taken to address the <i>MiFID complaint</i> and for its resolution</p> <p>[<del>Note:</del> <b>Note:</b> see article 26(1), article 72, and Annex 1 of the <i>MiFID Org Regulation</i>]</p>	<p>article 26(1), article 72 and Annex 1 of the <i>MiFID Org Regulation</i>]</p>	<p>article 72 of the <i>MiFID Org Regulation</i>]</p>



# Appendix 4

## Draft Binding Technical Standards Instruments



**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS  
DIRECTIVE) (EU EXIT) (No 1) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in the exercise of the power conferred by regulation 3 of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 (“the Regulations”).

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations as specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. In this instrument:

“the Act” means the European Union (Withdrawal) Act 2018; and  
“Exit Day” has the meaning given in the Act.

Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Amendments to EU Regulations**

- F. The following EU Regulations are amended in accordance with Annexes A - S of this instrument.

(1)	(2)
-----	-----

<i>Editor's Note:</i> for annexes A and C - S see CP18/28	
Commission Delegated Regulation (EU) 2017/566 of 18 May 2016 Supplementing Directive 2014/65/EU of the European Parliament and of the Council on Markets in Financial Instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions	Annex B

### Revocations

G. The FCA revokes the following EU Regulations.

<i>Editor's Note:</i> see CP18/28
-----------------------------------

### Commencement

H. This instrument comes into force on [29 March 2019 at 11.00 p.m.].

### Citation

I. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 1) Instrument 2019.

By order of the Board  
[*date*]

**Annex B**

**COMMISSION DELEGATED REGULATION (EU) 2017/566**

**of 18 May 2016**

**supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions**

...

Article -2

**Application**

This Regulation applies to UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

**Interpretation**

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

Article 4

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX**  
**Counting methodology for orders set out for each type**

Types of order	Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to	Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to
Limit	1	0
...		
Peg Market peg: an order to the opposite side of the <del>(European)</del> Best Bid and Offer (BBO) Primary peg: an order to the same side of the <del>(European)</del> BBO Midpoint peg: an order to the midpoint of the <del>(European)</del> BBO Alternate peg to the less aggressive of the midpoint or 1 tick Midpoint inside the same side of the Protected BBO	1	potentially unlimited as the order tracks the BBO
...		
One-cancels-the-other — add	2	
One-cancels-the-other — delete	2	
One-cancels-the-other — modify	4	
Trailing stop: Stop order which stop price at which the order is triggered changes in function of the <del>(European)</del> BBO	1	potentially unlimited as the stop limit tracks the BBO
At best limit order where the limit price is equal to the opposite side of the <del>(European)</del> BBO at the time of entry	1	0
...		

## TECHNICAL STANDARDS (MIFIR TRANSPARENCY) (EU EXIT) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

### Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

### Modifications

- F. The FCA thereafter amends the following EU Regulations in accordance with Annexes A - D of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments	Annex A

and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser	
Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives	Annex B
Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations	Annex C
Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds	Annex D

### Commencement

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

### Citation

H. This instrument may be cited as the Technical Standards (MiFIR Transparency) (EU Exit) Instrument 2019.

By order of the Board  
[date]

## Annex A

### COMMISSION DELEGATED REGULATION (EU) 2017/587 of 14 July 2016

**supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser**

#### CHAPTER I

#### GENERAL

#### Article -2

#### **Application**

This Regulation applies to:

- (1) those persons described in Article 1(2) of Regulation 600/2014/EU; and
- (2) the Financial Conduct Authority as a competent authority.

*[Editor's note: Third country firms who are authorised under Part 4A of the Financial Services and Markets Act 2000 should also see rule GEN 2.2.22AR in the General Provisions of the FCA's Handbook of Rules and Guidance. EU firms with a temporary permission should also see Article 1(2A) - (2E) of Regulation 600/2014/EU.]*

#### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before exit day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation No 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.
2. The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation unless otherwise stated.
4. Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA, as the sourcebook has effect on exit day.

5. The ‘relevant area’ in relation to a financial instrument means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 5 or Article 14 of Regulation (EU) No 600/2014, as the context requires.
6. References to the date of application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.

## Article 1

### Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘portfolio trade’ means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;
- (2) ‘give-up transaction’ or ‘give-in transaction’ means a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;
- (3) ‘securities financing transaction’ means a securities financing transaction as defined in Article 3(6) of Delegated Regulation (EU) 2017/577;
- (4) ~~‘systematic internaliser’ means an investment firm as defined in Article 4(1)(20) of Directive 2014/65/EU of the European Parliament and of the Council;~~
- (5) ‘the Recognition Requirements Regulations’ means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995);
- (6) ‘the AIFM Regulations’ means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).

## Article 2

### Transactions not contributing to the price discovery process

(Article 23(1) of Regulation (EU) No 600/2014)

A transaction in shares does not contribute to the price discovery process where any of the following circumstances apply:

- (a) the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;
- (b) the transaction is part of a portfolio trade;
- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;



- (d) the transaction is executed by a management company as defined in ~~Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council section 237(2) of FSMA~~, or ~~an alternative investment fund manager~~ a UK AIFM as defined in ~~Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council~~ the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;
- (e) the transaction is a give-up transaction or a give-in transaction;
- (f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;
- (g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;
- (h) the transaction is a securities financing transaction;
- (i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or a similar third country law for the same type of transactions, where applicable).

## CHAPTER II

### PRE-TRADE TRANSPARENCY

#### Section 1

#### Pre-trade transparency for trading venues

...

#### Article 4

#### Most relevant market in terms of liquidity

(Article 4(1)(a) of Regulation (EU) No 600/2014)

- 1. For the purposes of this Article, Article 2(1)(62) of Regulation 600/2014/EU shall not apply.
- 1. For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the ~~Union~~ relevant area for that financial instrument.
- 2. For the purpose of determining the most relevant markets in terms of liquidity in accordance with paragraph 1, ~~competent authorities~~ the FCA shall calculate the turnover in accordance with the methodology set out in Article 17(4) in respect of each financial instrument ~~for which they are the competent authority~~ that is traded on

- a UK trading venue and for each trading venue in the relevant area where that financial instrument is traded.
3. The calculation referred to in paragraph 2 shall have the following characteristics:
    - (a) it shall include, for each trading venue in the relevant area, transactions executed under the rules of that trading venue excluding:
      - (i) in the case of UK trading venues, reference price and negotiated transactions flagged as set out in Table 4 of Annex I and transactions executed on the basis of at least one order that has benefitted from a large-in-scale waiver and where the transaction size is above the applicable large-in-scale threshold as determined in accordance with Article 7; and
      - (ii) in the case of non-UK trading venues, transactions benefitting from any similar relief in the form of transparency waivers or otherwise;
    - (b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a UK trading venue and was not suspended from trading.
  4. Until the most relevant market in terms of liquidity for a specific financial instrument is determined in accordance with the procedure specified in paragraphs 1 to 3, the most relevant market in terms of liquidity shall be the trading venue in the relevant area where that financial instrument is first admitted to trading or first traded.
  5. Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments which were first admitted to trading or first traded on a UK trading venue four weeks or less before the end of the preceding calendar year.

...

## Article 6

### **Negotiated transactions subject to conditions other than the current market price**

(Article 4(1)(b) of Regulation (EU) No 600/2014)

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be subject to conditions other than the current market price of the financial instrument where any of the following circumstances applies:

- (a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;
- (b) the transaction is part of a portfolio trade;
- (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;

- (d) the transaction is executed by a management company as defined in ~~Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council~~ section 237(2) of FSMA, or an alternative investment fund manager a UK AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;
- (e) the transaction is a give-up transaction or a give-in transaction;
- (f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;
- (g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;
- (h) the transaction is a securities financing transaction;
- (i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or similar third country law for the same type of transactions, where applicable);
- (j) any other transaction equivalent to one of those described in points (a) to (i) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

## Article 7

### Orders that are large in scale

(Article 4(1)(c) of Regulation (EU) No 600/2014)

1. An order in respect of a share, depositary receipt, certificate or other similar financial instrument shall be considered to be large in scale where the order is equal to or larger than the minimum size of orders set out in Tables 1 and 2 of Annex II.
2. An order in respect of an ETF shall be considered to be large in scale where the order is equal to or larger than EUR 1 000 000.
3. For the purpose of determining orders that are large in scale, ~~competent authorities~~ the FCA shall calculate, in accordance with paragraph 4, the average daily turnover in respect of shares, depositary receipts, certificates and other similar financial instruments traded on a trading venue.
4. The calculation referred to in paragraph 3 shall have the following characteristics:
  - (a) it shall include transactions executed in the ~~Union~~ relevant area in respect of the financial instrument, whether traded on or outside a trading venue;
  - (b) it shall cover the period beginning on 1 January of the preceding calendar year and ending on 31 December of the preceding calendar year or, where applicable, that part of the calendar year during which the financial instrument

was admitted to trading or traded on a trading venue and was not suspended from trading.

Paragraphs 3 and 4 shall not apply to shares, depositary receipts, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

5. Unless the price or other relevant conditions for the execution of an order are amended, the waiver referred to in Article 4(1) of Regulation (EU) No 600/2014 shall continue to apply in respect of an order that is large in scale when entered into an order book but that, following partial execution, falls below the threshold applicable for that financial instrument as determined in accordance with paragraphs 1 and 2.
6. Before a share, depositary receipt, certificate or other similar financial instrument is traded for the first time on a trading venue ~~in the Union~~, the ~~competent authority~~ FCA shall estimate the average daily turnover for that financial instrument taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate.
7. The estimated average daily turnover referred to in paragraph 6 shall be used for the calculation of orders that are large in scale during a six-week period following the date that the share, depositary receipt, certificate or other similar financial instrument was admitted to trading or first traded on a trading venue.
8. The ~~competent authority~~ FCA shall calculate and ensure publication of the average daily turnover based on the first four weeks of trading before the end of the six-week period referred to in paragraph 7.
9. The average daily turnover referred to in paragraph 8 shall be used for the calculation of orders that are large in scale and until an average daily turnover calculated in accordance with paragraph 3 applies.
10. For the purposes of this Article, the average daily turnover shall be calculated by dividing the total turnover for a particular financial instrument as specified in Article 17(4) by the number of trading days in the period considered. The number of trading days in the period considered is the number of trading days on the most relevant market in terms of liquidity for that financial instrument as determined in accordance with Article 4.

...

## Section 2

### **Pre-trade transparency for systematic internalisers and investment firms trading outside a trading venue**

#### Article 9

#### **Arrangements for the publication of a firm quote**

(Article 14(1) of Regulation (EU) No 600/2014)

Any arrangement that a systematic internaliser adopts in order to comply with the obligation to make public firm quotes shall satisfy the following conditions:

- (a) the arrangement includes all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) the arrangement complies with technical arrangements equivalent to those specified for approved publication arrangements (APAs) in Article 15 of Delegated Regulation (EU) 2017/571 that facilitate the consolidation of the data with similar data from other sources;
- (c) the arrangement makes the information available to the public on a non-discriminatory basis;
- (d) the arrangement includes the publication of the time the quotes have been entered or amended in accordance with ~~Article 50 of Directive 2014/65/EU~~ paragraph 3H of the schedule to the Recognition Requirements Regulations, rule 5.3A.17 or rule 5A.5.17 of the Market Conduct sourcebook (as applicable) as specified in Commission Delegated Regulation (EU) 2017/574.

...

## Article 11

### Standard market size

(Article 14(2) and (4) of Regulation (EU) No 600/2014)

1. The standard market size for shares, depositary receipts, ETFs, certificates and other similar financial instruments for which there is a liquid market shall be determined on the basis of the average value of transactions for each financial instrument calculated in accordance with paragraphs 2 and 3 and in accordance with Table 3 of Annex II.
2. For the purpose of determining the standard market size which is applicable to a specific financial instrument as set out in paragraph 1, ~~competent authorities~~ the FCA shall calculate the average value of transactions in respect of all the shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which there is a liquid market ~~and for which they are the competent authority~~.
3. The calculation referred to in paragraph 2 shall have the following characteristics:
  - (a) it shall take into account the transactions executed in the ~~Union~~ relevant area in respect of the financial instrument concerned whether executed on or outside a trading venue;
  - (b) it shall cover either the preceding calendar year or, where applicable, the period of the preceding calendar year during which the financial instrument was admitted to trading or traded on a trading venue and was not suspended from trading;

- (c) it shall exclude post-trade large-in-scale transactions as set out in Table 4 of Annex I and any transactions benefitting from any similar relief under a third country regime in the form of a transparency waiver or otherwise.

Paragraphs 2 and 3 shall not apply to shares, depositary receipts, ETFs, certificates and other similar financial instruments first admitted to trading or first traded on a trading venue four weeks or less before the end of the preceding calendar year.

4. Before a share, depositary receipt, ETF, certificate or other similar financial instrument is traded for the first time on a trading venue ~~in the Union~~, the ~~competent authority~~ FCA shall estimate the average daily turnover for that financial instrument taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and ensure publication of that estimate.
5. The estimated average value of transactions laid down in paragraph 4 shall be used as the standard market size for a share, depositary receipt, ETF, certificate or other similar financial instrument during a six-week period following the date that the share, depositary receipt, ETF, certificate or other similar financial instrument was first admitted to trading or first traded on a trading venue.
6. The ~~competent authority~~ FCA shall calculate and ensure publication of the average value of transactions based on the first four weeks of trading before the end of the six-week period referred to in paragraph 5.
7. The average value of transactions in paragraph 6 shall apply immediately after its publication and until a new average value of transactions calculated in accordance with paragraphs 2 and 3 applies.
8. For the purposes of this Article, the average value of transactions shall be calculated by dividing the total turnover for a particular financial instrument as set out in Article 17(4) by the total number of transactions executed for that financial instrument in the period considered.

### CHAPTER III

#### POST-TRADE TRANSPARENCY FOR TRADING VENUES AND INVESTMENT FIRMS TRADING OUTSIDE A TRADING VENUE

...

#### Article 13

#### **Application of post-trade transparency to certain types of transactions executed outside a trading venue**

(Article 20(1) of Regulation (EU) No 600/2014)

The obligation in Article 20(1) of Regulation (EU) No 600/2014 shall not apply to the following:

- (a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable;
  - (b) transactions executed by a management company as defined in ~~Article 2(1)(b) of Directive 2009/65/EC section 237(2) of FSMA, or an alternative investment fund manager~~ a UK AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;
  - (c) give-up transactions and give-in transactions;
  - (d) transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP.
- ...

## Article 15

### **Deferred publication of transactions**

(Article 7(1) and 20(1) and (2) of Regulation (EU) No 600/2014)

1. Where ~~a competent authority~~ the FCA authorises the deferred publication of the details of transactions pursuant to Article 7(1) of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:
  - (a) the transaction is between an investment firm dealing on own account other than through matched principal trading and another counterparty;
  - (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size specified in Tables 4, 5 or 6 of Annex II, as appropriate.
2. The relevant minimum qualifying size for the purposes of point (b) in paragraph 1 shall be determined in accordance with the average daily turnover calculated as set out in Article 7.
3. For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:
  - (a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;
  - (b) no later than noon local time on the next trading day for transactions not covered in point (a).

For transactions that take place outside a trading venue, references to trading days and closing auctions shall be those of the most relevant market in terms of liquidity as determined in accordance with Article 4.

4. ~~Where a transaction between two investment firms is executed outside the rules of a trading venue, the competent authority for the purpose of determining the applicable deferral regime shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with paragraphs 5 and 6 of Article 12.~~

...

## CHAPTER IV

### PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY CALCULATIONS

#### Article 17

#### **Methodology, date of publication and date of application of the transparency calculations**

(Article 22(1) of Regulation (EU) No 600/2014)

1. At the latest 14 months after the date of the entry into application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, ~~competent authorities~~ the FCA shall, in relation to each financial instrument ~~for which they are the competent authority that is traded on a trading venue~~, collect the data, calculate and ensure publication of the following information:
  - (a) the trading venue which is the most relevant market in terms of liquidity as set out in Article 4(2);
  - (b) the average daily turnover for the purpose of identifying the size of orders that are large in scale as set out in Article 7(3);
  - (c) the average value of transactions for the purpose of determining the standard market size as set out in Article 11(2).
2. ~~Competent authorities~~ The FCA, market operators and investment firms including investment firms operating a trading venue shall use the information published in accordance with paragraph 1 for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014, for a period of 12 months from 1 April of the year in which the information is published.
 

Where the information referred to in the first subparagraph is replaced by new information pursuant to paragraph 3 during the 12-month period referred to therein, competent authorities, market operators and investment firms including investment firms operating a trading venue shall use that new information for the purposes of points (a) and (c) of Article 4(1) and paragraphs 2 and 4 of Article 14 of Regulation (EU) No 600/2014.
3. ~~Competent authorities~~ The FCA shall ensure that the information to be made public pursuant to paragraph 1 is updated on a regular basis for the purposes of Regulation



(EU) No 600/2014 and that all changes to a specific share, depositary receipt, ETF, certificate or other similar financial instrument which significantly affects the previous calculations and the published information are included in such updates.

4. For the purposes of the calculations referred to in paragraph 1, the turnover in relation to a financial instrument shall be calculated by summing the results of multiplying, for each transaction executed during a defined period of time, the number of units of that instrument exchanged between the buyers and sellers by the unit price applicable to such transaction.
5. After the end of the trading day, but before the end of the day, trading venues shall submit to ~~Competent authorities~~ the FCA the details set out in Tables 1 and 2 of Annex III whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever those previously submitted details have changed.

### Article 17A

#### **Transitional period for publication of transparency calculations**

1. Article 2(1)(62) of Regulation 600/2014/EU does not apply to this Article.
2. For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU.
3. During the transitional period and until the FCA makes a publication under Articles 4, 7, 11 or 17 in relation to the financial instrument in question, the most relevant market, average daily turnover and average value of transactions in respect of a share, depositary receipt, ETF, certificate or other similar financial instrument for the purposes of retained EU law relating to markets in financial instruments shall be as follows in (a) or (b), subject to (c):
  - (a) that stated in the most recent information published before exit day under Article 7(6), 7(8), 11(4), 11(6) or 19 (whichever is the most recent) by the competent authority in the European Union for the relevant instrument under Article 18 as it applied in the European Union before exit day (including the FCA); or
  - (b) if no such information was published by that competent authority in the European Union in respect of a financial instrument under those provisions before exit day:
    - (i) the most relevant market for that financial instrument shall be the trading venue in the relevant area where that financial instrument is first admitted to trading; and
    - (ii) the average daily turnover and average value of transactions for that financial instrument shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on exit day; and
  - (c) if information was published before exit day under Article 17(1) or 17(3) by the competent authority in the European Union for the relevant instrument under Article 18 as it applied in the European Union before exit day (including

the FCA), but the information was not required to be used under Article 17(2) before exit day, then the most relevant market, average daily turnover and average value of transactions shall become that stated in such information from the point at which it would have been required to be used under Article 17(2) as it applied in the European Union before exit day, provided that the calculations used to produce that information did not exclude trading in the UK for the relevant period.

4. From exit day and during the transitional period, the FCA’s obligations to perform calculations and publish information under Articles 4, 7, 11, and 17 are modified as follows:
- (a) where the FCA publishes information under Article 17(1) or 17(3):
- (i) it shall publish what appears to it to be the most relevant market in terms of liquidity, the average daily turnover and the average value of transactions as applicable;
- (ii) it is not required to follow the relevant methodology in Article 4(2), Article 7(3) or Article 11(2) (as applicable), but where it does not:
- it must have regard to the relevant methodology; and
  - it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and
- (iii) in the case of a publication under Article 17(1), it shall ensure publication by five working days after 1 March;
- (b) where the FCA publishes information under Article 7(8) or 11(6) it shall publish what appears to it to be the average daily turnover and the average value of transactions as applicable, and it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country.

## Article 18

### Reference to competent authorities

(Article 22(1) of Regulation (EU) No 600/2014)

~~The competent authority for a specific financial instrument responsible for performing the calculations and ensuring the publication of the information referred to in Articles 4, 7, 11 and 17 shall be the competent authority of the most relevant market in terms of liquidity in Article 26 of Regulation (EU) No 600/2014 and specified in Article 16 of Delegated Regulation (EU) 2017/571.~~

...

## Article 20

### Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX I

## Information to be made public

...

Table 3

**List of details for the purpose of post-trade transparency**

Field identifier	Description and details to be published	Type of execution or publication venue Format to be populated as defined in Table 2	Format to be populated as defined in Table 2
...			
Venue of execution	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a trading venue. Where the segment MIC does not exist, use the operating MIC. Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue, systematic internaliser or organised trading	RM, MTF APA CTP	trading venues: {MIC} Systematic internalisers: 'SINT'

	platform outside of the <del>Union</del> <u>UK</u> .		
	Use SINT for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.		
...			

Table 4

**List of flags for the purpose of post-trade transparency**

Flag	Name	Type of execution or publication venue	Description
...			
ALGO	Algorithmic transaction flag	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in <u>Article 4(1)(39) of Directive 2014/65/EU</u> <u>Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701)</u> .

...			
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...

## ANNEX III

Reference data to be provided for the purpose of transparency calculations

...

Table 2

**Details of the reference data to be provided for the purpose of transparency calculations**

#	Field	Details to be reported	Format and standards for reporting
...			
4	MiFIR identifier	<p>Identification of equity financial instruments</p> <p>Shares as referred to in <u>Article 4(44)(a) of Directive 2014/65/EU Article 2(1)(24)(a) of Regulation (EU) No 600/2014;</u></p> <p>Depository receipts as defined in <u>Article 4(45) of Directive 2014/65/EU Article 2(1)(25) of Regulation (EU) No 600/2014;</u></p>	<p>Equity financial instruments:</p> <p>SHRS = shares</p> <p>ETFS = ETFs</p> <p>DPRS = depository receipts CRFT = certificates OTHR = other equity-like financial instruments</p>

		<p>ETF as defined in <u>Article 4(46) of Directive 2014/65/EU Article 2(1)(26) of Regulation (EU) No 600/2014;</u></p> <p>Certificates as defined in Article 2(1)(27) of Regulation (EU) No 600/2014;</p> <p>Other equity-like financial instrument is a transferable security which is an equity instrument similar to a share, ETF, depositary receipt or certificate but other than a share, ETF, depositary receipt or certificate.</p>	
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## Annex B

### COMMISSION DELEGATED REGULATION (EU) 2017/583

of 14 July 2016

**supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives**

#### CHAPTER I

#### GENERAL

#### Article -2

#### **Application**

This Regulation applies to:

1. those persons described in Article 1(2) of Regulation 600/2014/EU; and
2. the Financial Conduct Authority as a competent authority.

*[Editor's note: Third country firms who are authorised under Part 4A of the Financial Services and Markets Act 2000 should also see rule GEN 2.2.22AR in the General Provisions of the FCA's Handbook of Rules and Guidance. EU firms with a temporary permission should also see Article 1(2A) - (2E) of Regulation 600/2014/EU.]*

#### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before exit day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.
2. The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation save where the context otherwise requires.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation unless otherwise stated.
4. References to the date of application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.



Article 1  
**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

1. 'package transaction' means either of the following:
  - (a) a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of a transaction in an equivalent quantity of an underlying physical asset (Exchange for Physical or EFP);
  - (b) a transaction which involves the execution of two or more component transactions in financial instruments; and:
    - (i) which is executed between two or more counterparties;
    - (ii) where each component of the transaction bears meaningful economic or financial risk related to all the other components;
    - (iii) where the execution of each component is simultaneous and contingent upon the execution of all the other components;
2. 'request-for-quote system' means a trading system where the following conditions are met:
  - (a) a quote or quotes by a member or participant are provided in response to a request for a quote submitted by one or more other members or participants;
  - (b) the quote is executable exclusively by the requesting member or participant;
  - (c) the requesting member or market participant may conclude a transaction by accepting the quote or quotes provided to it on request;
3. 'voice trading system' means a trading system where transactions between members are arranged through voice negotiation;
4. 'relevant area' in relation to a financial instrument means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 9 of Regulation (EU) 600/2014;
5. 'the AIFM Regulations' means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).

...

CHAPTER III

POST-TRADE TRANSPARENCY FOR TRADING VENUES AND INVESTMENT  
FIRMS TRADING OUTSIDE A TRADING VENUE

Article 7

**Post-trade transparency obligations**

(Article 10(1) and Article 21(1) and (5) of Regulation (EU) No 600/2014)

...

4. Post-trade information shall be made available as close to real time as is technically possible and in any case:
- (a) for the first three years from the date of application of Regulation (EU) No 600/2014, within 15 minutes after the execution of the relevant transaction;
  - (b) thereafter, within 5 minutes after the execution of the relevant transaction.

...

## Article 8

### Deferred publication of transactions

(Article 11(1) and (3) and Article 21(4) of Regulation (EU) No 600/2014)

1. Where ~~a competent authority~~ the FCA authorises the deferred publication of the details of transactions pursuant to Article 11(1) of Regulation (EU) No 600/2014, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public each transaction no later than 19.00 local time on the second working day after the date of the transaction, provided one of the following conditions is satisfied:
- (a) the transaction is large in scale compared with the normal market size as specified in Article 9;
  - (b) the transaction is in a financial instrument or a class of financial instruments for which there is not a liquid market as specified in accordance with the methodology set out in Article 13;
  - (c) the transaction is executed between an investment firm dealing on own account other than on a matched principal basis ~~(as per Article 4(1)(38) of Directive 2014/65/EU of the European Parliament and of the Council defined in accordance with the definition in effect on exit day for ‘matched principal trading’ in the Glossary to the Handbook of Rules and Guidance published by the FCA)~~ and another counterparty and is above a size specific to the instrument as specified in Article 10;
  - (d) the transaction is a package transaction which meets one of the following criteria:
    - (i) one or more of its components are transactions in financial instruments which do not have a liquid market;
    - (ii) one or more of its components are transactions in financial instruments that are large in scale compared with the normal market size as determined by Article 9;

- (iii) the transaction is executed between an investment firm dealing on own account other than on a matched principal basis (as ~~per Article 4(1)(38) of Directive 2014/65/EU and another counterparty defined in accordance with the definition in effect on exit day for ‘matched principal trading’ in the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority~~), and one or more of its components are transactions in financial instruments that are above the size specific to the instrument as determined by Article 10.
2. When the time limit of deferral set out in paragraph 1 has lapsed, all the details of the transaction shall be published unless an extended or an indefinite time period of deferral is granted in accordance with Article 11.
3. ~~Where a transaction between two investment firms, either on own account or on behalf of clients, is executed outside the rules of a trading venue, the relevant competent authority for the purposes of determining the applicable deferral regime shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with paragraphs 5, 6 and 7 of Article 7.~~
- ...

#### Article 11

### **Transparency requirements in conjunction with deferred publication at the discretion of the competent authorities**

(Article 11(3) of Regulation (EU) No 600/2014)

1. Where ~~competent authorities~~ the FCA exercises ~~their~~ its powers in conjunction with an authorisation of deferred publication pursuant to Article 11(3) of Regulation (EU) No 600/2014, the following shall apply:
- (a) where Article 11(3)(a) of Regulation (EU) No 600/2014 applies, ~~competent authorities~~ the FCA shall request the publication of either of the following information during the full period of deferral as set out in Article 8:
- (i) all the details of a transaction laid down in Tables 1 and 2 of Annex II with the exception of details relating to volume;
- (ii) transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same day, to be made public the following working day before 9.00 local time;
- (b) where Article 11(3)(b) of Regulation (EU) No 600/2014 applies, ~~competent authorities~~ the FCA shall allow the omission of the publication of the volume of an individual transaction for an extended time period of four weeks;
- (c) in respect of non-equity instruments that are not sovereign debt and where Article 11(3)(c) of Regulation (EU) No 600/2014 applies, the ~~competent authority~~ FCA shall allow, for an extended time period of deferral of four weeks, the publication of the aggregation of several transactions executed over

the course of one calendar week on the following Tuesday before 9.00 local time;

- (d) in respect of sovereign debt instruments and where Article 11(3)(d) of Regulation (EU) No 600/2014 applies, ~~competent authorities~~ the FCA shall allow, for an indefinite period of time, the publication of the aggregation of several transactions executed over the course of one calendar week on the following Tuesday before 9.00 local time.
2. Where the extended period of deferral set out in paragraph 1(b) has lapsed, the following requirements shall apply:
- (a) in respect of all instruments that are not sovereign debt, the publication of the full details of all individual transactions, on the next working day before 9.00 local time;
  - (b) in respect of sovereign debt instruments where ~~competent authorities decide~~ the FCA decides not to use the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively, pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of the full details of all individual transactions on the next working day before 9.00 local time;
  - (c) in respect of sovereign debt instruments, where ~~competent authorities apply~~ the FCA applies the options provided for in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, the publication of several transactions executed in the same calendar week in an aggregated form on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of that calendar week before 9.00 local time.

...

## Article 12

### **Application of post-trade transparency to certain transactions executed outside a trading venue**

(Article 21(1) of Regulation (EU) No 600/2014)

The obligation to make public the volume and price of transactions and the time at which they were concluded as set out in Article 21(1) of Regulation (EU) No 600/2014 shall not apply to any of the following:

- (a) transactions listed in Article 2(5) of Commission Delegated Regulation (EU) 2017/590;
- (b) transactions executed by a management company as defined in ~~Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council~~ section 237(2) of FSMA or an ~~alternative investment fund manager~~, a UK AIFM as defined in ~~Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council~~ the AIFM Regulations, or a third country AIFM as defined in the AIFM

Regulations which transfer the beneficial ownership of financial instruments from one collective investment undertaking to another and where no investment firm is a party to the transaction;

- (c) ‘give-up transaction’ or ‘give-in transaction’ which is a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing;
- (d) transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP.

## CHAPTER IV

### PROVISIONS COMMON TO PRE-TRADE AND POST-TRADE TRANSPARENCY

#### Article 13

#### **Methodology to perform the transparency calculations**

(Article 9(1) and (2), Article 11(1) and Article 22(1) of Regulation (EU) No 600/2014)

...

5. In accordance with Delegated Regulations (EU) 2017/590 and (EU) 2017/577 ~~competent authorities~~ the FCA shall collect on a daily basis the data from trading venues, APAs and CTPs which is necessary to perform the calculations to determine:
  - (a) the financial instruments and classes of financial instruments not having a liquid market as set out in paragraph 1;
  - (b) the sizes large in scale compared to normal market size and the size specific to the instrument as set out in paragraphs 2 and 3.
6. ~~Competent authorities performing the calculations for a class of financial instruments shall establish cooperation arrangements between each other as to ensure the aggregation of the data across the Union necessary for the calculations.~~
7. For the purpose of paragraph 1(b) and (d), paragraph 2(b) and paragraph 3(b), (c) and (d), ~~competent authorities~~ the FCA shall take into account transactions executed in the ~~Union~~ relevant area between 1 January and 31 December of the preceding year.

...

16. After the end of the trading day but before the end of that day, trading venues shall submit to ~~competent authorities~~ the FCA the details included in Annex IV for performing the calculations referred to in paragraph 5 whenever the financial instrument is admitted to trading or first traded on that trading venue or whenever the details previously provided have changed.
17. ~~Competent authorities~~ The FCA shall ensure the publication of the results of the calculations referred to under paragraph 5 for each financial instrument and class of

financial instrument by 30 April of the year following the date of application of Regulation (EU) No 600/2014 and by 30 April of each year thereafter. The results of the calculations shall apply from 1 June each year following publication.

18. For the purposes of the calculations in paragraph 1(b)(i) and by way of derogation from paragraphs 7, 15 and 17, ~~competent authorities~~ the FCA shall, in respect of bonds except ETCs and ETNs, ensure the publication of the calculations referred to under paragraph 5(a) on a quarterly basis, on the first day of February, May, August and November following the date of application of Regulation (EU) No 600/2014 and on the first day of February, May, August and November each year thereafter. The calculations shall include transactions executed in the ~~Union~~ relevant area during the preceding calendar quarter and shall apply for the 3 month period beginning on the sixteenth day of February, May, August and November each year.

...

### Article 13A

#### **Transitional period for publication of transparency calculations**

1. Article 2(1)(62) of Regulation 600/2014/EU does not apply to this Article.
2. For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU.
3. During the transitional period, and until the FCA makes a publication under Article 13 in relation to the financial instrument in question, the determination of whether or not it is liquid, the minimum order and transaction size of the size specific to the financial instrument and the minimum sizes of orders and transactions that are large in scale (as appropriate) in respect of a bond, structured finance product, emission allowance or derivative shall be as follows:
  - (a) that stated in the most recent information published before exit day under Article 13 or 18 (whichever is the most recent) by a competent authority in the European Union (including the FCA), provided the calculations used to produce that information did not exclude trading in the UK for the relevant period; or
  - (b) if no such information was published by a competent authority in the European Union in respect of a financial instrument under those provisions before exit day:
    - (i) the financial instrument shall be considered not to have a liquid market;
    - (ii) the minimum order and transaction size of the size specific to the financial instrument and the minimum sizes of orders and transactions that are large in scale (as appropriate) shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on exit day.

4. From exit day and during the transitional period the FCA's obligations to perform calculations and publish information under Articles 13(17) and 13(18) are modified as follows:
- (a) it shall publish whether or not the relevant instrument appears to it to be liquid, what appears to it to be the minimum order and transaction size of the size specific to the financial instrument, and the minimum sizes of orders and transactions that are large in scale (as appropriate);
  - (b) it is not required to follow the relevant methodology in Article 3, 5, 6, 9, 10, 13 or 17 (as applicable) but where it does not:
    - it must have regard to the relevant methodology; and
    - it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and
  - (c) in the case of a publication under Article 13(17), it shall ensure publication by five working days after 30 April; and
  - (d) in the case of a publication under Article 13(18), it shall ensure publication by five working days after the first day of February, May, August and November.

#### Article 14

#### **Transactions to which the exemption in Article 1(6) of Regulation (EU) No 600/2014 applies**

(Article 1(6) of Regulation (EU) No 600/2014)

A transaction shall be considered to be entered into by a member of the European System of Central Banks (ESCB), the Debt Management Office or the Bank of England in performance of monetary, foreign exchange and financial stability policy where that transaction meets any of the following requirements:

- (a) ~~the transaction is carried out for the purposes of monetary policy, including an operation carried out in accordance with Articles 18 and 20 of the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;~~
- (b) ~~the transaction is a foreign-exchange operation, including operations carried out to hold or manage official foreign reserves of the Member States or the reserve management service provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of Regulation (EU) No 600/2014;~~

...

#### Article 15

**Transactions to which the exemption in Article 1(6) of Regulation (EU) No 600/2014  
does not apply**

(Article 1(7) of Regulation (EU) No 600/2014)

Article 1(6) of Regulation (EU) No 600/2014 shall not apply to the following types of transactions entered into by a member of the ESCB, the Debt Management Office or the Bank of England for the performance of an investment operation that is unconnected with that member's performance of one of the tasks referred to in Article 14:

- (a) transactions entered into for the management of its own funds;
- (b) transactions entered into for administrative purposes or for the staff of the member of the ESCB the Debt Management Office or the Bank of England which include transactions conducted in the capacity as administrator of a pension scheme for its staff;
- (c) transactions entered into for its investment portfolio pursuant to obligations under national law.

Article 16

**Temporary suspension of transparency obligations**

(Article 9(5)(a) of Regulation (EU) No 600/2014)

- 1. This Article does not apply in relation to a temporary suspension of obligations under Article 9(4A) or Article 11(2A) of Regulation (EU) No 600/2014.
- 1. For financial instruments for which there is a liquid market in accordance with the methodology set out in Article 13, ~~a competent authority~~ the FCA may temporarily suspend the obligations set out in Articles 8 and 10 Regulation (EU) No 600/2014 where for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 40 % of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.
- 2. For financial instruments for which there is not a liquid market in accordance with the methodology set out in Article 13, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 of Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 4 of Annex II calculated for the previous 30 calendar days represents less than 20 % of the average monthly volume calculated for the 12 full calendar months preceding those 30 calendar days.
- 3. ~~Competent authorities~~ The FCA shall take into account the transactions executed on all venues in the ~~Union~~ relevant area for the class of bonds, structured finance products, emission allowances or derivatives concerned when performing the calculations referred to in paragraphs 1 and 2. The calculations shall be performed at the level of the class of financial instruments to which the liquidity test set out in Article 13 is applied.



4. ~~Before competent authorities decide~~ the FCA decides to suspend transparency obligations, they shall ensure that the significant decline in liquidity across all venues is not the result of seasonal effects of the relevant class of financial instruments on liquidity.

#### Article 17

#### **Provisions for the liquidity assessment for bonds and for the determination of the pre-trade size specific to the instrument thresholds based on trade percentiles**

...

4. ~~ESMA~~ The FCA shall, by 30 July of the year following the date of application of Regulation (EU) No 600/2014 and by 30 July of each year thereafter, submit to the ~~Commission Treasury~~ an assessment of the operation of the thresholds for the liquidity criterion 'average daily number of trades' for bonds as well as ~~the trade percentiles that determine~~ the size specific to the financial instruments covered by paragraph 8. ~~The obligation to submit the assessment of the operation of the thresholds for the liquidity criterion for bonds ceases once S4 in the sequence of paragraph 6 is reached. The obligation to submit the assessment of the trade percentiles ceases once S4 in the sequence of paragraph 8 is reached.~~
5. The assessment referred to in paragraph 4 shall take into account:
- the evolution of trading volumes in non-equity instruments covered by the pre-trade transparency obligations pursuant to Article 8 and 9 of Regulation (EU) No 600/2014;
  - the impact on liquidity providers of the percentile thresholds used to determine the size specific to the financial instrument; and
  - any other relevant factors.
6. ~~ESMA~~ The FCA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, consider its use of the powers to amend this Regulation at Article 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1115) and section 138P of FSMA ~~submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for the liquidity criterion 'average daily number of trades' for bonds according to the following sequence:~~
- ~~S2 (10 daily trades) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;~~
  - ~~S3 (7 daily trades) by 30 July of the year thereafter; and~~
  - ~~S4 (2 daily trades) by 30 July of the year thereafter.~~
7. ~~Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 6, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.~~

8. ~~ESMA shall, in light of the assessment undertaken in accordance with paragraphs 4 and 5, submit to the Commission an amended version of the regulatory technical standard adjusting the threshold for trade percentiles according to the following sequence:~~
- ~~(a) S2 (40th percentile) by 30 July of the year following the date of application of Regulation (EU) No 600/2014;~~
  - ~~(b) S3 (50th percentile) by 30 July of the year thereafter; and~~
  - ~~(c) S4 (60th percentile) by 30 July of the year thereafter.~~
9. ~~Where ESMA does not submit an amended regulatory technical standard adjusting the threshold to the next stage according to the sequence referred to in paragraph 8, the ESMA assessment undertaken in accordance with paragraphs 4 and 5 shall explain why adjusting the threshold to the relevant next stage is not warranted. In this instance, the move to the next stage will be postponed by one year.~~

## Article 19

### Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX II

Details of transactions to be made available to the public

Table 2

**List of details for the purpose of post-trade transparency**

<b>Details</b>	<b>Financial Instruments</b>	<b>Description/Details to be published</b>	<b>Type of execution / publication</b>	<b>Format to be populated as defined in Table 1</b>
...				
Venue of execution	For all financial instruments	<p>Identification of the venue where the transaction was executed.</p> <p>Use the ISO 10383 segment MIC for transactions executed on a trading venue. Where the segment MIC does not exist, use the operating MIC.</p> <p>Use MIC code 'XOFF' for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue or systematic internaliser or organised trading platform outside of the <del>Union</del> <u>UK</u>.</p> <p>Use SINT for financial instrument submitted to trading or traded on a trading</p>	RM, MTF, OTF APA CTP	{MIC} –trading venues 'SINT' — systematic internaliser

		venue, where the transaction on that financial instrument is executed on a Systematic Internaliser.		
...				
Venue of publication	For all financial instruments	Code used to identify the trading venue and APA publishing the transaction.	CTP	Trading venue: {MIC} APA: {MIC} where available. Otherwise, 4 character code as published in the list of data reporting services providers on <u>ESMA's website</u> <u>the FCA's website</u> .

...

### ANNEX III

Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments

...

Table 2.2

**Bonds (all bond types except ETCs and ETNs) — classes not having a liquid market**

Asset class — Bonds (all bond types except ETCs and ETNs)	
Each individual bond shall be determined not to have a liquid market as per Article 13(18) if it is characterised by a specific combination of bond type and issuance size as specified in each row of the table.	
Bond Type	Issuance size

Sovereign Bond	<p>means a bond issued by a sovereign issuer which is either:</p> <p>(a) the <u>European Union</u>;</p> <p>(b) <del>a Member State</del> <u>the United Kingdom</u> including a government department, an agency or a special purpose vehicle of <del>a Member State</del> <u>the United Kingdom</u>;</p> <p><del>(ba) a State other than the United Kingdom, including a government department, an agency or a special purpose vehicle of the State;</del></p> <p>(c) a sovereign entity which is not listed under points <del>(a) and (b)</del> <u>to (ba)</u>.</p>	smaller than (in EUR)	1 000 000 000
Other Public Bond	<p>means a bond issued by any of the following public issuers:</p> <p>(a) in the case of a federal <del>Member State</del>, a member of that federation;</p> <p>(b) a special purpose vehicle for several <del>Member States</del>; an international financial institution established by two or more <del>Member States</del> which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems;</p> <p>(d) the European Investment Bank;</p> <p><del>(da) the International Finance Corporation</del></p> <p><del>(db) the International Monetary Fund</del></p> <p>(e) a public entity which is not an issuer of a sovereign bond as specified in the previous row.</p>	smaller than (in EUR)	500 000 000

Convertible Bond	means an instrument consisting of a bond or a securitised debt instrument with an embedded derivative, such as an option to buy the underlying equity	smaller than (in EUR)	500 000 000
Covered Bond	means bonds as referred to in <del>Article 52(4) of Directive 2009/65/EC</del> <u>Article 4(1)(128A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council</u>	during stages S1 and S2	during stages S3 and S4
		smaller than (in EUR)	1 000 000 000 ...
Corporate Bond	means a bond that is issued by a <del>Societas Europaea established before exit day in accordance with Council Regulation (EC) No 2157/2001 or a type of company listed in Article 1 of Directive 2009/101/EC of the European Parliament and of the Council</del> <u>incorporated in the UK with limited liability or equivalent in third countries</u>	during stages S1 and S2	during stages S3 and S4
		smaller than (in EUR)	1 000 000 000 ...
...			

...

Table 4.1

**Securitised derivatives — classes not having a liquid market**

Asset class — Securitised Derivatives

means a transferable security as defined in ~~Article 4(1)(44)(c) of Directive 2014/65/EU~~ Article (2)(1)(24) of Regulation 600/2014/EU different from structured finance products and should include at least:

...

Table 5.1

**Interest rate derivatives — classes not having a liquid market**

Asset class — Interest Rate Derivatives
---

any contract as defined in ~~Annex I, Section C(4) of Directive 2014/65/EU~~ paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order whose ultimate underlying is an interest rate, a bond, a loan, any basket, portfolio or index including an interest rate, a bond, a loan or any other product representing the performance of an interest rate, a bond, a loan.

...

...

Table 6.1

**Equity derivatives — classes not having a liquid market**

Asset class — Equity Derivatives
any contract as defined <del>Annex I, Section C(4) of Directive 2014/65/EU</del> <u>paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order</u> related to:
(a) one or more shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments;
(b) an index of shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments
...

...

Table 8.1

**Foreign exchange derivatives — classes not having a liquid market**

Asset class — Foreign Exchange Derivatives
a financial instrument relating to currencies as defined in <del>Section C(4) of Annex I of Directive 2014/65/EU</del> <u>paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order</u>
...

...

Table 9.1

## Credit derivatives — classes not having a liquid market

Asset class — Credit Derivatives					
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria. For sub-classes determined to have a liquid market the additional qualitative liquidity criterion, where applicable, shall be applied	Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	Average daily number of trades [quantitative liquidity criterion 2]	On-the-run status of the index [Additional qualitative liquidity criterion]
...					
<p><b>Single name credit default swap (CDS)</b></p> <p>a swap whose exchange of cash flows is linked to the creditworthiness of one issuer of financial instruments and the occurrence of credit events</p>	<p>a single name credit default swap sub-class is defined by the following segmentation criteria:</p> <p><b>Segmentation criterion 1</b> — underlying reference entity</p> <p><b>Segmentation criterion 2</b> — underlying reference entity type defined as follows:</p> <p>‘Issuer of sovereign and public type’ means an issuer entity which is either:</p> <p>(a) the <u>European Union</u>;</p>	EUR 10 000 000	10		



	<p>(b) <del>a Member State</del> <u>the United Kingdom</u> including a government department, an agency or a special purpose vehicle <del>a</del> <del>Member State</del> <u>the</u> <u>United Kingdom</u>;</p> <p><u>(ba) a State other</u> <u>than the United</u> <u>Kingdom, including a</u> <u>government</u> <u>department, an</u> <u>agency or a special</u> <u>purpose vehicle of</u> <u>the State</u>;</p> <p>(c) a sovereign entity which is not listed under points (a) <del>and</del> <del>(b)</del> <u>to (ba)</u>;</p> <p>(d) in the case of a federal <del>Member State</del>, a member of that federation;</p> <p>(e) a special purpose vehicle for several <del>Member States</del>;</p> <p>(f) an international financial institution established by two or more <del>Member States</del> which have the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or are threatened by severe financial problems;</p> <p>(g) the European Investment Bank;</p> <p><u>(ga) the International</u> <u>Finance Cooperation</u></p>			
--	---	--	--	--

	<p><u>(gb) the International Monetary Fund</u></p> <p>(h) a public entity which is not a sovereign issuer as specified in the points (a) to (c).</p> <p>‘Issuer of corporate type’ means an issuer entity which is not an issuer of sovereign and public type.</p> <p><b>Segmentation criterion 3</b> — notional currency defined as the currency in which the notional amount of the derivative is denominated</p> <p><b>Segmentation criterion 4</b> — time maturity bucket of the CDS defined as follows:</p> <p><b>Maturity bucket 1:</b> 0 &lt; time to maturity ≤ 1 year</p> <p><b>Maturity bucket 2:</b> 1 year &lt; time to maturity ≤ 2 years</p> <p><b>Maturity bucket 3:</b> 2 years &lt; time to maturity ≤ 3 years</p> <p>...</p> <p><b>Maturity bucket m:</b> (n-1) years &lt; time to maturity ≤ n years</p>			
...				

...

Table 10.1

**C10 derivatives — classes not having a liquid market**

Asset class — C10 Derivatives			
Sub-asset class	For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b), each sub-asset class shall be further segmented into sub-classes as defined below	Each sub-class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria	
		Average daily notional amount (ADNA) [quantitative liquidity criterion 1]	...
Freight derivatives a financial instrument relating to freight rates as defined in <u>Section C(10) of Annex I of Directive 2014/65/EU paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order</u>	<p>a freight derivative sub-class is defined by the following segmentation criteria:</p> <p><b>Segmentation criterion 1</b> — contract type: Forward Freight Agreements (FFAs) or options</p> <p><b>Segmentation criterion 2</b> — freight type: wet freight, dry freight</p> <p><b>Segmentation criterion 3</b> — freight sub-type: dry bulk carriers, tanker, containership</p> <p><b>Segmentation criterion 4</b> — specification of the size related to the freight sub-type</p> <p><b>Segmentation criterion 5</b> — specific route or time charter average</p> <p><b>Segmentation criterion 6</b> — time maturity bucket of the derivative defined as follows:</p>	EUR 10 000 000	<b>10</b>

	<p><b>Maturity bucket 1:</b> 0 &lt; time to maturity ≤ 1 month</p> <p><b>Maturity bucket 2:</b> 1 month &lt; time to maturity ≤ 3 months</p> <p><b>Maturity bucket 3:</b> 3 months &lt; time to maturity ≤ 6 months</p> <p><b>Maturity bucket 4:</b> 6 months &lt; time to maturity ≤ 9 months</p> <p>Maturity bucket 5: 9 months &lt; time to maturity ≤ 1 year</p> <p>Maturity bucket 6: 1 year &lt; time to maturity ≤ 2 years</p> <p>Maturity bucket 7: 2 years &lt; time to maturity ≤ 3 years</p> <p>...</p> <p><b>Maturity bucket m:</b> (n-1) years &lt; time to maturity ≤ n years</p>		
Asset class — C10 Derivatives			
<b>Sub-asset class</b>	<b>For the purpose of the determination of the classes of financial instruments considered not to have a liquid market as per Articles 6 and 8(1)(b) the following methodology shall be applied</b>		
<b>Other C10 derivatives</b>			
<p>a financial instrument as defined in <del>Section C(10) of Annex I of Directive 2014/65/EU</del> <u>paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order</u> which is not a 'Freight derivative', any of the following interest rate derivatives sub-asset classes: 'Inflation multi-currency swap or cross-currency swap', a 'Future/forward on inflation multi-currency swaps or cross-currency</p> <p>...</p>	<p>any other C10 derivatives is within the meaning of considered not to have a liquid market</p>		

Table 12.1

**Emission allowances — classes not having a liquid market**

...

Table 13.1

**Emission allowance derivatives — classes not having a liquid market**

<b>Sub-asset class</b>	<b>Each sub-asset class shall be determined not to have a liquid market as per Articles 6 and 8(1)(b) if it does not meet one or all of the following thresholds of the quantitative liquidity criteria</b>	
	<b>Average Daily Amount (ADA)</b> [quantitative liquidity criterion 1]	<b>Average daily number of trades</b> [quantitative liquidity criterion 2]
<p><b>Emission allowance derivatives whose underlying is of the type European Union Allowances (EUA)</b></p> <p>a financial instrument relating to emission allowances of the type European Union Allowances (EUA) as defined in <del>Section C(4) of Annex I of Directive 2014/65/EU</del> <u>paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order</u></p>	150 000 tons of Carbon Dioxide Equivalent	<b>5</b>
<p><b>Emission allowance derivatives whose underlying is of the type European Union Aviation Allowances (EUAA)</b></p> <p>a financial instrument relating to emission allowances of the type European Union Aviation Allowances (EUAA) as defined in <del>Section C(4) of Annex I of Directive 2014/65/EU</del> <u>paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order</u></p>	150 000 tons of Carbon Dioxide Equivalent	<b>5</b>
<p><b>Emission allowance derivatives whose underlying is of the type Certified Emission Reductions (CER)</b></p> <p>a financial instrument relating to emission allowances of the type Certified Emission Reductions (CER) as defined in <del>Section C(4) of Annex I of Directive 2014/65/EU</del> <u>paragraph 4 of</u></p>	150 000 tons of Carbon Dioxide Equivalent	<b>5</b>

<u>Part 1 of Schedule 2 to the Regulated Activities Order</u>		
<p><b>Emission allowance derivatives whose underlying is of the type Emission Reduction Units (ERU)</b></p> <p>a financial instrument relating to emission allowances of the type Emission Reduction Units (ERU) as defined in <del>Section C(4) of Annex I of Directive 2014/65/EU</del> paragraph 4 of <u>Part 1 of Schedule 2 to the Regulated Activities Order</u></p>	<p>150 000 tons of Carbon Dioxide Equivalent</p>	<p><b>5</b></p>
<p>...</p>		

ANNEX IV

Reference data to be provided for the purpose of transparency calculations

...

Table 2

**Details of the reference data to be provided for the purpose of transparency calculations**

#	FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
1	Instrument identification code	Code used to identify the financial instrument	{ISIN}
2	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
3	MiFIR identifier	<p><b>Identification of non-equity financial instruments: Securitised derivatives</b> as defined in Table 4.1 in Section 4 of Annex III</p> <p><b>Structured Finance Products (SFPs)</b> as defined in Article 2(1)(28) of Regulation (EU) No 600/2014</p> <p><b>Bonds</b> (for all bonds except ETCs and ETNs) as defined in <u>Article 4(1)(44)(b) of Directive 2014/65/EU Article (2)(1)(24)(b) of Regulation 600/2014/EU</u></p> <p><b>ETCs</b> as defined in <u>Article 4(1)(44)(b) of Directive 2014/65/EU Article (2)(1)(24)(b) of Regulation 600/2014/EU</u> and further specified in Table 2.4 of Section 2 of Annex III</p> <p><b>ETNs</b> as defined in <u>Article 4(1)(44)(b) of Directive 2014/65/EU Article (2)(1)(24)(b) of Regulation 600/2014/EU</u> and further specified in Table 2.4 of Section 2 of Annex III</p>	<p><b>Non-equity financial instruments:</b></p> <p>‘SDRV’ — Securitised derivatives</p> <p>‘SFPS’ — Structured Finance Products (SFPs)</p> <p>‘BOND’ — Bonds</p> <p>‘ETCS’ — ETCs</p> <p>‘ETNS’ — ETNs</p> <p>‘EMAL’ — Emission Allowances</p> <p>‘DERV’ — Derivative</p>



		<p><b>Emission allowances</b> as defined in Table 12.1 of Section 12 of Annex III</p> <p><b>Derivative</b> as defined in <del>Annex I, Section C (4) to (10) of Directive 2014/65/EU</del> paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order</p>	
...			

**Annex C**  
**COMMISSION DELEGATED REGULATION (EU) 2017/577**  
**of 13 June 2016**

**supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations**

...

Article -2

**Application**

This Regulation applies to:

1. those persons described in Article 1(2) of Regulation 600/2014/EU;
2. approved publication arrangements (APAs) as defined in Article (2)(1)(34) of Regulation 600/2014/EU and consolidated tape providers (CTPs) as defined in Article (2)(1)(35) of Regulation 600/2014/EU;
3. the Financial Conduct Authority as a competent authority.

[*Editor's note:* Third country firms who are authorised under Part 4A of the Financial Services and Markets Act 2000 should also see rule GEN 2.2.22AR in the General Provisions of the FCA's Handbook of Rules and Guidance. EU firms with a temporary permission should also see Article 1(2A) - (2E) of Regulation 600/2014/EU.]

Article -1

**Interpretation**

1. Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before exit day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.
2. The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.
4. References to the day of entry into application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.

Article 1

## Subject matter and scope

1. This Regulation sets out, the details of the data requests to be sent by ~~competent authorities~~ the FCA and the details of the reply to those requests to be sent by trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs), for the purposes of calculating and adjusting the pre-trade and post-trade transparency and trading obligation regimes and in particular for the purposes of determining the following factors:

...

- (g) for equity and equity-like instruments, the total volume of trading for the previous 12 months and of the percentages of trading carried out under both the negotiated trade and reference price waivers across the ~~Union~~ UK and on each trading venue in the previous 12 months;

...

## Article 2

### Content of the data requests and information to be reported

1. For the purpose of carrying out calculations that occur at pre-set dates or in pre-defined frequencies, trading venues, APAs and CTPs shall provide ~~their competent authorities~~ the FCA with all the data required to perform the calculations set out in the following Regulations:
  - (a) Delegated Regulation (EU) 2017/587;
  - (b) Delegated Regulation (EU) 2017/583;
  - (c) Delegated Regulation (EU) 2017/567;
  - (d) Delegated Regulation (EU) 2017/565.
2. ~~Competent authorities~~ The FCA may request, where necessary, additional information for the purpose of monitoring and adjusting the thresholds and parameters referred to in points (a) to (f) and (h) of Article 1 from trading venues, APAs and CTPs.
3. ~~Competent authorities~~ The FCA may request all the data ~~ESMA~~ it is required to take into consideration in accordance with Delegated Regulation (EU) 2016/2020 for non-equity financial instruments, including data on the following:
  - (a) the average frequency of trades;
  - (b) the average size and distribution of trades;
  - (c) the number and type of market participants; (d) the average size of spreads.

...

## Article 6

### **Reporting requirements for trading venues and CTPs for the purpose of the volume cap mechanism**

1. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014, trading venues shall submit the following data to the ~~competent authority~~ FCA:
  - (a) the total volume of trading in the financial instrument executed on that trading venue;
  - (b) the total volumes of trading in the financial instrument executed on that trading venue falling under the waivers of Article 4(1)(a) or Article 4(1)(b)(i) of Regulation (EU) No 600/2014, respectively, with total volumes reported separately for each waiver.
2. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014 and where requested by the ~~competent authority~~ FCA, CTPs shall submit to the ~~competent authority~~ FCA the following data:
  - (a) the total volumes of trading in the financial instrument executed on all trading venues in the ~~Union~~ UK with total volumes reported separately for each trading venue;
  - (b) the total volumes of trading executed on all trading venues in the ~~Union~~ UK falling under the waivers of Article 4(1)(a) or Article 4(1)(b)(i) of Regulation (EU) No 600/2014, respectively, with total volumes reported separately for each waiver and for each trading venue.
3. Trading venues and CTPs shall report the data set out in paragraphs 1 and 2 to the competent authority using the formats provided in the Annex. They shall, in particular, ensure that the trading venue identifiers they provide are sufficiently granular to enable the ~~competent authority~~ FCA and ~~ESMA~~ to identify the volumes of trading executed under the reference price waiver and, for liquid financial instruments, under the negotiated trade waiver of each trading venue and allow for the calculation of the ratio set out under Article 5(1)(a) of Regulation (EU) No 600/2014.

...

6. Trading venues shall submit the data referred to in paragraphs 1 to 5 to the ~~competent authority~~ FCA on the first and the sixteenth day of each calendar month by 13:00 CET. Where the first or the sixteenth day of the calendar month is a non-working day for the trading venue, the trading venue shall report the data to the ~~competent authority~~ FCA by 13:00 CET on the following working day.

7. Trading venues shall submit to the ~~competent authority~~ FCA the total volumes of trading determined in accordance with paragraphs 1 to 5 in respect of the following time periods:
  - (a) for the reports to be submitted on the sixteenth day of each calendar month, the execution period is from the first day to the fifteenth day of the same calendar month;
  - (b) for the reports to be submitted on the first day of each calendar month, the execution period is from the sixteenth day to the last day of the previous calendar month.

...

9. Trading venues and CTPs shall respond to any ad hoc request from ~~competent authorities~~ the FCA on the volume of trading in relation to the calculation to be performed for monitoring the use of the reference price or negotiated trade waivers by close of business on the next working day following the request.

#### Article 7

### **Reporting requirements for competent authorities to ESMA for the purposes of the volume cap mechanism and the trading obligation for derivatives**

- ~~1. Competent authorities shall provide ESMA with the data received from a trading venue or a CTP in accordance with Article 6 by 13:00 CET on the next working day following its receipt.~~
- ~~2. The Competent authorities shall provide ESMA with the data received from a trading venue, APA or CTP for the purpose of determining whether derivatives are sufficiently liquid as referred to in Article 1(h) without undue delay and no later than three working days following the receipt of the relevant data.~~

#### Article 8

### **Reporting requirements for ESMA for the purpose of the volume cap mechanism**

- 1. For the purposes of this Article:
  - (a) the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU); and
  - (b) the ‘relevant area’ in relation to a financial instrument means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 5 of Regulation (EU) 600/2014.
- ~~1. ESMA~~ After the transitional period, the FCA shall publish the measurements of the total volume of trading for each financial instrument that is traded on a trading venue in the previous 12 months and of the percentages of trading under both the

negotiated trade and reference price waivers across the ~~Union~~ relevant area and on each trading venue in the previous 12 months, in accordance with paragraphs 4, 5 and 6 of Article 5 of Regulation (EU) No 600/2014, no later than 22.00 CET on the ~~fifth~~ tenth working day following the end of the reporting periods set out in Article 6(6) of this Regulation.

2. The publication referred to in paragraph 1 shall be free of charge and in a machine-readable and human-readable format as defined in Article 14 of Commission Delegated Regulation (EU) 2017/571 and in paragraphs 4 and 5 of Article 13 of Delegated Regulation (EU) 2017/567.
3. Where a financial instrument is traded in more than one currency across the ~~Union~~ relevant area, ~~ESMA~~ the FCA shall convert all volumes into euros using average exchange rates calculated on the basis of the daily euro foreign exchange reference rates published by the European Central Bank on its website in the previous 12 months. Those converted volumes shall be used for the calculation and publication of the total volume of trading and of the percentages of trading under both the negotiated trade and reference price waivers across the ~~Union~~ relevant area and on each trading venue as referred to in paragraph 1.

#### Article 9

#### **Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## Annex D

### COMMISSION DELEGATED REGULATION (EU) 2017/588

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

...

#### Article -2

#### **Application**

This Regulation applies to:

1. those persons described in Article 1(2) of Regulation 600/2014/EU; and
2. the Financial Conduct Authority as a competent authority.

[*Editor's note:* Third country firms who are authorised under Part 4A of the Financial Services and Markets Act 2000 should also see rule GEN 2.2.22AR in the General Provisions of the FCA's Handbook of Rules and Guidance. EU firms with a temporary permission should also see Article 1(2A) - (2E) of Regulation 600/2014/EU.]

#### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2014/65/EU (as that directive applied in the European Union immediately before exit day) that definition shall apply for the purposes of this Regulation except where it is defined in article 2 of Regulation 600/2014/EU in which case that definition shall apply for the purposes of this Regulation.
2. The definition of all other terms defined in article 2 of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.
4. References to the date of application of Regulation (EU) No 600/2014 mean the date of application of that Regulation in the European Union.

#### Article 1

#### **Most relevant market in terms of liquidity**

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587.

...

### Article 3

#### **Average daily number of transactions for shares and depositary receipts**

(Article 49(1) and (2) of Directive 2014/65/EU)

1. By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, the ~~competent authority for a specific share or depositary receipt~~ FCA shall, when determining the most relevant market in terms of liquidity for ~~that~~ each share or depositary receipt that is traded on a trading venue calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

~~The competent authority referred to in subparagraph 1 shall be the competent authority of the most relevant market in terms of liquidity as specified in Article 16 of Commission Delegated Regulation (EU) 2017/590.~~

...

5. Before the first admission to trading or before the first day of trading of a share or depositary receipt, the ~~competent authority of the trading venue where that financial instrument is to be first admitted to trading or is to be first traded~~ FCA shall estimate the average daily number of transactions for that trading venue, taking into account the previous trading history of that financial instrument, where applicable, as well as the previous trading history of financial instruments that are considered to have similar characteristics, and publish that estimation.

The tick sizes of the liquidity band corresponding to that published estimate average daily number of transactions shall apply from the publication of that estimate until the publication of the average daily number of transactions for that instrument in accordance with paragraph 6.

6. No later than six weeks after the first day of trading of the share or depositary receipt, the ~~competent authority of the trading venue where the financial instrument was first admitted to trading or was first traded on a trading venue~~ FCA shall calculate and ensure the publication of the average daily number of transactions in that financial instrument for that trading venue, using the data relating to the first four weeks of trading of that financial instrument.

The tick sizes of the liquidity band corresponding to that published average daily number of transactions shall apply from the publication until a new average daily



number of transactions for that instrument has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4.

...

### Article 3A

#### **Transitional period for publication of average daily number of transactions**

1. For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU.
2. During the transitional period and until the FCA makes a publication under Articles 3, 4 or 5(3) in relation to the financial instrument in question, the average daily number of transactions in respect of a share or depositary receipt for the purposes of retained EU law relating to markets in financial instruments shall be as follows in (a) or (b), subject to (c):
  - (a) that stated in the most recent information published before exit day under Article 4 or 5 (whichever is the most recent) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before exit day (including the FCA); or
  - (b) if no such information was published by that competent authority in the European Union in respect of a financial instrument under those provisions before exit day, the average daily number of transactions for that financial instrument shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on exit day; and
  - (c) if information was published before exit day under Article 3(1) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before exit day, but the information was not required to be used under Article 3(4) before exit day, then the average daily number of transactions shall become that stated in such information from the point at which it would have been required to be used under Article 3(4) as it applied in the European Union before exit day, provided that the calculations used to produce that information did not exclude trading in the UK for the relevant period.
3. From exit day and during the transitional period, the FCA’s obligations to perform calculations and publish information under Article 3 are modified as follows:
  - (a) where the FCA publishes information under Article 3(1):
    - (i) it shall publish what appears to it to be the average daily number of transactions;
    - (ii) it is not required to follow the relevant methodology in Article 3, but where it does not:

- it must have regard to the relevant methodology; and
- it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and
- (iii) it shall ensure publication by five working days after 1 March; and
- (b) where the FCA publishes information under Article 3(6) it shall publish what appears to it to be the average daily number of transactions, and it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country.

#### Article 4

#### **Corporate actions**

(Article 49(1) and (2) of Directive 2014/65/EU)

Where ~~a competent authority~~ the FCA considers that a corporate action may modify the average daily number of transactions of a particular financial instrument thereby causing this financial instrument to fall within a different liquidity band, the ~~competent authority~~ FCA shall determine and ensure publication of a new applicable liquidity band for that financial instrument treating it as if it were first admitted to trading or first traded on a trading venue and apply the procedure set out in Article 3(5) and (6).

#### Article 5

#### **Transitional provisions**

...

3. The tick sizes of the liquidity band corresponding to the published average daily number of transactions referred to in paragraph 1 shall be applied until 1 April of the year following the date of application of Regulation (EU) No 600/2014. During that period, ~~competent authorities~~ the FCA shall ensure that the tick sizes for financial instruments referred to under points (b) and (c) of paragraph 2 ~~and for which they are the competent authority~~, do not contribute to disorderly trading conditions. Where ~~a competent authority~~ the FCA identifies a risk for the orderly functioning of the markets due to such tick sizes, it shall determine and publish an updated average daily number of transactions for the relevant financial instruments to address that risk. It shall do so on the basis of longer and more comprehensive trading history data of those instruments. Trading venues shall immediately apply the liquidity band corresponding to that updated average daily number of transactions. They shall do so until 1 April of the year following the date of application of Regulation (EU) No 600/2014 or until any further publication by the ~~competent authority~~ FCA in accordance with this paragraph.

Article 6

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (PACKAGED RETAIL AND INSURANCE-BASED  
INVESTMENT PRODUCTS) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in [Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. In this instrument:
- “the Act” means the European Union (Withdrawal) Act 2018; and  
“Exit Day” has the meaning given in the Act.
- F. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- G. The FCA thereafter amends the following EU Regulation in accordance with Annex A of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) 2017/653	Annex A

of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents	
---	--

**Commencement**

H. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

I. This instrument may be cited as the Technical Standards (Packaged Retail and Insurance-based Investment Products) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

**COMMISSION DELEGATED REGULATION (EU) 2017/653**

**of 8 March 2017**

**supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents**

...

**CHAPTER I**

**CONTENT AND PRESENTATION OF THE KEY INFORMATION DOCUMENT**

Article -2

**Interpretation**

1. In this Regulation, unless the contrary intention appears:
- (a) words and expressions used have the same meaning as in Regulation 1286/2014/EU, as amended by the [Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2018];
  - (b) a reference to a provision of FSMA is a reference to that provision as amended from time to time;
  - (c) a reference to a provision of rules made under FSMA is a reference to that provision as it has effect on Exit Day;
  - (d) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA;
  - (e) references to ‘UCITS’ include both UK UCITS and EEA UCITS.

Article -1

**Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘AIF’ has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;
- (2) ‘EEA UCITS’ means a collective investment scheme (as defined in section 235 of FSMA) established in accordance with Directive 2009/65/EC in an EEA State;
- (3) ‘regulated market’ means a regulated market which is a UK regulated market or an EU regulated market, as those terms are defined in Regulation (EU) No

600/2014 on markets in financial instruments (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018);

- (4) 'UK UCITS' has the meaning given in section 237(3) of FSMA.

## Article 1

### General information section

...

- (d) ~~the name of the competent authority responsible for the supervision of the PRIIP manufacturer in relation to the key information document;~~

...

Information in the section referred to in the first subparagraph shall also include the comprehension alert referred to in Article 8(3)(b) of Regulation (EU) No 1286/2014 where the PRIIP meets one of the following conditions:

- (a) it is an insurance-based investment product which does not meet the requirements laid down in ~~Article 30(3)(a) of Directive (EU) 2016/97 of the European Parliament and of the Council~~ rule 10A.4.1(2A) of the Conduct of Business sourcebook;
- (b) it is a PRIIP which does not meet the requirements laid down in ~~points (i)–(vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council~~ rule 10A.4.1(2) of the Conduct of Business sourcebook.

...

## Article 3

### 'What are the risks and what could I get in return?' section

...

2. ...

- (c) a narrative below the summary risk indicator explaining that if a PRIIP is denominated in a currency other than ~~the official currency of the Member State where the PRIIP is being marketed~~ pounds sterling, the return, when expressed in ~~the official currency of the Member State where the PRIIP is being marketed~~ pounds sterling, may change depending on currency fluctuations;

...

Article 14

**Specific information on each underlying investment option**

...

2. By way of derogation from paragraph 1, PRIIP manufacturers may use the key investor information document drawn up in accordance with:

(a) for EEA UCITS, Articles 78 to 81 of Directive 2009/65/EC, as amended from time to time; or

(b) the rules made under FSMA which implemented those Articles,

to provide specific information for the purposes of Articles 11 to 13 of this Delegated Regulation where at least one of the underlying investment option referred to in paragraph 1 is a UCITS or non-UCITS fund referred to in Article 32 of Regulation (EU) No 1286/2014.

...

Article 18

**Final Provision**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...



**ANNEX I**  
**TEMPLATE FOR THE KEY INFORMATION DOCUMENT**

PRIIP manufacturers shall comply with the section order and titles set out in the template, which however does not fix parameters regarding the length of individual sections and the placing of page breaks, and is subject to an overall maximum of three sides of A4-sized paper when printed.

<b>Key Information Document</b>	
<b>Purpose</b> This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.	
<b>Product</b> [Name Of Product] [Name Of PRIIP manufacturer] [where applicable ISIN or UPI] [website for PRIIP manufacturer] Call [telephone number] for more information <del>[Competent Authority of the PRIIP Manufacturer in relation the KID]</del> [date of production of the KID]	
[Alert (where applicable) <b>You are about to purchase a product that is not simple and may be difficult to understand</b> ]	
<b>What is this product?</b>	
<b>Type</b>	
<b>Objectives</b>	
<b>Intended retail investor</b>	
<b>[Insurance benefits and costs]</b>	
<b>What are the risks and what could I get in return?</b>	
<b>Risk Indicator</b>	Description of the risk-reward profile Summary Risk Indicator SRI template and narratives as set out in Annex III, including on possible maximum loss: can I lose all invested capital? Do I bear the risk of incurring additional financial commitments or obligations? Is there capital protection against market risk?

<b>Performance Scenarios</b>	Performance Scenario templates and narratives as set out in Annex V including where applicable information on conditions for returns to retail investors or built-in performance caps, and statement that the tax legislation of the <del>retail investor's home Member State</del> <u>United Kingdom</u> may have an impact on actual payout
------------------------------	---

...

**ANNEX II**  
**METHODOLOGY FOR THE PRESENTATION OF RISK**  
**PART 1**  
**Market risk assessment**

**Determination of the market risk measure (MRM)**

...

4. Category 1 covers the following:

...

- (b) PRIIPs that fall within one of the categories referred to in ~~items 4 to 10 of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

...

...

**PART 2**  
**Methodology for assessing credit risk**

...

**II. CREDIT RISK ASSESSMENT**

**Credit assessment of obligors**

37. Where available, a PRIIP manufacturer shall define *ex-ante* one or more external credit assessment institutions (ECAI) certified or registered with:
- (a) the European Securities and Markets Authority (ESMA) immediately after Exit Day in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council, as it has effect in the European Union; or
  - (b) the Financial Conduct Authority in accordance with Regulation (EC) No 1060/2009,

whose credit assessments will consistently be referred to for the purpose of the credit risk assessment. Where multiple credit assessments are available according to that policy, the median rating shall be used, defaulting to the lower of the two middle values in case of an even number of assessments.

- 37A. The ability of a PRIIP manufacturer to define an ECAI certified or registered with ESMA for the purpose of the credit risk assessment shall not otherwise affect the application of Article 4(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 to a PRIIP manufacturer to which that Regulation also applies.

...

### Allocation of credit assessments to credit quality steps

...

43. If the obligor has no external credit assessments, the default credit assessment as referred to in point 38 of this Annex shall be:
- (a) credit quality step 3, if the rating of the state in which the obligor is domiciled would be credit quality step 3 and if the obligor is regulated as a credit institution or an insurance undertaking under: the applicable Union law or the legal framework deemed equivalent under Union law and if the rating of the Member State where the obligor is domiciled would be credit quality step 3;
    - (i) the law of the United Kingdom;
    - (ii) the law of a Member State for the purposes of Union law; or
    - (iii) the legal framework deemed equivalent under Union law;
  - (b) credit quality step 5, for any other obligor.

### III. CREDIT RISK MEASURE

...

46. The CRM may be assigned as 1 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

...

- (b) held with a third party on a segregated account under equivalent terms and conditions as those laid down in Directive 2011/61/EU of the European Parliament and of the Council or Directive 2014/91/EU, as those Directives had effect immediately after Exit Day, or in those enactments which were relied on immediately before Exit Day to implement those directives; and

...

47. The CRM may be assigned as 2 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

...

- (b) identified and held on accounts or registers, based on applicable law, including Articles 275 and 276 of Directive 2009/138/EC of the European Parliament and of the Council, as those Articles had effect immediately after Exit Day, or those enactments which were relied on immediately before Exit Day to implement those Articles; and

...

...

49. Where a PRIIP is not able to satisfy the criteria under point 47 of this Annex, the CRM pursuant to point 45 of this Annex may be reduced by one class where the claims of retail investors have priority over the claims of ordinary creditors, as set out in Article 108 of Directive 2014/59/EU, as that Article had effect immediately after Exit Day, or those enactments which were relied on immediately before Exit Day to implement that Article, of the PRIIP manufacturer or party bound to make, directly or indirectly, relevant payments to the investor, in so far as the obligor is subject to relevant prudential requirements in respect of ensuring an appropriate matching of assets and liabilities.

...

51. The CRM pursuant to point 45 of this Annex shall be increased by three classes where a PRIIP is part of the own funds of the PRIIP obligor, as defined in Article 4(1)(118) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, or in that Article as it has effect in the European Union, or in Article 93 of Directive 2009/138/EU or those enactments which were relied on immediately before Exit Day to implement that Article.

...

**ANNEX IV**  
**PERFORMANCE SCENARIOS**

...

34. For an insurance based investment product, the following shall apply in addition to the methods referred above including under point 15 when calculating the performance scenarios in respect of the investment:

...

- (c) assumptions on how future profits are shared between the PRIIP manufacturer and the retail investor and other assumptions on future profit sharing shall be realistic and in line with the current business practice and business strategy of the PRIIP manufacturer. Where there is sufficient evidence that the undertaking will change its practices or strategy, the assumptions on future profit sharing shall be consistent with the changed practices or strategy. For life insurers within the scope of Directive 2009/138/EC, or those enactments which were relied on immediately before Exit Day to implement that directive, these assumptions shall be consistent with the assumptions on future management actions used for the valuation of technical provisions in the Solvency II-balance-sheet;

...

...

## ANNEX VI

## METHODOLOGY FOR THE CALCULATION OF COSTS

...

9. When calculating the transaction costs incurred by the PRIIP over the previous three years, actual transaction costs must be calculated using the methodology described in points 12 to 18 of this Annex for investments in the following instruments:

(a) transferable securities as defined by ~~Article 2 of Commission Directive 2007/16/EC~~ by rule 5.2.7A of the Collective Investment Schemes sourcebook;

...

...

16. Costs associated with transactions undertaken by PRIIPs and concerning financial instruments that fall within one of the categories referred to in ~~items 4 to 10 of Section C of Annex I to Directive 2014/65/EU~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be calculated in the following way:

...

...

58. For manufacturers within the scope of Directive 2009/138/EC, or those enactments which were relied on immediately before Exit Day to implement that directive, these best estimate assumptions shall be consistent with the respective assumptions used for the calculation of the technical provisions in the Solvency II balance sheet.

...

89. The PRIIP manufacturer shall ensure that the accuracy of the estimated figure is kept under review. The PRIIP manufacturer shall determine when it is appropriate to begin using *ex-post* figures rather than an estimate; but in any case it shall, no later than 12 months after the date on which the PRIIP was first offered for sale in ~~any Member State~~ the United Kingdom, review the accuracy of the estimate by calculating a figure on an *ex-post* basis.

...

**TECHNICAL STANDARDS (PAYMENT ACCOUNTS DIRECTIVE) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulations in accordance with Annexes A - B of this instrument.

(1)	(2)
COMMISSION IMPLEMENTING REGULATION (EU) 2018/33 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the statement of fees and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council	Annex A



COMMISSION IMPLEMENTING REGULATION (EU) 2018/34 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the fee information document and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council	Annex B
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**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (Payment Accounts Directive) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

**ANNEX A**

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/33**

**of 28 September 2017**

**laying down implementing technical standards with regard to the standardised presentation format of the statement of fees and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council**

...

**Article 1**

Template for the statement of fees and its common symbol

...

3. The statement of fees shall:

...

- (d) use font type Arial or another font type similar to Arial and font size 11, with exceptions for the title ‘Statement of Fees’, which uses font size 16 in bold type; font size 14 in bold type for the headings, and font size 12 in bold for the sub-headings, unless an increase in the font size or use of braille font type for visually impaired persons is either required under ~~national~~ UK law or agreed between the consumer and the payment service provider;

...

**Article 9**

**Summary of fees and interest**

...

- 2. Where interest is not applicable to a specific account, and where the inclusion of such information is enabled or required by ~~national provisions transposing Directive 2014/92/EU~~, the Payment Accounts Regulations, payment service providers shall use the wording ‘interest not applicable’, in lower case, right aligned.

3. Where interest is applicable but, for the specific period, it amounts to zero, and where the inclusion of such information is enabled or required by ~~national provisions transposing Directive 2014/92/EU~~ the Payment Accounts Regulations, payment service providers shall indicate this by using '0' in the corresponding table.
4. ~~Payment service providers shall display the comprehensive cost indicator summarising the overall annual cost of the payment account in a separate table, where required by the Payment Accounts Regulations national provisions transposing Directive 2014/92/EU. Payment service providers shall delete the table, if those national provisions do not require payment service providers to display the comprehensive cost indicator.~~

#### Article 10

##### **Detailed statement of fees paid on the account**

...

3. Payment service providers shall leave the sub-column 'Number of times the service was used' blank where:
- (a) a service has been used but the payment service provider did not charge a fee for that service, and
  - (b) the inclusion of such information is enabled or required by ~~national provisions transposing Directive 2014/92/EU~~ the Payment Accounts Regulations.

...

5. ...

- (b) the inclusion of such information is enabled or required by ~~national provisions transposing Directive 2014/92/EU~~ the Payment Accounts Regulations.

...

#### Article 14

##### **Detail of interest paid on the account**

...

5. Where no interest is paid by a payment account holder because no interest is applicable to the account, and where the inclusion of such information is enabled or

required by ~~national provisions transposing Directive 2014/92/EU~~ the Payment Accounts Regulations, payment service providers shall indicate it by words ‘interest not applicable’, in lower case, left aligned, in bold, in row ‘Total interest paid’.

#### Article 15

##### **Detail of interest earned on the account**

...

7. Where a particular account does not pay the interest because no interest is applicable to the account, and where the inclusion of such information is enabled or required by ~~national provisions transposing Directive 2014/92/EU~~ the Payment Accounts Regulations, payment service providers shall indicate it by words ‘interest not applicable’, in lower case, left aligned, in bold, in row ‘Total interest earned’.

#### Article 16

##### **Additional information**

1. Payment service providers shall display in the table ‘Additional information’ any additional information that goes beyond the information covered under Articles 2 to 15 and that is directly related to the services or fees paid or interest charged or earned, or interest rates applied, as referred to in Article 5(2) of Directive 2014/92/EU Schedule 2 (3) of the Payment Accounts Regulations during the period covered by the statement of fees. The additional information displayed in that table shall include information required by ~~national provisions~~ the Payment Accounts Regulations.

...

#### Article 19

##### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Statement of fees template**

...

Total fees paid (total package of services fees and total fees paid)

Total interest paid

Total interest earned

Comprehensive cost indicator

...

---

...

**ANNEX B**

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/34  
of 28 September 2017**

**laying down implementing technical standards with regard to the standardised presentation format of the fee information document and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council**

...

Article 1

**Template for the fee information document and its common symbol**

...

2. ...

- (d) use font type Arial or another font type similar to Arial and font size 11, with exceptions for the title ‘Fee Information Document’, which uses font size 16 in bold type; font size 14 in bold type for the headings, and font size 12 in bold for the sub-headings, unless an increase in the font size or use of braille font type for visually impaired persons is either required under ~~national~~ UK law or agreed between the consumer and the payment service provider;

...

- 4. Notwithstanding the provision of a payment account with basic features referred to in ~~Chapter IV of Directive 2014/92/EU~~ Part 4 of the Payment Accounts Regulations, where a payment service provider offers only one payment account to consumers that can be combined with different packages of services referred to in ~~Article 4(3) of Directive 2014/92/EU~~ Schedule 1(3) of the Payment Accounts Regulations, the payment service provider may produce more than one fee information document in respect of that account, provided that each fee information document contains at least one package.

...

Article 7

**‘Services and Fees’ table**

1. Payment service providers shall list the services that are included in the ~~national~~ final linked services list of most representative services linked to a payment account referred to in ~~Article 3(5) of the Directive 2014/92/EU~~ Regulation 3 of the Payment Accounts Regulations, where payment service provider offer such services, and their corresponding fees in the table on services and fees as follows:

...

2. Where none of the services offered by a payment services provider, which would correspond a sub-heading, are included in the ~~national~~ final linked services list of most representative services linked to a payment account, the entire row related to that sub-heading shall be deleted, including the title of the sub-heading.
3. Where payment service providers do not offer one or more services from the ~~national~~ final linked services list of the most representative services referred to in ~~Article 3(5) of the Directive 2014/92/EU~~ Regulation 3 of the Payment Accounts Regulations, or where the service is not made available with the account, the phrase ‘service not available’ shall be used.

...

#### Article 8

##### **Presentation of packages of services charged as part of fees under the sub-heading ‘General account services’**

1. Where a package of services linked to a payment account is charged as part of the fees under the sub-heading ‘General account services’, all services included in the package, regardless of whether they are included in the final ~~national~~ linked services list of most representative services linked to a payment account referred to in ~~Article 3(5) of the Directive 2014/92/EU~~ Regulation 3 of the Payment Accounts Regulations, shall be listed in the section of the table on general account service, in the row on package of services.

...

#### Article 9

##### **Presentation of packages of services charged separately from fees under the sub-heading a ‘General account services’**

1. ...

- (a) a list of all services included in the package, regardless of whether they are included in the final ~~national~~ linked services list of most representative services linked to a payment account referred to in ~~Article 3(5) of Directive 2014/92/EU~~ Regulation 3 of the Payment Accounts Regulations;

...

#### Article 11

#### **Comprehensive cost indicator**

1. ~~Payment service providers shall display the comprehensive cost indicator summarising the overall annual cost of the payment account, in a separate table, where required by the Payment Accounts Regulations national provisions.~~
2. ~~Payment service providers shall delete the table on comprehensive cost indicator, if the Payment Accounts Regulations national provisions do not require payment service providers to display the comprehensive cost indicator.~~

#### Article 14

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...



ANNEX

**Fee information document template**

...

...
Comprehensive cost indicator

**TECHNICAL STANDARDS (PAYMENT SERVICES DIRECTIVE) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- D. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocations**

- E. The FCA revokes Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions.

**Commencement**

- F. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

- G. This instrument may be cited as the Technical Standards (Payment Services Directive) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

**TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE  
REGULATION) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3.

**Pre-conditions to making**

- B. The FCA and the Bank of England are the appropriate regulators for the EU Regulations under European Market Infrastructure Regulations that are specified in Part 5 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. In accordance with regulation 3(2)(b), the Bank of England has given consent to the modifications in Annexes A - C of this instrument.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- F. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- G. The FCA thereafter amends the following EU Regulation in accordance with Annexes A - C of this instrument.

(1)	(2)
COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012	Annex A

of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories	
COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories	Annex B
COMMISSION DELEGATED REGULATION (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP	Annex C

### Commencement

H. This instrument comes into force on [29 March 2019 at 11 p.m.].

### Citation

I. This instrument may be cited as the Technical Standards (European Market Infrastructure Regulations) (EU Exit) Instrument 2019.

By order of the Board  
[date]

## ANNEX A

**COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012  
of 19 December 2012**

**laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories**

## Article 1

**Format of derivative contract reports**

The information contained in a report under Article 9 of Regulation (EU) No 648/2012 shall be provided in the format specified in the Annex to this Regulation.

## Article 2

**Frequency of derivative contract reports**

Where provided for in Article 11(2) of Regulation (EU) No 648/2012, mark to market or mark to model valuations of contracts reported to a trade repository shall be done on a daily basis. Any other reporting elements as provided for in the Annex to this Regulation and the Annex to ~~the delegated act with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories pursuant to Article 9(5) of Regulation (EU) No 648/2012~~ Regulation (EU) No 148/2013 shall be reported as they occur and taking into account the time limit foreseen under Article 9 of Regulation (EU) No 648/2012, notably as regards the conclusion, modification or termination of a contract.

...

## Article 4

**Specification, identification, and classification of derivatives**

...

5. The derivative shall be identified in Field 6 of Table 2 of the Annex using the following, where available:
  - (a) an ISO 6166 International Securities Identification Number (ISIN) code or an Alternative Instrument Identifier code (AII), as applicable, until 3 January 2018 ~~the date of application of the delegated act adopted by the Commission~~

~~pursuant to Article 27(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council;~~

- (b) ~~an ISIN from the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014 3 January 2018.~~

Where an AII code is used, the complete AII code shall be used.

...

9. Until the code referred to in paragraph 8 is endorsed by the FCA ESMA, derivatives for which an ISO 6166 ISIN code or an AII code are not available shall be classified using an ISO 10692 CFI code.

#### Article 4a

### Unique Trade Identifier

1. A report shall be identified through either a global unique trade identifier endorsed by the FCA ESMA or, in the absence thereof, a unique trade identifier agreed by the counterparties.

...

#### Article 4b

### Venue of execution

The venue of execution of the derivative contract shall be identified in Field 15 of Table 2 of the Annex ~~as follows:~~ using the ISO 10383 Market Identifier Code (MIC).

- (a) ~~until the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014:~~
- (i) ~~for a venue of execution inside the Union, the ISO 10383 Market Identifier Code (MIC) published on ESMA's website in the register set up on the basis of information provided by competent authorities pursuant to Article 13(2) of Commission Regulation (EC) No 1287/2006;~~
  - (ii) ~~for a venue of execution outside the Union, the ISO 10383 MIC included in the list of MIC codes maintained and updated by ISO and published at ISO web site;~~
- (b) ~~from the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014, the ISO 10383 MIC.~~

## Article 5

**Reporting start date**

1. Credit derivative and interest rate derivative contracts shall be reported:
  - (a) by 1 July 2013, where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 April 2013;
  - (b) 90 days after the registration of a trade repository for a particular derivative class under Article 55 of Regulation (EU) No 648/2012, where there is no trade repository registered for that particular derivative class before or on 1 April 2013;
  - (c) by 1 July 2015, where there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015. ~~The reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation until a trade repository is registered for that particular derivative class.~~
2. Derivative contracts not referred to in paragraph 1 shall be reported:
  - (a) by 1 January 2014, where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before 1 October 2013;
  - (b) 90 days after the registration of a trade repository for a particular derivative class under Article 55 of Regulation (EU) No 648/2012, where there is no trade repository registered for that particular derivative class before or on 1 October 2013;
  - (c) by 1 July 2015, where there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 by 1 July 2015. ~~The reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation until a trade repository is registered for that particular derivative class.~~
3. Those derivative contracts which were outstanding on 16 August 2012 and are still outstanding on the reporting start date shall be reported to a trade repository within 90 days of the reporting start date for a particular derivative class.
4. The following derivative contracts which are not outstanding on the commencement date for reporting for a particular derivative class shall be reported to a trade repository within five years of that date:
  - (a) derivative contracts that were entered into before 16 August 2012 and were still outstanding on 16 August 2012;
  - (b) derivative contracts that were entered into on or after 16 August 2012.
5. The reporting start date shall be extended by 180 days for the reporting of information referred to in Article 3 of Regulation (EU) No 148/2013 ~~the delegated act with regard to regulatory technical standards specifying the minimum details of the data to be~~



~~reported to trade repositories pursuant to Article 9(5) of Regulation (EU) No 648/2012.~~

Article 6  
**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX

**Table 1**  
**Counterparty Data**

	Field	Format
<b>Parties to the contract</b>		
...		
6	Corporate sector of the reporting counterparty	<p>Taxonomy for Financial Counterparties:</p> <p><del>A = Assurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council</del></p> <p><del>C = Credit institution which is a CRR firm (within the definition in Article 4(1)(2A) of the Capital Requirements Regulation) authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council</del></p> <p><del>F = Investment firm within the meaning given in Article 2(1A) of the MIFIR which:</del></p> <ul style="list-style-type: none"> <li><del>(i) has its registered office or head office in the United Kingdom;</del></li> <li><del>(ii) has permission under Part 4A of FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;</del></li> <li><del>(iii) would require authorisation under Directive 2014/65/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head offices) in an EEA state; and</del></li> <li><del>(iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017; authorised in accordance with Directive 2004/39/EC of the European Parliament and of the Council</del></li> </ul>

I = Insurance undertaking ~~authorised in accordance with Directive 2009/138/EC as defined in section 417 of the FSMA~~

L = ~~AIF (within the definition in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) Alternative investment fund managed by Alternative Investment Fund Managers (AIFMs) (within the definition in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council~~

O = Institution for occupational retirement provision ~~within the meaning of section 1(1) of the Pension Schemes Act 1993 within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council~~

R = Reinsurance undertaking ~~as defined in section 417 of the FSMA authorised in accordance with Directive 2009/138/EC~~

U = ~~Undertakings for the Collective Investment in Transferable Securities (UCITS) UK UCITS (within the definition in section 237(3) of the FSMA) and its management company (within the definition in section 237(2) of the FSMA), authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council~~

Taxonomy for Non-Financial Counterparties. The following categories correspond to the main sections of Statistical classification of economic activities in the European Community (NACE) as defined in Regulation (EC) No 1893/2006 of the European Parliament and of the Council

1 = Agriculture, forestry and fishing

2 = Mining and quarrying

3 = Manufacturing

4 = Electricity, gas, steam and air conditioning supply

5 = Water supply, sewerage, waste management and remediation activities

6 = Construction

7 = Wholesale and retail trade, repair of motor vehicles and motorcycles

8 = Transportation and storage

9 = Accommodation and food service activities

10 = Information and communication

11 = Financial and insurance activities

12 = Real estate activities

		<p>13 = Professional, scientific and technical activities          14 = Administrative and support service activities          15 = Public administration and defence; compulsory social security          16 = Education          17 = Human health and social work activities          18 = Arts, entertainment and recreation          19 = Other service activities          20 = Activities of households as employers; undifferentiated goods — and services — producing activities of households for own use          21 = Activities of extraterritorial organisations and bodies</p> <p>Where more than one activity is reported, list the codes in order of the relative importance of the corresponding activities, separating them with a “-”.</p> <p>Leave blank in the case of CCPs and other type of counterparties in accordance with Article 1(5) of Regulation (EU) No 648/2012.</p>
...		

**Table 2**  
**Common Data**

	<b>Field</b>	<b>Format</b>	<b>Applicable types of derivative contracts</b>
	<b>Section 2a — Contract type</b>		<b>All contracts</b>
...			
6	Product identification	For product identifier type I: ISO 6166 ISIN 12 character alphanumerical code For product identifier type A: Complete AII code in accordance with Article 4(86)	
7	Underlying identification type	I = ISIN A = AII U = UPI B = Basket X = Index	
8	Underlying identification	For underlying identification type I: ISO 6166 ISIN 12 character alphanumerical code For underlying identification type A: complete AII code in accordance with Article 4(86) For underlying identification type U: UPI For underlying identification type B: all individual components identification through ISO 6166 ISIN or complete AII code in accordance with Article 4(86). Identifiers of individual components shall be separated with a dash “-”. For underlying identification type X: ISO 6166 ISIN if available, otherwise full name of the index as assigned by the index provider	
...			
15	Venue of execution	ISO 10383 Market Identifier Code (MIC), 4 alphanumerical characters; in accordance with Article 4(b).	

## ANNEX B

**COMMISSION DELEGATED REGULATION (EU) No 148/2013  
of 19 December 2012**

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories**

~~(Text with EEA relevance)~~

...

Article 3

**Reporting of exposures**

1. The data on collateral required in accordance with Table 1 of the Annex shall include all posted and received collateral in accordance with fields 21 to 35 in Table 1 of the Annex.
2. Where a counterparty does not collateralise on a transaction level basis, counterparties shall report to a trade repository collateral posted and received on a portfolio basis in accordance with fields 21 to 35 in Table 1 of the Annex.
3. Where the collateral related to a contract is reported on a portfolio basis, the reporting counterparty shall report to the trade repository a code identifying the portfolio related to the reported contract in accordance with field 23 in Table 1 of the Annex.
4. Non-financial counterparties other than those referred to in Article 10 of Regulation (EU) No 648/2012 shall not be required to report collateral, mark-to-market, or mark-to-model valuations of the contracts set out in Table 1 of the Annex to this Regulation.
5. For contracts cleared by a CCP, the counterparty shall report the valuation of the contract provided by the CCP in accordance with fields 17 to 20 in Table 1 of the Annex.
6. For contracts not cleared by a CCP, the counterparty shall report, in accordance with fields 17 to 20 in Table 1 of the Annex to this Regulation, the valuation of the contract performed in accordance with the methodology defined in International Financial Reporting Standard 13 Fair Value Measurement as ~~adopted by the Union and~~ referred to in the Annex to Commission Regulation (EC) No 1126/2008.

Article 5

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX

## Details to be reported to trade repositories

...

Table 2  
Common Data

	Field	Details to be reported	Applicable types of derivative contracts
...			
	<b>Section 2b — Contract information</b>		<b>All contracts</b>
...			
6	Product identification	<p>The product shall be identified through ISIN or AII. AII shall be used if a product is traded in a trading venue classified as AII in the register published on ESMA's website and set up on the basis of information provided by competent authorities pursuant to Article 13(2) of Commission Regulation (EC) No 1287/2006 <u>as it had effect in EU law before exit day.</u></p> <p>AII shall only be used until <u>3 January 2018 the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.</u></p>	
7	Underlying identification type	The type of relevant underlying identifier.	
8	Underlying identification	<p>The direct underlying shall be identified by using a unique identification for this underlying based on its type.</p> <p>AII shall only be used until <u>3 January 2018 the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014.</u></p> <p>For Credit Default Swaps, the ISIN of the reference obligation should be provided.</p>	



		In case of baskets composed, among others, of financial instruments traded in a trading venue, only financial instruments traded in a trading venue shall be specified.	
...			

## ANNEX C

**COMMISSION DELEGATED REGULATION (EU) No 149/2013  
of 19 December 2012**

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP**

...

Article 1

**Definitions**

For the purposes of this Regulation the following definitions apply:

...

- (e) 'third indirect client' means a client of a second indirect client;
- (f) 'authorised credit institution' means a credit institution which is a CRR firm (within the definition in Article 4(1)(2A) of the Capital Requirements Regulation);
- (g) 'authorised investment firm' means an investment firm within the meaning given in Article 2(1A) of the MIFIR which:
  - (i) has its registered office or head office in the United Kingdom;
  - (ii) has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;
  - (iii) would require authorisation under Directive 2014/65/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head offices) in an EEA state; and
  - (iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

Article 2

**Requirements for the provision of indirect clearing services by clients**

1. A client may only provide indirect clearing services to indirect clients provided that all of the following conditions are fulfilled:
  - (a) the client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the ~~Union~~ United Kingdom;

...

#### Article 5a

#### **Requirements for the provision of indirect clearing services by indirect clients**

1. An indirect client may only provide indirect clearing services to second indirect clients provided that the parties to the indirect clearing arrangements fulfil one of the requirements set out in paragraph 2 and that all of the following conditions are met:
  - (a) the indirect client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the ~~Union~~ United Kingdom;

...

#### Article 5b

#### **Requirements for the provision of indirect clearing services by second indirect clients**

1. A second indirect client may only provide indirect clearing services to third indirect clients provided that all of the following conditions are met:
  - (a) the indirect client and the second indirect client are authorised credit institutions or an investment firms or entities established in a third country that would be considered to be a credit institution or an investment firm if that entity were established in the ~~Union~~ United Kingdom;

...

#### Article 6

#### **Details to be included in the notification**

1. ~~The notification for the purpose of the clearing obligation shall include the following information:~~

- (a) ~~the identification of the class of OTC derivative contracts;~~
  - (b) ~~the identification of the OTC derivative contracts within the class of OTC derivative contracts;~~
  - (c) ~~other information to be included in the public register in accordance with Article 8;~~
  - (d) ~~any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class;~~
  - (e) ~~evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts;~~
  - (f) ~~data on the volume of the class of OTC derivative contracts;~~
  - (g) ~~data on the liquidity of the class of OTC derivative contracts;~~
  - (h) ~~evidence of availability to market participants of fair, reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts;~~
  - (i) ~~evidence of the impact of the clearing obligation on availability to market participants of pricing information.~~
2. ~~For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing in and the categories of counterparties to which the clearing obligation applies, the notification for the purpose of the clearing obligation shall include:~~
- (a) ~~data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;~~
  - (b) ~~evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements;~~
  - (c) ~~the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation;~~
  - (d) ~~an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;~~
  - (e) ~~information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation.~~
3. ~~The data pertaining to the volume and the liquidity shall contain for the class of OTC derivative contracts and for each derivative contract within the class, the relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts becomes subject to the clearing obligation, including:~~
- (a) ~~the number of transactions;~~

- (b) ~~the total volume;~~
  - (c) ~~the total open interest;~~
  - (d) ~~the depth of orders including the average number of orders and of requests for quotes;~~
  - (e) ~~the tightness of spreads;~~
  - (f) ~~the measures of liquidity under stressed market conditions;~~
  - (g) ~~the measures of liquidity for the execution of default procedures.~~
4. ~~The information related to the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts provided in point (e) of paragraph 1 shall include, for the class of OTC derivative contracts and for each derivative contract within the class, data on the daily reference price as well as the number of days per year with a reference price it considers reliable over at least the previous 12 months.~~

#### CHAPTER IV

### CRITERIA FOR THE DETERMINATION OF THE CLASSES OF OTC DERIVATIVE CONTRACTS SUBJECT TO THE CLEARING OBLIGATION

(Article 5(4) of Regulation (EU) No 648/2012)

#### Article 7

#### **Criteria to be assessed by ~~ESMA~~ Bank of England**

1. In relation to the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivative contracts, the ~~European Securities and Markets Authority (ESMA)~~ Bank of England shall take into consideration:
 

...
2. In relation to the volume and liquidity of the relevant class of OTC derivative contracts, ~~ESMA~~ the Bank of England shall take into consideration:
 

...
3. In relation to the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts, ~~ESMA~~ the Bank of England shall take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.

## CHAPTER V

## PUBLIC REGISTER

(Article 6(4) of Regulation (EU) No 648/2012)

## Article 8

**Details to be included in ~~ESMA~~ the Bank of England's Register**

1. The ~~ESMA~~ Bank of England's public register shall include for each class of OTC derivative contracts subject to the clearing obligation:
 

...
2. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the ~~ESMA~~ Bank of England's public register shall include for each CCP:
 

...

  - (c) the country of establishment;
  - (d) ~~the competent authority designated in accordance with Article 22 of Regulation (EU) No 648/2012.~~
3. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the ~~ESMA~~ Bank of England's public register shall include:
 

...

  - (b) any other condition required pursuant to the ~~regulatory~~ technical standards made, or adopted (and forming part of domestic law), under Article 5(2) of Regulation (EU) No 648/2012, in order for the phase-in period to apply.

...
4. The ~~ESMA~~ Bank of England's public register shall include the reference of the ~~regulatory~~ technical standards made, or adopted (and forming part of domestic law), under Article 5(2) of Regulation (EU) No 648/2012, according to which each clearing obligation was established.
5. ~~In relation to the CCP that has been notified to ESMA by the competent authority, the ESMA public register shall include at least:~~
  - (a) ~~the identification of the CCP;~~
  - (b) ~~the asset class of OTC derivative contracts that are notified;~~

- (e) ~~the type of OTC derivative contracts;~~
- (d) ~~the date of the notification;~~
- (e) ~~the identification of the notifying competent authority.~~

## CHAPTER VI

### LIQUIDITY FRAGMENTATION

(Article 8(5) of Regulation (EU) No 648/2012)

#### Article 9

#### **Specification of the notion of liquidity fragmentation**

...

5. Clearing arrangements referred to in point (b) of paragraph 2 may foresee the transfer of transactions executed by such market participants to clearing members of other CCPs. Although access by a CCP to a trading venue should not require interoperability, an interoperability arrangement which has been agreed by the relevant CCPs and approved by the ~~relevant competent authorities~~ Bank of England may be used to fulfil the requirement for access to common clearing arrangements.

...

## CHAPTER VIII

### RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVE CONTRACTS NOT CLEARED BY A CCP

#### Article 12

(Article 11(14)(a) of Regulation (EU) No 648/2012)

#### **Timely confirmation**

...

4. Financial counterparties shall have the necessary procedure to report on a monthly basis to the FCA ~~competent authority designated in accordance with Article 48 of Directive 2004/39/EC of the European Parliament and of the Council~~ the number of unconfirmed OTC derivative transactions referred to in paragraphs 1 and 2 that have been outstanding for more than five business days.

...

## Article 15

(Article 11(14)(a) of Regulation (EU) No 648/2012)

**Dispute resolution**

...

2. Financial counterparties shall report to the FCA ~~competent authority designated in accordance with Article 48 of Directive 2004/39/EC of the European Parliament and of the Council~~ any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

...

## Article 18

(Article 11(14)(c) of Regulation (EU) No 648/2012)

**Details of the intragroup transaction notification to the competent authority**

...

2. As part of its application or notification to the relevant competent authority, a counterparty shall also submit supporting information evidencing that the conditions of Article 11(~~6~~ 8) ~~to and~~ (~~10~~ 9) of Regulation (EU) No 648/2012 are fulfilled. The supporting documents shall include copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties and may include a legal opinion upon request from the competent authority.

## Article 19

~~(Article 11(14)(d) of Regulation (EU) No 648/2012)~~**Details of the intragroup transaction notification to ESMA**

1. ~~The notification by a competent authority of the details of the intragroup transaction shall be submitted to ESMA in writing:~~
- ~~(a) within one month of the receipt of the notification with respect to a notification under Article 11(7) or (9) of Regulation (EU) No 648/2012;~~
  - ~~(b) within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority under Article 11(6), (8) or (10) of Regulation (EU) No 648/2012.~~



2. ~~The notification to ESMA shall include:~~
- ~~(a) the information listed in Article 18;~~
  - ~~(b) whether there is a positive or a negative decision;~~
  - ~~(c) in the case of a positive decision:~~
    - ~~(i) a summary of the reason for considering that the conditions set in Article 11(6), (7), (8), (9) or (10) of Regulation (EU) No 648/2012 as applicable are fulfilled;~~
    - ~~(ii) whether the exemption is a full exemption or a partial exemption with respect to of a notification related to Article 11(6), (8) or (10) of Regulation (EU) No 648/2012;~~
  - ~~(d) in the case of a negative decision:~~
    - ~~(i) the identification of the conditions of Article 11(6), (7), (8), (9) or (10) of Regulation (EU) No 648/2012 as applicable that are not fulfilled;~~
    - ~~(ii) a summary of the reason for considering that such conditions are not fulfilled.~~

...

## Article 21

### Entry into force and application

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE  
REGULATION) (EU EXIT) (No 1) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The following EU Regulations are amended in accordance with Annexes A - C of this instrument.

(1)	(2)
<i>Editor’s Note:</i> see FCA CP18/28.	Annex A
<i>Editor’s Note:</i> see FCA CP18/28.	Annex B
Commission Delegated Regulation (EU) 151/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the	Annex C

data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.	
--	--

**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 1) Instrument 2019.

By order of the Board  
[*date*]

**Annex A**

*Editor's Note:* see FCA CP18/28.

**Annex B**

*Editor's Note:* see FCA CP18/28.

## Annex C

## COMMISSION DELEGATED REGULATION (EU) No 151/2013

of 19 December 2012

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

...

## Article 2

## Data access by relevant authorities

1. A trade repository shall provide access to all transaction data to the ~~European Securities and Markets Authority (ESMA)~~ FCA, the Bank of England and the Pensions Regulator for the purpose of fulfilling its their supervisory competences, respective responsibilities and mandates.
2. ~~ESMA~~ The FCA, the Bank of England and the Pensions Regulator shall enact internal procedures in order to ensure the appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ~~ESMA's~~ their respective responsibilities and mandates.
3. ~~A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy or emission allowances.~~
4. ~~A trade repository shall provide a competent authority supervising a CCP and the relevant member of the European System of Central Banks (ESCB) overseeing the CCP, where applicable, with access to all the transaction data cleared or reported by the CCP.~~
5. ~~A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on contracts executed on those venues.~~
6. ~~A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all the transaction data on derivatives where the underlying is a security issued by a company which meets one of the following conditions:~~
  - (a) ~~it is admitted to trading on a regulated market within their jurisdiction;~~
  - (b) ~~it has its registered office or, where it has no registered office, its head office, in their jurisdiction;~~

- (e) ~~it is an offeror for the entities provided for in points (a) or (b) and the consideration it offers includes securities.~~
7. ~~The data to be provided in accordance with paragraph 6 shall include information on:~~
- ~~(a) the underlying securities;~~
  - ~~(b) the derivative class;~~
  - ~~(c) the sign of the position;~~
  - ~~(d) the number of reference securities;~~
  - ~~(e) the counterparties to the derivative.~~
8. ~~A trade repository shall provide the relevant Union securities and markets authorities referred to in Article 81(3)(h) of Regulation (EU) No 648/2012 with access to all transaction data on markets, participants, contracts and underlyings that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.~~
9. ~~A trade repository shall provide the European Systemic Risk Board, ESMA and the relevant members of the ESCB with transaction level data:~~
- ~~(a) for all counterparties within their respective jurisdictions;~~
  - ~~(b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.~~
10. ~~A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.~~
11. ~~A trade repository shall provide, for the prudential supervision of counterparties subject to the reporting obligation, the relevant entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data of such counterparties.~~

### Article 3

#### Third country authorities

1. In relation to a relevant authority of a third country that has ~~entered into an international agreement with the Union as referred to in Article 75 of Regulation (EU) No 648/2012~~ been prescribed by HM Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with Article 75(1)) (equivalence), a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities ~~and in line with the provisions of the relevant international agreement.~~
2. In relation to a relevant authority of a third country that has entered into a cooperation arrangement with ~~ESMA~~ the FCA as referred to in Article 76 of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities and in line with the provisions of the relevant cooperation arrangement.

## Article 4

**Operational standards for aggregation and comparison of data**

1. A trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with direct and immediate access, ~~including where delegation under Article 28 of Regulation (EU) No 1095/2010 exists,~~ to details of derivatives contracts in accordance with Articles 2 and 3 of this Regulation.

For the purposes of the first subparagraph, a trade repository shall use an XML format and a template developed in accordance with ISO 20022 methodology. A trade repository may in addition, after agreement with the entity concerned, provide access to details of derivatives contracts in another mutually agreed format.

## Article 5

**Operational standards for access to data**

1. A trade repository shall record information regarding the access to data given to the entities listed in Article 81(3) of Regulation (EU) No 648/2012.
2. The information referred to in paragraph 1 shall include:
  - (a) the scope of data accessed;
  - (b) a reference to the legal provisions granting access to such data under Regulation (EU) No 648/2012 and this Regulation.
3. A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to connect using a secure machine-to-machine interface in order to submit data requests and to receive data.

For the purposes of the first subparagraph, a trade repository shall use the SSH File Transfer Protocol, except in relation to the FCA, for whom the use of Amazon S3 HTTPS API to upload/download files is required. The trade repository shall use standardised XML messages developed in accordance with the ISO 20022 methodology to communicate through that interface. A trade repository may in addition, after agreement with the entity concerned, set up a connection using another mutually agreed protocol.

...

## Article 6

**Entry into force**

...



~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (INSURANCE DISTRIBUTION DIRECTIVE) (EU  
EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulation specified in [Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulation in accordance with Annex A of this instrument.

(1)	(2)
COMMISSION IMPLEMENTING REGULATION (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information document.	Annex A

**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (Insurance Distribution Directive) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

## ANNEX A

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/1469  
of 11 August 2017**

**laying down a standardised presentation format for the insurance product information document**

...

Article -1

**Application**

1. Articles 1 to 7 apply to persons carrying on insurance distribution to which Commission Implementing Regulation (EU) 2017/1469 would have applied prior to 23:00 GMT on 29 March 2019.
2. Paragraph 1 includes any person able to carry on insurance distribution in the UK due to regulations 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

Article 1

**Name and company logo of the manufacturer**

1. The name of the manufacturer of the non-life insurance product, ~~the Member State where that manufacturer is registered~~, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title ‘insurance product information document’ at the top of the first page.

...

Article 3

**Length**

The insurance product information document shall be set out on two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the ~~competent authority~~ Financial Conduct Authority, be able to demonstrate that more space was needed.

...

Article 8  
**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (MARKET ABUSE REGULATION) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulations in accordance with Annexes A-K of this instrument.

(1)	(2)
COMMISSION IMPLEMENTING REGULATION (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	Annex A
COMMISSION IMPLEMENTING REGULATION (EU) 2016/378	Annex B

of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council	
COMMISSION IMPLEMENTING REGULATION (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	Annex C
COMMISSION DELEGATED REGULATION (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance	Annex D
COMMISSION DELEGATED REGULATION (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications	Annex E
COMMISSION DELEGATED REGULATION (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions	Annex F
COMMISSION DELEGATED REGULATION (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest	Annex G
COMMISSION IMPLEMENTING REGULATION (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	Annex H
COMMISSION DELEGATED REGULATION (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings	Annex I
COMMISSION DELEGATED REGULATION (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures	Annex J
COMMISSION IMPLEMENTING REGULATION (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for	Annex K

delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council	
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### Revocations

G. The FCA revokes the following EU Regulations.

<p>COMMISSION IMPLEMENTING REGULATION (EU) 2017/1158 of 29 June 2017 laying down implementing technical standards with regards to the procedures and forms for competent authorities exchanging information with the European Securities Market Authority as referred to in Article 33 of Regulation (EU) No 596/2014 of the European Parliament and of the Council</p>
<p>COMMISSION IMPLEMENTING REGULATION (EU) 2018/292 of 26 February 2018 laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse</p>

### Commencement

H. This instrument comes into force on [29 March 2019 at 11 p.m.].

### Citation

I. This instrument may be cited as the Technical Standards (Market Abuse Regulation) (EU Exit) Instrument 2019.

By order of the Board  
[date]



## Annex A

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/347  
of 10 March 2016**

**laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council**

...

Article -2

**Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

**Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

Article 2

**Format for drawing up and updating the insider list**

1. Issuers, ~~and~~ and emission allowance market participants, ~~auction platforms, auctioneers and auction monitor~~, or any person acting on their behalf or on their account, shall ensure that their insider list, drawn up pursuant to Article 18 of Regulation (EU) No 596/2014, is divided into separate sections relating to different inside information. New sections shall be added to the insider list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014.

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

...

4. The electronic formats referred to in paragraph 3 shall at all times ensure:

- (a) the confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons from within the issuer and emission allowance market participant, ~~auction platform, auctioneer and auction monitor~~, or any person acting on their behalf or on their account that need that access due to the nature of their function or position;
  - (b) the accuracy of the information contained in the insider list;
  - (c) the access to and the retrieval of previous versions of the insider list.
5. The insider list referred to in paragraph 3 shall be submitted using the electronic means specified by the ~~competent authority~~ Financial Conduct Authority. ~~Competent authorities~~ The Financial Conduct Authority shall publish on ~~their~~ its website the electronic means to be used. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

### Article 3

#### **SME growth market issuers**

For the purposes of Article 18(6)(b) of Regulation (EU) No 596/2014, an issuer whose financial instruments are admitted to trading on an SME growth market shall provide the ~~competent authority~~ Financial Conduct Authority, upon its request, with an insider list in accordance with the template in Annex II and in a format that ensures that the completeness, integrity and confidentiality of the information are maintained during the transmission.

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX I  
 TEMPLATE 1

**Insider list: section related to [Name of the deal-specific or event-based inside information]**

...

**Date of transmission to the ~~competent authority~~ Financial Conduct Authority: [yyyy-mm-dd]**

...					
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant / <del>auction platform/auctioneer/auction monitor</del> or third party of insider]	...

TEMPLATE 2

**Permanent insiders section of the insider list**

...

**Date of transmission to the ~~competent authority~~ Financial Conduct Authority: [yyyy-mm-dd]**

...					
-----	--	--	--	--	--

[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of... issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of insider]	
--------	--------	--------	----------------------	--	--

ANNEX II

**Template for the insider list to be submitted by issuers of financial instruments admitted to trading on SME growth markets**

...

**Date of transmission to the ~~competent authority~~ Financial Conduct Authority:** [yyyy-mm-dd]

...	<p><b>Personal full home address</b> (street name; street number; city; post/zip code; country)</p> <p>(If available at the time of the request by the <del>competent authority</del> <u>Financial Conduct Authority</u>)</p>	<p><b>Personal telephone numbers</b> (home and personal mobile telephone numbers)</p> <p>(If available at the time of the request by the <del>competent authority</del> <u>Financial Conduct Authority</u>)</p>
...		

## Annex B

### COMMISSION IMPLEMENTING REGULATION (EU) 2016/378

of 11 March 2016

laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council

...

#### Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

#### Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

#### Article 1

1. By no later than 21.00 CET on each day that it is open for trading, a trading venue shall, using automated processes, provide to ~~its competent authority~~ the Financial Conduct Authority pursuant to Article 4(1) of Regulation (EU) No 596/2014 the notifications of all financial instruments which, before 18.00 CET on that day, were for the first time subject to a request for admission to trading or admitted to trading or traded on that trading venue, including where orders or quotes were placed through its system, or ceased to be traded or to be admitted to trading on the trading venue.
2. Notifications of financial instruments which, after 18.00 CET, were for the first time subject to a request for admission to trading or admitted to trading or traded on the trading venue, including where orders or quotes were placed through its system, or ceased to be traded or to be admitted to trading on the trading venue, shall be made, using automated processes, by the trading venue to the ~~competent authority~~ Financial Conduct Authority by no later than 21.00 CET of the next day on which it is open for trading.

3. ~~Competent authorities shall transmit notifications referred to in paragraphs 1 and 2 pursuant to Article 4(2) of Regulation (EU) No 596/2014 to ESMA each day by no later than 23.59 CET using automated processes and secure electronic communication channels between them and ESMA.~~

Article 2

All details to be included in notifications pursuant to Article 4(1) ~~and (2)~~ of Regulation (EU) No 596/2014 shall be submitted in accordance with the standards and formats specified in the Annex to this Regulation, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 3

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Standards and formats of the submission of notifications to ~~competent authorities~~ the Financial Conduct Authority according to Regulation (EU) No 596/2014**

...

Table 2

...

...		
‘OTHC’ — Other C10 ‘as defined in Table 10.1 Section 10 of Annex III to Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.	‘DLVR’ — Deliverable ‘NDLV’ — Non-deliverable	...
...		

Table 3

**Standards and formats to be used in the notifications to be submitted in accordance with Article 4(1) and ~~(2)~~ of Regulation (EU) No 596/2014**

...

## Annex C

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/523  
of 10 March 2016**

**laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council**

Article -2

**Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

**Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

Article 2

**Format and template for the notification**

...

2. Persons discharging managerial responsibilities and persons closely associated with them shall ensure that electronic means are used for the transmission of the notifications referred to in paragraph 1. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission and provide certainty as to the source of the information transmitted.
3. ~~Competent authorities~~ The Financial Conduct Authority shall specify and publish on ~~their~~ its website the electronic means referred to in paragraph 2 with respect to the transmission to ~~them~~ it.

Article 3

**Entry into force**



...

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...

## ANNEX

**Template for notification and public disclosure of transactions by persons discharging managerial responsibilities and persons closely associated with them**

...		
<b>2</b>	<b>Reason for the notification</b>	
a)	Position/status	[For persons discharging managerial responsibilities: the position occupied within the issuer, / emission allowances market participant/ <del>auction platform/auctioneer/auction monitor</del> should be indicated, e.g. CEO, CFO.] [For persons closely associated, — An indication that the notification concerns a person closely associated with a person discharging managerial responsibilities; — Name and position of the relevant person discharging managerial responsibilities.]
b)	Initial notification/ Amendment	[Indication that this is an initial notification or an amendment to prior notifications. In case of amendment, explain the error that this notification is amending.]
<b>3</b>	<b>Details of the issuer, <u>or</u> emission allowance market participant, <del>auction platform, auctioneer or auction monitor</del></b>	
a)	Name	[Full name of the entity.]
b)	LEI	[Legal Entity Identifier code in accordance with ISO 17442 LEI code.]

4	<b>Details of the transaction(s): section to be repeated for (i) each type of instrument; (ii) each type of transaction; (iii) each date; and (iv) each place where transactions have been conducted</b>					
a)	Description of the financial instrument, type of instrument Identification code	<p>[— Indication as to the nature of the instrument:</p> <ul style="list-style-type: none"> <li>— a share, a debt instrument, a derivative or a financial instrument linked to a share or a debt instrument;</li> <li>— an emission allowance, an auction product based on an emission allowance or a derivative relating to an emission allowance.</li> </ul> <p>— Instrument identification code as defined under Commission Delegated Regulation <a href="#">(EU) 2017/590</a> supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities adopted under Article 26 of Regulation (EU) No 600/2014.]</p>				
...						
c)	Price(s) and volume(s)	<table border="1" data-bbox="625 1317 1441 1480"> <tr> <td data-bbox="625 1317 1062 1397">Price(s)</td> <td data-bbox="1062 1317 1441 1397">Volume(s)</td> </tr> <tr> <td data-bbox="625 1397 1062 1480"></td> <td data-bbox="1062 1397 1441 1480"></td> </tr> </table> <p>[Where more than one transaction of the same nature (purchases, sales, lendings, borrows, ...) on the same financial instrument or emission allowance are executed on the same day and on the same place of transaction, prices and volumes of these transactions shall be reported in this field, in a two columns form as presented above, inserting as many lines as needed.</p> <p>Using the data standards for price and quantity, including where applicable the price currency and the quantity currency, as defined under Commission Delegated Regulation <a href="#">(EU) 2017/590</a> supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions</p>	Price(s)	Volume(s)		
Price(s)	Volume(s)					

		to competent authorities adopted under Article 26 of Regulation (EU) No 600/2014.]
d)	<p>Aggregated information</p> <ul style="list-style-type: none"> <li>— Aggregated volume</li> <li>— Price</li> </ul>	<p>[The volumes of multiple transactions are aggregated when these transactions:</p> <ul style="list-style-type: none"> <li>— relate to the same financial instrument or emission allowance;</li> <li>— are of the same nature;</li> <li>— are executed on the same day; and</li> <li>— are executed on the same place of transaction.</li> </ul> <p>Using the data standard for quantity, including where applicable the quantity currency, as defined under Commission Delegated Regulation (EU) 2017/590 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities adopted under Article 26 of Regulation (EU) No 600/2014.] [Price information:</p> <ul style="list-style-type: none"> <li>— In case of a single transaction, the price of the single transaction;</li> <li>— In case the volumes of multiple transactions are aggregated: the weighted average price of the aggregated transactions.</li> </ul> <p>Using the data standard for price, including where applicable the price currency, as defined under Commission Delegated Regulation (EU) 2017/590 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities adopted under Article 26 of Regulation (EU) No 600/2014.]</p>
...		
f)	Place of the transaction	<p>[Name and code to identify the <del>MIFID</del> <u>UK trading venue</u> or <u>EU trading venue</u>, the systematic internaliser or the organised trading platform outside of the <del>Union</del> <u>UK</u> where the transaction was executed as defined under Commission Delegated Regulation (EU) 2017/590 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities adopted under Article 26 of Regulation (EU) No 600/2014, or if the</p>

		transaction was not executed on any of the above mentioned venues, please mention 'outside a trading venue'.]
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**Annex D**

**COMMISSION DELEGATED REGULATION (EU) 2016/908**

**of 26 February 2016**

**supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance**

...

CHAPTER I

**GENERAL PROVISION**

Article -2

**Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

**Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

References in this Regulation to exit day shall mean as defined in the European Union (Withdrawal) Act 2018.

Article 1

**Definitions**

For the purposes of this Regulation, ‘supervised persons’ means any of the following:

- (a) investment firms authorised under Directive 2014/65/EU of the European Parliament and of the Council; an investment firm within the meaning given in Article 2(1A) of the Markets in Financial Instruments Regulation which:
  - (i) has its registered office or head office in the United Kingdom;

- (ii) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the Markets in Financial Instruments Regulation) in the United Kingdom;
  - (iii) would require authorisation under Directive 2014/65/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head offices) in an EEA state; and
  - (iv) is not a firm which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
- (b) ~~credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council~~ a credit institution that satisfies the following conditions:
- (i) it is an authorised person within the meaning of section 31(1)(a) of the Financial Services and Markets Act 2000 and has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits;
  - (ii) its registered office, or if it has no registered office, its head office, is in the United Kingdom; and
  - (iii) it is not a credit union within the meaning of the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985, or a friendly society within the meaning of section 417(1) of the Financial Services and Markets Act 2000;
- and for the purposes of this paragraph, ‘regulated activity’ has the meaning in section 22 of the Financial Services and Markets Act 2000, and ‘accepting deposits’ has the meaning in Article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (c) financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 of the European Parliament and of the Council;
  - (d) any person subject to authorisation, organisational requirements and supervision by ‘competent financial authority’ or ‘national regulatory authority’ as defined in Regulation (EU) No 1227/2011 of the European Parliament and of the Council;
  - (e) any person subject to authorisation, organisational requirements and supervision by ~~competent authorities,~~ the Financial Conduct Authority or other UK regulators or agencies responsible for commodities spot or derivatives markets;
  - (f) ~~operators with compliance obligations under Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading.~~

## CHAPTER II

### ACCEPTED MARKET PRACTICES

#### SECTION 1

#### Establishing an accepted market practice

##### Article 2

## General requirements

1. Prior to establishing a market practice as an accepted market practice (AMP) ~~competent authorities~~ the Financial Conduct Authority shall:
  - (a) evaluate the market practice against each of the criteria set out in Article 13(2) of Regulation (EU) No 596/2014 and specified further in Section 2 of this Chapter;
  - (b) consult as appropriate with relevant bodies including, at a minimum, representatives of issuers, investment firms, credit institutions, investors, emission allowance market participants, market operators operating a UK multilateral trading facility (MTF) or ~~an~~ a UK organised trading facility (OTF) and operators of a UK regulated market, and other authorities on the appropriateness of establishing a market practice as an AMP.
- ~~2. Competent authorities intending to establish a market practice as an AMP shall notify ESMA and the other competent authorities of that intention in accordance with the procedure laid down in Section 3, using the template set out in the Annex.~~
3. Where ~~competent authorities establish~~ the Financial Conduct Authority establishes a market practice as an AMP in accordance with Article 13 of Regulation (EU) No 596/2014 and with this Regulation, ~~they it~~ shall publicly disclose on ~~their its~~ website the decision establishing the market practice as an AMP and a description of the AMP concerned, in accordance with the template set out in the Annex including the following information:

...

## SECTION 2

### Specification of the criteria to consider when establishing accepted market practices

#### Article 3

#### Transparency

1. In determining whether a market practice can be established as an AMP and whether it fulfils the criterion set out in point (a) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall examine whether the market practice ensures that the following information will be disclosed to the public:

- (a) ...

...

- (iv) the identification of the UK trading venues on which the AMP will be carried out, and, where applicable, indication of the possibility to execute transactions outside a UK trading venue;

...

2. In determining whether a market practice can be established as an AMP and whether it fulfils the criterion set out in point (a) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall examine whether the market practice ensures that the following information will be disclosed to ~~them~~ it:
  - (a) before a market practice is performed as an AMP, the arrangements or contracts between the identified beneficiaries and the persons who will perform the market practice once established as an AMP where such arrangements or contracts are needed for its performance;
  - (b) once the market practice is performed as an AMP, periodic report to the ~~competent authority~~ Financial Conduct Authority providing details about the transactions executed and about the operations of any arrangement or contract between the beneficiary and the persons performing the AMP.

#### Article 4

#### **Safeguards of the operations of ~~the~~ market forces operating in UK markets and interplay of the forces of supply and demand**

1. In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (b) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall consider whether the market practice limits the opportunities for other market participants to respond to transactions. ~~Competent authorities~~ The Financial Conduct Authority shall also consider at a minimum the following criteria relating to the types of persons who will perform the market practice once established as an AMP:
  - (a) whether they are supervised persons;
  - (b) whether they are members of a UK trading venue where the AMP will be performed;
  - (c) whether they maintain records of orders and transactions relating to the market practice performed in a way that allows it to be easily distinguished from other trading activities, including through the maintenance of separate accounts for the performance of the AMP, in particular to demonstrate that orders introduced are entered separately and individually without aggregating orders from several clients;
  - (d) whether they have put in place specific internal procedures allowing:
    - (i) immediate identification of the activities relating to the market practice;



- (ii) ready availability of the relevant orders and transaction records to the ~~competent authority~~ Financial Conduct Authority upon request;
  - (e) whether they possess the compliance and audit resources necessary to be able to monitor and ensure compliance at all times with the conditions set for the AMP;
  - (f) whether they keep the records mentioned in point (c) for a period of at least five years.
2. ~~Competent authorities~~ The Financial Conduct Authority shall consider the extent to which the market practice establishes an ex ante list of trading conditions for its performance as an AMP, including limits with regard to prices and volumes and limits on positions.
3. ~~Competent authorities~~ The Financial Conduct Authority shall assess the extent to which the market practice and the arrangement or contract for its performance:
- (a) enables the person performing the AMP to act independently from the beneficiary without being subject to instructions, information or influence from the beneficiary as regards the manner in which trading is to be conducted;
  - (b) allows for the avoidance of conflicts of interest between the beneficiary and the clients of the person performing the AMP.

#### Article 5

#### **Impact on UK market liquidity and efficiency**

In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (c) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall assess the impact the market practice has on at least the following elements:

...

#### Article 6

#### **Impact on the proper functioning of the UK market**

1. In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (d) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall consider the following elements:
- (a) the possibility that the market practice could affect price formation processes in a UK trading venue;
  - (b) the extent to which the market practice could facilitate the evaluation of prices and orders entered into the order book and whether the transactions to be

carried out or orders to be introduced for its performance as an AMP do not contravene the trading rules of the corresponding UK trading venue;

- (c) the modalities by which the information referred to in Article 3 is disclosed to the public including where it is disclosed on the website of the relevant trading platform and, when appropriate, where it is simultaneously released on the websites of the beneficiaries;
- (d) the extent to which the market practice establishes an ex ante list of situations or conditions when its performance as an AMP is temporarily suspended or restricted, inter alia, particular trading periods or phases such as auction phases, takeovers, initial public offerings, capital increases, secondary offerings.

For the purposes of point (b) of the first subparagraph, a market practice where transactions and orders are monitored in real time by the market operator or the investment firm or market operators operating a UK MTF or an UK OTF shall also be taken into consideration.

2. ~~Competent authorities~~ The Financial Conduct Authority shall assess the extent to which a market practice enables:

...

#### Article 7

#### **Risks for the integrity of related markets within the United Kingdom**

In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (e) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall consider:

- (a) whether the transactions related to the performance of the market practice once established as an AMP will be reported to ~~competent authorities~~ the Financial Conduct Authority on a regular basis;
- (b) whether the resources (cash or financial instruments) to be allocated to the performance of the AMP are proportionate and commensurate with the objectives of the AMP itself;
- (c) the nature and level of the compensation for services provided within the performance of an AMP and whether that compensation is established as a fixed amount; where variable compensation is proposed, it shall not lead to behaviour which may be prejudicial to UK market integrity or to the orderly functioning of the UK market and shall be available to the ~~competent authority~~ Financial Conduct Authority for assessment;

...

#### Article 8

#### **Investigation of the market practice**

In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (f) of Article 13(2) of Regulation (EU) No 596/2014, ~~competent authorities~~ the Financial Conduct Authority shall in particular take into account the outcome of any investigation ~~in the markets they monitor~~ by the Financial Conduct Authority that might question the AMP to be established.

## Article 9

### Structural characteristics of the UK market

In taking into account, in accordance with point (g) of Article 13(2) of Regulation (EU) No 596/2014, the participation of retail-investors in the relevant UK market, ~~competent authorities~~ the Financial Conduct Authority shall assess at a minimum:

- (a) the impact the market practice might have on retail investors' interests where the market practice concerns financial instruments traded on UK markets in which retail investors participate;
- (b) whether the market practice increases the probability of retail investors to find counterparties in low-liquidity financial instruments, without increasing the risks borne by them.

## SECTION 3

### Procedures

#### Article 10

#### ~~Notification when intending to establish an accepted market practice~~

1. ~~Competent authorities shall notify, in accordance with Article 13(3) of Regulation (EU) No 596/2014, their intention to establish an AMP by post or e-mail to ESMA and to the other competent authorities simultaneously, using a pre-identified list of contact points to be set up and regularly maintained by competent authorities and ESMA.~~
2. ~~The notification referred to in paragraph 1 shall include the following elements:~~
  - (a) ~~a statement of the intention to establish an AMP, including the expected date of establishment;~~
  - (b) ~~the identification of the notifying competent authority and the contact details of the contact person(s) within that competent authority (name, professional telephone number and e-mail address, title);~~
  - (e) ~~a detailed description of the market practice including:~~
    - (i) ~~the identification of the types of financial instrument and trading venues on which the AMP will be performed;~~
    - (ii) ~~the types of persons who can perform the AMP;~~

- (iii) the type of beneficiaries;
  - (iv) the indication of whether the market practice can be performed for a determined period of time and of any situations or conditions leading to a temporary interruption, suspension or termination of the practice;
  - (d) the reason for which the practice could constitute market manipulation under Article 12 of Regulation (EU) No 596/2014;
  - (e) the details of the assessment made according to Article 13(2) of Regulation (EU) No 596/2014.
3. The notification referred to in paragraph 1 shall include the table for assessing a proposed market practice using the template in the Annex.

#### Article 11

#### **ESMA opinion**

1. Following receipt of the notification referred to Article 13(4) of Regulation (EU) No 596/2014 and before issuing the opinion required under that paragraph, ESMA shall initiate, on its own initiative or upon request of any competent authority, a process to provide the notifying competent authority with preliminary comments, concerns, disagreement or request for clarifications, if any, concerning the notified market practice. The notifying competent authority may provide further clarification concerning the notified market practice to ESMA.
2. Where in the course of the process referred to in paragraph 1, any fundamental or significant change is introduced that affects the basis or substance of the notified market practice or the assessment carried out by the notifying competent authority, the process of issuing the ESMA opinion on the notified practice shall cease. If appropriate, the competent authority shall initiate a new process for establishing the modified practice as an AMP in accordance with Article 13(3) of Regulation (EU) No 596/2014.

### SECTION 4

#### **Maintenance, modification and termination of accepted market practices**

#### Article 12

#### **Review of an established AMP**

1. ~~Competent authorities that have~~ Where the Financial Conduct Authority has established AMPs, ~~it~~ shall assess regularly, and at a minimum every two years, whether the conditions for establishing the AMP set out in Article 13(2) of Regulation (EU) No 596/2014 and in Section 2 of this Chapter continue to be met.
2. Notwithstanding the regular review in accordance with Article 13(8) of Regulation (EU) No 596/2014, the assessment process referred to in paragraph 1 shall also be triggered:

- (a) when any sanction involving an established AMP has been imposed;
  - (b) when due to a significant change in the UK market environment referred to in Article 13(8) of that Regulation, one or more of the conditions of acceptance of an established practice are no longer met;
  - (c) when ~~a competent authority~~ the Financial Conduct Authority has reasons to suspect that acts contrary to Regulation (EU) No 596/2014 are being or have been carried out by beneficiaries of the AMP, or by persons performing it.
3. In the event that the assessment reveals that an established AMP no longer meets the conditions of the ~~competent authorities'~~ Financial Conduct Authority's original assessment set out in Section 2, ~~competent authorities~~ the Financial Conduct Authority shall either propose the modification of the conditions of the acceptance or terminate the AMP, taking into account the criteria set out in Article 13.
4. ~~Competent authorities shall inform ESMA of the outcome of the assessment process, including when the AMP is maintained without modification.~~
5. Where ~~a competent authority~~ the Financial Conduct Authority proposes to modify the conditions of acceptance of an established AMP, it shall comply with the requirements set out in Article 2.
6. Where ~~a competent authority~~ the Financial Conduct Authority decides to terminate an established AMP, it shall publicly disclose ~~and communicate~~ its decision ~~simultaneously to all other competent authorities and to ESMA~~, indicating the date of termination, in view of updating the list of AMPs published by it in accordance with Article 13(9) of Regulation (EU) No 596/2014.

### Article 13

#### Criteria for modifying or terminating an established AMP

In determining whether to terminate an established AMP or propose modification of the conditions of its acceptance, ~~competent authorities~~ the Financial Conduct Authority shall have regard to:

- (a) the extent to which the beneficiaries or the persons performing the AMP have complied with the conditions established under that AMP;
- (b) the extent to which the conduct of the beneficiaries or the persons performing an AMP has resulted in any of the criteria set out in Article 13(2) of Regulation (EU) No 596/2014 no longer being met;
- (c) the extent to which the AMP has not been used by market participants for a period of time;
- (d) whether a significant change in the relevant UK market environment referred to in Article 13(8) of Regulation (EU) No 596/2014 results in any of the conditions for establishing the AMP being no longer possible to meet or being not necessary to be met, considering in particular:
  - (i) whether the objective of the AMP has become unfeasible;

- (ii) whether the continued use of the established AMP might adversely affect the integrity or efficiency of the markets under the supervision of the ~~competent authority~~ Financial Conduct Authority;
- (e) whether there exists a situation falling within any general termination provision included in the established AMP itself.

CHAPTER III  
FINAL PROVISION

Article 14

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Template for notifying the intention to establish accepted market practices**

<b>Accepted market practice (AMP) on</b> [insert name of the AMP]	
<b>Proposed date of establishment of the AMP:</b> [insert the date on which the AMP is intended to be established by the <del>notifying competent authority</del> <u>Financial Conduct Authority</u> ]	
<b>Description of the AMP:</b> [insert text, including the identification of the types of financial instrument and <u>UK</u> trading venues on which the AMP will be performed; the types of persons who can perform the AMP; the type of beneficiaries, and, the indication of whether the market practice can be performed for a determined period of time and of any situations or conditions leading to a temporary interruption, suspension or termination of the practice]	
<b>Rationale for which the practice could constitute market manipulation</b> [insert text]	
<b>ASSESSMENT</b>	
<b>List of criteria taken into account</b>	<b>Conclusion of the <del>competent authority</del> <u>Financial Conduct Authority</u> and rationale</b>

(a) Level of transparency provided to the <u>UK</u> market	[insert text to fill in the rationale for this criterion]
(b) Degree of safeguards to the operation of market forces <u>operating in UK markets</u> and the proper interplay of the forces of supply and demand.	[insert text to fill in the rationale for this criterion]
(c) Impact on <u>UK</u> market liquidity and efficiency.	[insert text to fill in the rationale for this criterion]
(d) The trading mechanism of the relevant <u>UK</u> market and the possibility for market participants to react properly and in a timely manner to the new market situation created by that practice.	[insert text to fill in the rationale for this criterion]
(e) Risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instruments within the <del>Union</del> <u>United Kingdom</u> .	[insert text to fill in the rationale for this criterion]
(f) Outcome of any investigation of the relevant market practice by <del>any competent authority or other authority</del> <u>the Financial Conduct Authority</u> , in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse or codes of conduct, irrespective of whether — it concerns, directly or indirectly, — the relevant <u>UK</u> market or related markets within the <del>Union</del> <u>United Kingdom</u> .	[insert text to fill in the rationale for this criterion]
(g) Structural characteristics of the relevant <u>UK</u> market, inter alia, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors' participation in the relevant <u>UK</u> market.	[insert text to fill in the rationale for this criterion]

## Annex E

## COMMISSION DELEGATED REGULATION (EU) 2016/909

of 1 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications

...

Article -2**Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1**Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

## Article 2

1. ~~Competent authorities~~ The Financial Conduct Authority shall monitor and assess, using automated processes, whether the notifications received pursuant to Article 4(1) of Regulation (EU) No 596/2014 comply with the requirements under Article 1 of this Regulation and Article 2 of Commission Implementing Regulation (EU) 2016/378.
2. Trading venue operators shall be informed using automated processes without delay of any incompleteness in the received notifications and of any failure to deliver the notifications before the deadline specified in Article 1 of Implementing Regulation (EU) 2016/378.
3. ~~Competent authorities shall, using automated processes, transmit complete and accurate notifications of financial instruments to ESMA pursuant to Article 1.~~

~~On the day following receipt of the notifications of financial instruments in accordance with Article 4(2) of Regulation (EU) No 596/2014, ESMA shall, using automated processes, consolidate the notifications received from each competent authority.~~



4. ~~ESMA shall, using automated processes, monitor and assess whether the notifications received from competent authorities are complete and accurate and comply with the applicable standards and formats specified in Table 3 of the Annex to Implementing Regulation (EU) 2016/378.~~
5. ~~ESMA shall, using automated processes, without delay inform the competent authorities concerned of any incompleteness in the transmitted notifications and of any failure to deliver notifications before the deadline specified in Article 1(3) of Implementing Regulation (EU) 2016/378.~~
6. ~~ESMA~~ The Financial Conduct Authority shall, using automated processes, publish the complete list of notifications in an electronic, downloadable and machine readable form on its website.

### Article 3

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX

**Notifications of financial instruments pursuant to Article 4(1) of Regulation (EU) No 596/2014**

Table 1

**Classification of commodity and emission allowances derivatives for Table 2 (fields 35-37)**

Base product	Sub product	Further sub product
...		
'OEST' — Official economic statistics'		
'OTHC' — Other C10 'as defined in Table 10.1 Section 'Other C10 derivatives' of Annex III to Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.	'DLVR' — Deliverable 'NDLV' — Non-deliverable	
'OTHR' — Other		
...		

Table 2

**Content of the notifications to be submitted to ~~competent authorities~~ the Financial Conduct Authority in accordance with Article 4(1) of Regulation (EU) No 596/2014**

...

## Annex F

### COMMISSION DELEGATED REGULATION (EU) 2016/957

of 9 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions

...

#### Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

#### Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

#### Article 2

#### **General requirements**

1. Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure:
  - (a) effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed;
  - (b) the transmission of STORs to ~~competent authorities~~ the Financial Conduct Authority in accordance with the requirements set out in this Regulation and using the template set out in the Annex.

2. The obligations referred to in paragraph 1 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of:
  - (a) the capacity in which the order is placed or the transaction is executed;
  - (b) the types of clients concerned;
  - (c) whether the orders were placed or transactions executed on or outside a UK trading venue.
  
3. Market operators and investment firms operating a UK trading venue shall establish and maintain arrangements, systems and procedures that ensure:
  - (a) effective and ongoing monitoring, for the purposes of preventing, detecting and identifying insider dealing, market manipulation and attempted insider dealing and market manipulation, of all orders received and all transactions executed;
  - (b) the transmission of STORs to ~~competent authorities~~ the Financial Conduct Authority in accordance with the requirements set out in this Regulation and using the template set out in the Annex.
  
- ...
  
5. Persons professionally arranging or executing transactions, and market operators and investment firms operating a UK trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3:
  - (a) are appropriate and proportionate in relation to the scale, size and nature of their business activity;
  - (b) are regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary;
  - (c) are clearly documented in writing, including any changes or updates to them, for the purposes of complying with this Regulation, and that the documented information is maintained for a period of five years.

The persons referred to in the first subparagraph shall, upon request, provide the ~~competent authority~~ Financial Conduct Authority with the information referred to in point (b) and (c) of that subparagraph.

### Article 3

#### **Prevention, monitoring and detection**

1. The arrangements, systems and procedures referred to in Article 2(1) and (3) shall:
  - (a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the UK trading venue and, in the case of persons professionally arranging or executing transactions, also outside a UK trading venue;

- (b) produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation;
  - (c) cover the full range of trading activities undertaken by the persons concerned.
- 2. Persons professionally executing or arranging transactions and market operators and investment firms operating UK trading venues shall, upon request, provide the ~~competent authority~~ Financial Conduct Authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems.
- 3. Market operators and investment firms operating UK trading venues shall, to a degree which is appropriate and proportionate in relation to the scale, size and nature of their business activity, employ software systems and have in place procedures which assist the prevention and detection of insider dealing, market manipulation or attempted insider dealing or market manipulation.

...

- 4. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation.
- 5. Market operators and investment firms operating a UK trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis also in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.

...

- 8. As part of the arrangements and procedures referred to in Article 2(1) and (3), persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation which have been examined and the reasons for submitting or not submitting a STOR. That information shall be provided to the ~~competent authority~~ Financial Conduct Authority upon request.

...

#### Article 4

## Training

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall organise and provide effective and comprehensive training to the staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, including the staff involved in the processing of orders and transactions. Such training shall take place on a regular basis and shall be appropriate and proportionate in relation to the scale, size and nature of the business.
2. Market operators and investment firms operating a UK trading venue shall in addition provide the training referred to in paragraph 1 to staff involved in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.

## Article 5

### Reporting obligations

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall establish and maintain effective arrangements, systems and procedures that enable them to assess, for the purpose of submitting a STOR, whether an order or transaction could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. Those arrangements, systems and procedures shall take due account of the elements constituting the actual or attempted insider dealing or market manipulation under Articles 8 and 12 of Regulation (EU) No 596/2014 and of the non-exhaustive indicators of market manipulation referred to in Annex I to that Regulation, as further specified in the Commission Delegated Regulation (EU) 2016/522 (1).

...

4. Persons referred to in paragraph 1 shall have in place procedures to ensure that the person in respect of which the STOR was submitted and anyone who is not required to know about the submission of a STOR by virtue of their function or position within the reporting person, is not informed of the fact that a STOR has been or will or is intended to be submitted to the ~~competent authority~~ Financial Conduct Authority.

...

## Article 6

### Timing of STORs

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall ensure that they have in place effective arrangements, systems and procedures for the submission of a STOR without delay, in accordance with Article 16(1) and (2) of Regulation (EU) No 596/2014, once reasonable suspicion of actual or attempted insider dealing or market manipulation is formed.

2. ...

In such cases, the person professionally arranging or executing transactions and the market operator and investment firm operating a UK trading venue shall explain in the STOR to the ~~competent authority~~ Financial Conduct Authority the delay between the suspected breach and the submission of the STOR according to the specific circumstances of the case.

3. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall submit to the ~~competent authority~~ Financial Conduct Authority any relevant additional information which they become aware of after the STOR has been originally submitted, and shall provide any information or document requested by the ~~competent authority~~ Financial Conduct Authority.

## Article 7

### Content of STORs

1. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall submit a STOR using the template set out in the Annex.

2. ...

...

- (e) any other information and supporting documents which may be deemed relevant for the ~~competent authority~~ Financial Conduct Authority for the purposes of detecting, investigating and enforcing insider dealing, market manipulation and attempted insider dealing and market manipulation.

## Article 8

### Means of transmission



1. Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall submit a STOR, including any supporting documents or attachments, to the ~~competent authority referred to in Article 16(1) and (3) of Regulation (EU) No 596/2014~~ Financial Conduct Authority using the electronic means specified by ~~that competent authority~~ the Financial Conduct Authority.
2. ~~Competent authorities~~ The Financial Conduct Authority shall publish on ~~their~~ its website the electronic means referred to in paragraph 1. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

## Article 9

### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX  
**STOR template**

SECTION 1 — IDENTITY OF ENTITY/PERSON SUBMITTING THE STOR

**Persons professionally arranging or executing transactions/Market operators and investment firms that operate a UK trading venue — Specify in each case:**

...

SECTION 2 — TRANSACTION/ORDER

<p>Description of the financial instrument:</p>	<p>[Describe the financial instrument which is the subject of the STOR, specifying:</p> <ul style="list-style-type: none"> <li>—the full name or description of the financial instrument,</li> <li>—the instrument identifier code as defined in a Commission Delegated Regulation (EU) 2017/590 adopted under Article 26 of Regulation (EU) No 600/2014, when applicable, or other codes,</li> </ul> <p>...</p> <p>—Describe the underlying financial instrument of the OTC derivative specifying:</p> <ul style="list-style-type: none"> <li>— The full name of the underlying financial instrument or description of the financial instrument,</li> <li>— The instrument identifier code as defined under Commission Delegated Regulation <del>to be</del> (EU) 2017/590 adopted under Article 26 of Regulation (EU) No 600/2014 when applicable, or other codes,</li> </ul> <p>...</p>
<p>...</p>	

<p>Market where order or transaction occurred</p>	<p>[Specify:  — name and code to identify the <u>UK trading venue</u> or <u>EU trading venue</u>, the systematic internaliser or the organised trading platform outside the <del>Union</del> <u>UK</u> where the order was placed and the transaction was executed as defined under Commission Delegated Regulation (<u>EU</u>) <u>2017/590</u> adopted under Article 26 of Regulation (EU) No 600/2014, or  ...]</p>
<p>...</p>	
<p>Description of the order or transaction ...</p>	<p>[Where there are multiple orders or transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the details on the prices and volumes of such orders and transactions can be provided to the <del>competent authority</del> <u>Financial Conduct Authority</u> in an Annex to the STOR.]</p> <p>...</p> <p>[Where there are multiple orders or transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the details on the prices and volumes of such orders and transactions can be provided to the <del>competent authority</del> <u>Financial Conduct Authority</u> in an Annex to the STOR.]</p> <p>...</p>

...

## Annex G

### COMMISSION DELEGATED REGULATION (EU) 2016/958

of 9 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest

...

#### CHAPTER I

#### GENERAL PROVISIONS

Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

#### CHAPTER II

#### PRODUCTION OF RECOMMENDATIONS

Article 2

#### **Identity of producers of recommendations**

...

2. Where the person who produces recommendations is an investment firm, a credit institution, or a natural person working for an investment firm or a credit institution under contract of employment or otherwise, that person shall, in addition to the

information laid down in paragraph 1, state the identity of the relevant ~~competent authority~~ regulator (whether that is the Financial Conduct Authority or the relevant competent authority) in the recommendation.

...

### Article 3

#### **General obligations in relation to objective presentation of recommendations**

...

3. Persons who produce recommendations shall substantiate any recommendation they have produced to the ~~competent authority~~ Financial Conduct Authority upon its request.

...

### Article 6

#### **Additional obligations in relation to disclosure of interests or of conflicts of interest by persons referred to in Article 3(1)(34)(i) of Regulation (EU) No 596/2014 and experts**

1. ...
  - (c) ...
    - (iii) is party to an agreement with the issuer relating to the provision of services of investment firms set out in ~~Sections A and B of Annex I to Directive 2014/65/EU of the European Parliament and of the Council~~ (2) Parts 3 and 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, a statement to that effect, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the obligation to pay or receive compensation;

...

2. ...
  - (b) if the remuneration of natural or legal persons working for it under a contract of employment or otherwise, and who were involved in producing the recommendation, is directly tied to transactions in services of investment

firms set out in ~~Sections A and B of Annex I to Directive 2014/65/EU~~ Parts 3 and 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or other type of transactions it or any legal person part of the same group performs, or to trading fees it or any legal person that is part of the same group receives, a statement to that effect;

...

3. Where the person referred to in paragraph 1 is an investment firm, a credit institution, or a natural or legal person working for an investment firm or credit institution under a contract, including a contract of employment, or otherwise, that person shall publish, on a quarterly basis, the proportion of all recommendations that are ‘buy’, ‘hold’, ‘sell’ or equivalent terms over the previous 12 months, and the proportion of issuers corresponding to each of those categories to which such person has supplied material services of investment firms set out in ~~Sections A and B of Annex I to Directive 2014/65/EU~~ Parts 3 and 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 over the previous 12 months.

...

## CHAPTER III

### DISSEMINATION OF RECOMMENDATIONS PRODUCED BY THIRD PARTIES

#### Article 8

##### Arrangements for dissemination of recommendations

...

2. ...
  - (a) the identity of the relevant ~~competent authority~~ regulator (whether that is the Financial Conduct Authority or the relevant competent authority);

...

## CHAPTER IV

### FINAL PROVISIONS

#### Article 11

##### Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...



## Annex H

### COMMISSION IMPLEMENTING REGULATION (EU) 2016/959

of 17 May 2016

laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council

...

Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

Article 5

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## Annex I

### COMMISSION DELEGATED REGULATION (EU) 2016/960

of 17 May 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings

...

#### Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

#### Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

#### Article 6

#### **Record keeping requirements**

...

4. The records referred to in paragraphs 1, 2 and 3 shall be made available to the competent authority Financial Conduct Authority upon request.

#### Article 7

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## Annex J

### COMMISSION DELEGATED REGULATION (EU) 2016/1052

of 8 March 2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures

...

#### CHAPTER I

##### GENERAL PROVISIONS

###### Article -2

###### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

###### Article -1

###### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3 of Regulation (EU) No 596/2014 that definition applies.

References in this Regulation to exit day shall mean as defined in the European Union (Withdrawal) Act 2018.

#### Article 1

For the purposes of this Regulation, the following definitions shall apply:

...

- (b) 'adequate public disclosure' means making information public in a manner which enables fast access and complete, correct and timely assessment of the information by the public in accordance with Commission Implementing Regulation (EU) 2016/1055 and, where applicable, in ~~the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European~~

Parliament and of the Council a mechanism referred to in section 89W of the Financial Services and Markets Act 2000;

...

## CHAPTER II

### BUY-BACK PROGRAMMES

#### Article 2

#### **Disclosure and reporting obligations**

1. In order to benefit from the exemption laid down in Article 5(1) of Regulation (EU) No 596/2014, prior to the start of trading in a buy-back programme permitted in accordance with the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Article 21(1) of Directive 2012/30/EU of the European Parliament and of the Council (3), the issuer shall ensure adequate public disclosure of the following information:

...

2. The issuer shall have in place mechanisms that allow it to fulfil reporting obligations to the ~~competent authority~~ Financial Conduct Authority and to record each transaction related to a buy-back programme including the information specified in Article 5(3) of Regulation (EU) No 596/2014. The issuer shall report to the ~~competent authority of each trading venue on which the shares are admitted to trading or are traded~~ Financial Conduct Authority no later than by the end of the seventh daily market session following the date of the execution of the transaction, all the transactions relating to the buy-back programme, in a detailed form and in an aggregated form. The aggregated form shall indicate the aggregated volume and the weighted average price per day and per trading venue.

...

#### Article 4

#### **Trading restrictions**

...

3. Point (a) of paragraph 1 shall not apply if the issuer is an investment firm or credit institution and has established, implemented and maintains adequate and effective internal arrangements and procedures, subject to the supervision of the Financial Conduct Authority or the relevant competent authority, to prevent unlawful disclosure

of inside information by persons having access to inside information concerning directly or indirectly the issuer to persons responsible for any decision relating to the trading of own shares, when trading in own shares on the basis of such decision.

4. Points (b) and (c) of paragraph 1 shall not apply if the issuer is an investment firm or credit institution and has established, implemented and maintains adequate and effective internal arrangements and procedures, subject to the supervision of the Financial Conduct Authority or the relevant competent authority, to prevent unlawful disclosure of inside information by persons having access to inside information concerning directly or indirectly the issuer, including acquisition decisions under the buy-back programme, to persons responsible for the trading of own shares on behalf of clients, when trading in own shares on behalf of those clients.

## CHAPTER III

### STABILISATION MEASURES

#### Article 5

#### **Conditions regarding the stabilisation period**

...

2. For the purposes of point (a) of paragraph 1, where the initial offer publicly announced takes place ~~in a Member State that permits~~ on a trading venue where trading prior to the commencement of trading on a that trading venue is permitted, the stabilisation period shall start on the date of adequate public disclosure of the final price of the securities and last no longer than 30 calendar days thereafter. Such trading shall be carried out in compliance with the applicable rules of the trading venue ~~on which the securities are to be admitted to trading~~, including any rules concerning public disclosure and trade reporting.

...

#### Article 6

#### **Disclosure and reporting obligations**

...

4. For the purpose of complying with the notification requirement set out in Article 5(5) of Regulation (EU) No 596/2014, the entities undertaking the stabilisation, whether or not they act on behalf of the issuer or the offeror, shall record each stabilisation order or transaction in securities and associated instruments pursuant to Article 25(1) and Article 26(1), (2) and (3) of Regulation (EU) No 600/2014 of the European

Parliament and of the Council (and for these purposes, Article 26 of that Regulation applies as if the obligations in paragraphs (2)(a), (b) and (c) only applied to financial instruments which are admitted to trading or traded on a UK trading venue). The entities undertaking the stabilisation, whether or not acting on behalf of the issuer or the offeror, shall notify all stabilisation transactions in securities and associated instruments carried out to:

- (a) ~~the competent authority of each trading venue on which the securities under the stabilisation are admitted to trading or are traded;~~
- (b) ~~the competent authority of each trading venue where transactions in associated instruments for the stabilisation of securities are carried out.~~ the Financial Conduct Authority.

5. The issuer, the offeror and any entity undertaking the stabilisation, as well as the persons acting on their behalf, shall appoint one among them to act as central point responsible:

- (a) for the public disclosure requirements referred to in paragraphs 1, 2 and 3; and
- (b) for handling any request from ~~any of the competent authorities referred to in paragraph 4~~ the Financial Conduct Authority.

...

## CHAPTER IV FINAL PROVISION

### Article 9

#### Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## Annex K

### COMMISSION IMPLEMENTING REGULATION (EU) 2016/1055

of 29 June 2016

laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council

...

#### CHAPTER I

#### GENERAL PROVISIONS

Article -2

#### **Application**

This Regulation applies in accordance with Regulation (EU) No 596/2014.

Article -1

#### **Interpretation**

For the purposes of this Regulation, where a term is defined in Article 3(1) of Regulation (EU) No 596/2014 that definition applies.

...

#### CHAPTER II

#### TECHNICAL MEANS FOR APPROPRIATE PUBLIC DISCLOSURE OF INSIDE INFORMATION

Article 2

#### **Means for public disclosure of inside information**

1. Issuers and emission allowance market participants shall disclose inside information pursuant to Article 17 of Regulation (EU) No 596/2014 using technical means that ensure:
  - (a) inside information is disseminated:
    - (i) to as wide a public as possible on a non-discriminatory basis;



- (ii) free of charge;
- (iii) simultaneously throughout the ~~Union~~ UK;

...

### CHAPTER III

## TECHNICAL MEANS FOR DELAYING THE PUBLIC DISCLOSURE OF INSIDE INFORMATION

### Article 4

#### Notification of delayed disclosure of inside information and written explanation

1. ...
  - (b) ...
  - (iv) providing the requested information about the delay and ~~the any~~ written explanation to the competent authority Financial Conduct Authority;

...

2. Issuers and emission allowance market participants shall inform, by means of a written notification, the ~~competent authority~~ Financial Conduct Authority of a delay in the disclosure of inside information and provide any written explanation of such delay through the dedicated contact point within, or designated by, the ~~competent authority~~ Financial Conduct Authority using the electronic means specified by the ~~competent authority~~ Financial Conduct Authority.

~~Competent authorities~~ The Financial Conduct Authority shall publish on ~~their~~ its website the dedicated contact point within, or designated by, the ~~competent authority~~ Financial Conduct Authority and the electronic means referred to in the first subparagraph. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

...

4. ~~Where the written explanation of a delay in the disclosure of inside information is provided only upon request of the competent authority in accordance with the third subparagraph of Article 17(4) of Regulation (EU) No 596/2014, the~~ The electronic means referred to in paragraph 2 of this Article shall ensure that ~~such any~~ written explanation of a delay in the disclosure of inside information includes the information referred to in paragraph 3 of this Article.

## Article 5

### **Notification of intention to delay the disclosure of inside information**

1. For the purpose of delaying the public disclosure of inside information in accordance with Article 17(5) of Regulation (EU) No 596/2014, an issuer that is a credit institution or a financial institution shall provide the ~~competent authority~~ Financial Conduct Authority with a notification in writing, of its intention to delay the disclosure of inside information in order to preserve the stability of the financial system, ensuring the completeness, integrity and confidentiality of the information, through a dedicated contact point within, or designated by, the ~~competent authority~~ Financial Conduct Authority.

Where the issuer transmits the notification referred to in the first subparagraph electronically, it shall use the electronic means referred to in Article 4(2) of this Regulation.

2. The ~~competent authority~~ Financial Conduct Authority shall communicate to the issuer its decision to consent or not to the delay of the disclosure on the basis of the information provided pursuant to paragraph 1 in writing and ensuring the completeness, integrity and confidentiality of the information.
3. The issuer shall use the same technical means used to provide the ~~competent authority~~ Financial Conduct Authority with the notification referred to in paragraph 1 to inform the ~~competent authority~~ Financial Conduct Authority of any new information that may affect the decision of the ~~competent authority~~ Financial Conduct Authority regarding the delay of the disclosure of the inside information.

## CHAPTER IV

### **FINAL PROVISIONS**

## Article 6

### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (BENCHMARK REGULATION) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in [Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA amends the following EU Regulations in accordance with Annexes A - K of this instrument.

(1)	(2)
Commission Implementing Regulation (EU) 2018/1106 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks	Annex A

pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council	
Commission Delegated Regulation (EU) 2018/1637 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function	Annex B
Commission Delegated Regulation (EU) 2018/1638 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function	Annex C
Commission Delegated Regulation (EU) 2018/1639 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors	Annex D
Commission Delegated Regulation (EU) 2018/1640 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors	Annex E
Commission Delegated Regulation (EU) 2018/1641 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology	Annex F
Commission Delegated Regulation (EU) 2018/1642 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements	Annex G
Commission Delegated Regulation (EU) 2018/1643 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the	Annex H

benchmark statement to be published by the administrator of a benchmark	
Commission Delegated Regulation (EU) 2018/1644 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent	Annex I
Commission Delegated Regulation (EU) 2018/1645 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)	Annex J
Commission Delegated Regulation (EU) 2018/1646 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration	Annex K

### Commencement

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

### Citation

H. This instrument may be cited as the Technical Standards (Benchmark Regulation) (EU Exit) Instrument 2019.

By order of the Board  
[date]

ANNEX A

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/1106**

**of 8 August 2018**

**laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council**

...

Article 2

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX I

**Template for the compliance statement referred to in Article 25(7) of Regulation (EU) 2016/1011**

Item	Text field
<b>A. General Information</b>	
...	
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by <del>ESMA</del> <u>the FCA</u> ]
<del>3. Relevant National Competent Authority</del>	<del>3. [The competent authority which has authorised or registered the administrator pursuant to Article 34(1) of Regulation (EU) 2016/1011]</del>

...

## ANNEX II

**Template for the compliance statement referred to in Article 26(3) of Regulation (EU) 2016/1011**

Item	Text field
<b>A. General Information</b>	
...	
2. Name of the administrator	2. [As it appears in the 'Register of administrators and benchmarks' published by <del>ESMA</del> <u>the FCA</u> ]

...



## ANNEX B

## COMMISSION DELEGATED REGULATION (EU) 2018 / 1637

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function

...

## Article 1

**Composition of the oversight function**

1. The structure and composition of the oversight function shall be proportionate to the ownership and control structure of the administrator and shall, as a general rule, be determined in accordance with one or more appropriate governance arrangements listed in the Annex to this Regulation. Administrators shall provide ~~competent authorities~~ the FCA with a justification for any deviation from such arrangements.

...

4. Administrators of regulated-data benchmarks shall include, as members of the oversight function, representatives from the entities listed in the definition of a regulated-data benchmark at point (a) of Article 3(1)(24) of Regulation (EU) 2016/1011 and, where applicable, from entities contributing net asset values of investment funds to regulated-data benchmarks. Administrators shall provide ~~competent authorities~~ the FCA with a justification for any exclusion of representatives from these entities.

...

## Article 3

**Procedures governing the oversight function**

1. An oversight function shall have procedures at least relating to the following areas:

...

- (e) where applicable, the criteria for choosing the person or committee responsible for its overall direction and coordination and for acting as

the contact point for the management body of the administrator and for the ~~competent authority~~ FCA, in accordance with the appropriate governance arrangements for oversight functions consisting of multiple committees as set out in the Annex;

...

- (m) the notification to the ~~competent authority~~ FCA of any suspected misconduct by contributors or by the administrator and of any anomalous or suspicious input data;

...

#### Article 4

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX

**Non-exhaustive list of appropriate governance arrangements**

...

4. An oversight function consisting of multiple committees, each responsible for the oversight of a benchmark, type of benchmarks or family of benchmarks, provided that a single person or committee is designated as responsible for the overall direction and coordination of the oversight function and for interaction with the management body of the benchmark administrator and the ~~competent authority~~ FCA;
5. An oversight function consisting of multiple committees, each performing a subset of the oversight responsibilities and tasks, provided that a single person or committee is designated as responsible for the overall direction and coordination of the oversight function and for interaction with the management body of the benchmark administrator and the ~~competent authority~~ FCA.

...

ANNEX C

**COMMISSION DELEGATED REGULATION (EU) 2018 / 1638  
of 13 July 2018**

**supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function**

...

Article 4

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX D**

**COMMISSION DELEGATED REGULATION (EU) 2018 / 1639  
of 13 July 2018 13.7.2018**

**supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors**

...

Article 9

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX E**

**COMMISSION DELEGATED REGULATION (EU) 2018 / 1640  
of 13 July 2018**

**supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors**

...

**Article 8**

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX F**  
**COMMISSION DELEGATED REGULATION (EU) 2018 / 1641**  
**of 13 July 2018**

**supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology**

...

Article 5  
**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX G

## COMMISSION DELEGATED REGULATION (EU) 2018 / 1642

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements

...

## Article 1

**Vulnerability of the benchmark to manipulation**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the vulnerability of the benchmark to manipulation shall include at least the following

...

## Article 2

**Nature of the input data**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature of the input data shall include at least the following:

...

- (c) in cases where the input data is sourced from exchanges or trading systems located in a third country, whether a regulatory and supervisory framework applies to those exchanges or trading systems that maintains the integrity of the input data;

...



## Article 3

**Level of conflicts of interest**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the level of conflicts of interest shall include at least the following:

...

## Article 4

**Degree of discretion of the administrator**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the degree of discretion of the administrator shall include at least the following:

...

## Article 5

**Impact of the benchmark on markets**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature of the impact of the benchmark on markets shall include at least the following:

...

- (b) in cases where the benchmark qualifies as a significant benchmark by virtue of point (b) of Article 24(1) of Regulation (EU) 2016/1011, and where the information is known to the ~~competent authority~~ FCA, any relevant quantitative relation of financial instruments, financial contracts, or investment funds referencing the benchmark to the total value of the respective instruments in ~~a Member State~~ the United Kingdom;

## Article 6

**Nature, scale and complexity of the provision of the benchmark**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the nature, scale and complexity of the provision of the benchmark shall include at least the following:

...

## Article 7

## **Importance of the benchmark to financial stability**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the importance of the benchmark to financial stability shall include at least an assessment of the relationship between the total value of the financial instruments, financial contracts and investment funds referencing the benchmark and the value of the total assets of the financial sector and of the banking sector in ~~a Member State~~ the United Kingdom, where that information is known to the ~~competent authority~~ FCA.

### Article 8

#### **Value of financial instruments, financial contracts and investment funds that reference the benchmark**

The further criteria to be considered by the ~~competent authority~~ FCA under Article 25(3) of Regulation (EU) 2016/1011 in taking into account the value of financial instruments, financial contracts or investment funds that reference the benchmark shall include at least the following:

- (a) the total value of all financial instruments, financial contracts and investment funds referencing the benchmark on the basis of all the ranges of maturities or tenors of the benchmark, where known to the ~~competent authority~~ FCA;

...

- (c) in cases where the benchmark is a significant benchmark by virtue of point (a) of Article 24(1) of Regulation (EU) 2016/1011, and where known to the ~~competent authority~~ FCA, how close the total value of financial instruments, financial contracts and investment funds that reference the benchmark is to the thresholds referred to in Article 20(1)(a) and (c)(i) of that Regulation.

...

### Article 10

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX H**

**COMMISSION DELEGATED REGULATION (EU) 2018 / 1643**

**of 13 July 2018**

**supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark**

...

**Article 7**

**Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX I

## COMMISSION DELEGATED REGULATION (EU) 2018 / 1644

Of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent.

...

## Article 1

**Scope of the cooperation arrangements**

1. The cooperation arrangements referred to in Article 30(4) of Regulation (EU) 2016/1011 ("cooperation arrangements") shall clearly set out their scope of application. That scope shall include cooperation by the parties on at least the following matters:

...

- (b) any issues that may be relevant to the operations, activities or services of administrators covered by the cooperation arrangements in question, including the provision to ~~ESMA~~ the FCA of information on the laws and regulations to which those administrators are subject in the third country and any material changes to those laws or regulations;
- (c) any regulatory or supervisory actions taken, or approvals given, by the competent authority of the third country in relation to any administrator which has given its consent to the use of benchmarks in the ~~Union~~ United Kingdom, including changes to the obligations or requirements to which the administrator is subject that may have an impact on the administrator's continued compliance with applicable laws and regulations

...

...

## Article 4

**Confidentiality, use of information and data protection**

1. Cooperation arrangements shall require the parties to refrain from disclosing information exchanged or provided to them under the cooperation arrangements, except where the party which had provided the information has given its prior written consent or where the disclosure of data is a necessary and proportionate obligation required under ~~Union or national law~~ English law or other law applicable in the jurisdictions in which the competent authorities which are party to the relevant cooperation arrangement are located, in particular in the context of investigations or subsequent judicial proceedings.

...

#### Article 5

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX J

## COMMISSION DELEGATED REGULATION (EU) 2018 / 1645

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA)

...

## Article 2

**Format of the application**

1. The application for recognition shall be submitted in ~~the official language or one of the official languages of the Member State of reference~~ English, unless otherwise indicated in the Annex. The documents referred to in point 8 of the Annex shall be submitted in ~~a language customary in the sphere of international finance or in the official language or one of the official languages of the Member State of reference~~ English.
2. The application for recognition shall be submitted by electronic means or, if accepted by the ~~relevant competent authority~~ FCA, in paper form. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. The applicant shall ensure that each submitted document clearly identifies to which specific requirement of this Regulation it refers.

...

## Article 4

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Information to be provided in the application for recognition under  
Article 32 of Regulation (EU) 2016/1011**

## SECTION A – INFORMATION ON THE PROVIDING PERSON AND ITS LEGAL REPRESENTATIVE IN THE UNION

### 1. GENERAL INFORMATION

...

- (e) Where the applicant is supervised in the non-EU UK country where it is located, information about its current authorisation status, including the activities for which it is authorised, the name and address of the competent authority of the non-EU UK country and the link to the register of such competent authority, where available; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided.
- (f) A description of the operations of the applicant in the EU United Kingdom and in non-EU UK countries, whether or not subject to any EU UK or extra-EU UK financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

...

...

### 1. LEGAL REPRESENTATIVE IN THE ~~MEMBER STATE OF REFERENCE~~ UNITED KINGDOM

- (a) ~~Documented evidence supporting the choice of the Member State of reference, by application of the criteria laid down in Article 32(4) of Regulation (EU) 2016/1011.~~
- (b) With respect to the legal representative established in the ~~Member State of reference~~ United Kingdom as set out in Article 32(3) of Regulation (EU) 2016/1011, its:
  - (viii) details of the performance of the oversight function by the legal representative relating to the provision of benchmarks that may be used in the ~~Union~~ United Kingdom;

...

- (viii) details of the performance of the oversight function by the legal representative relating to the provision of benchmarks that may be used in the ~~Union~~ United Kingdom;

...

...

### 4. CONFLICTS OF INTEREST

- (a) Policies and procedures that address:

...

- (ii) particular circumstances which apply to the applicant or to any particular benchmark provided by the applicant and which may be used in the ~~Union~~ United Kingdom, in relation to which conflicts of interest are most likely to arise, including where expert judgment or discretion is exercised in the benchmark's determination process, where the applicant is within the same group as a user of a benchmark and where the provider is a participant in the market or economic reality that the benchmark intends to measure.

...

...

## 7. COMPLIANCE WITH IOSCO PRINCIPLES

...

- (b) Where available, in cases where the applicant is subject to supervision, a certification provided by the competent authority of the non-~~EU~~ UK country where the applicant is located, attesting compliance with the IOSCO principles referred to in letter (a).

## 8. OTHER INFORMATION

...

- (b) The applicant shall provide this information in a manner and form stipulated by the ~~competent authority~~ FCA.

...

...

## **SECTION B – INFORMATION ON THE BENCHMARKS**

### 9. DESCRIPTION OF THE ACTUAL OR PROSPECTIVE BENCHMARKS OR FAMILIES OF BENCHMARKS THAT MAY BE USED IN THE ~~UNION~~ UNITED KINGDOM

- (a) A list including all the benchmarks provided by the applicant that are already used in the ~~Union~~ United Kingdom and, where available, their International Securities Identification Numbers (ISINs).
- (b) A description of the benchmark or family of benchmarks provided and that are already used in the ~~Union~~ United Kingdom, including a description of the



underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.

- (c) A list including all the benchmarks that are intended to be marketed for their use in the ~~Union~~ United Kingdom and, where available, their ISINs.
- (d) A description of the benchmark or family of benchmarks that are intended to be marketed for its use in the ~~Union~~ United Kingdom, including a description of the underlying market or economic reality that the benchmark or the family of benchmarks is intended to measure, along with an indication of the sources used to provide these descriptions, and a description of contributors, if any, to this benchmark or family of benchmarks.

...

- (h) Any documented evidence that a benchmark or family of benchmarks described under point (b) has a degree of use within the ~~Union territory~~ United Kingdom which qualifies this benchmark or all the benchmarks included in that family of benchmarks either as significant benchmarks, as defined by point (26) Article 3(1) of Regulation (EU) 2016/1011, or as non-significant benchmarks, as defined by point (27) of Article 3(1) of Regulation (EU) 2016/1011. The information to be provided shall be determined, to the extent possible, on the basis of the provisions in Commission Delegated Regulation (EU) 2018/662 for the assessment of the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds that make reference to the non-~~EU~~ UK-country benchmarks, within the ~~Union~~ United Kingdom, including in the event of an indirect reference to any such benchmark within a combination of benchmarks.

...

...

ANNEX K

COMMISSION DELEGATED REGULATION (EU) 2018 / 1646

of 13 July 2018

supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration

...

Article 1

**General requirements**

...

4. The applicant shall not be required to provide the information listed under points (f) to (j) of paragraph 1 of Annex I or Annex II, as applicable, to the extent that the applicant is already supervised in the Member State United Kingdom by the same competent authority FCA for other activities than the provision of benchmarks.

...

Article 4

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX I**

**Information to be provided in the application for recognition under  
Article 34 of Regulation (EU) 2016/1011**

1. GENERAL INFORMATION

...

(b) Address of the office within the ~~European Union~~ United Kingdom.

...

(f) Where the applicant is a supervised entity, information about its current authorisation status, including the activities for which it is authorised ~~and its relevant competent authority in its home Member State~~ by the FCA.

(g) A description of the operations of the applicant in the ~~European Union~~ United Kingdom, whether or not subject to financial regulation, that are relevant for the activity of provision of benchmarks, along with a description of where these operations are conducted.

...

...

8. OTHER INFORMATION

...

(b) The applicant shall provide the requisite information in the manner and form stipulated by the ~~competent authority~~ FCA.

...

...

## TECHNICAL STANDARDS (MONEY MARKET FUNDS) (EU EXIT) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

### Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations [specified in Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

### Modifications

- F. The FCA thereafter amends the following EU Regulation in accordance with Annexes A of this instrument.

(1)	(2)
COMMISSION IMPLEMENTING REGULATION (EU) 2018/708 of 17 April 2018 laying down implementing technical standards with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council	Annex A

**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (Money Markets Funds Regulation) (EU Exit) Instrument 2019.

By order of the Board

[*date*]

**ANNEX A**

**COMMISSION IMPLEMENTING REGULATION (EU) 2018/708**

**of 17 April 2018**

**laying down implementing technical standards with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council**

...

Article 2

...

~~This regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX

**Reporting template for managers of Money Market Funds (MMFs)**

Except where otherwise specified, all figures shall be filled in at sub-fund level

...

(A) APPLICABLE TO ALL MMFS

	<b>(1) General characteristics, identification of the MMF and the manager of that MMF</b>		
(A.1.1)	Reporting period		
(A.1.2)	National code of the MMF as provided by the competent authority of the MMF <u>FCA</u>		
...			
(A.1.9)	<del>Member State where the MMF is authorised</del>	<del>ISO 3166</del>	<del>Country code</del>
(A.1.10)	<del>Member States where the MMF is marketed</del>	<del>List of Countries (ISO-3166</del>	<del>Country code)</del>

...			
(A.1.14)	National code of the manager of the MMF as provided by the <del>competent authority of the manager of the MMF</del> <u>FCA</u>		
...			

	(A.6.38)	<p>Type of the Other assets [Select one]          The type of other assets shall be selected among the assets listed in Article 9 of Regulation (EU) 2017/1131</p>	<p>Deposits with credit institutions as referred to in Article 12 of Regulation (EU) 2017/1131</p> <p>Reverse repurchase agreements as referred to in Article 15 of Regulation (EU) 2017/1131</p> <p>Repurchase agreements as referred to in Article 14 of Regulation (EU) 2017/1131</p> <p>Units or shares of other MMFs as referred to in Article 16 of Regulation (EU) 2017/1131</p> <p>Financial derivative instruments as referred to in Article 13 of Regulation (EU) 2017/1131 of which:</p> <ul style="list-style-type: none"> <li>— Financial derivative instruments dealt in on a regulated market (and specify if it falls under <del>Article 50(1)(a), (b) or (c) of Directive 2009/65/EC</del> <u>Article 2(1)(13A), Article 2(1)(13B), or Article 2(1)(13) of Regulation (EU) 600/2014</u>)</li> <li>— Financial derivative instruments dealt over-the-counter</li> </ul> <p>Ancillary liquid assets (<del>in accordance with Article 50(2) of Directive 2009/65/EC</del>)</p>
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...			
(A.7.2)		Specify the breakdown of investor concentration by status of investors (estimate if no precise information available): 1) Professional clients (as defined in <u>Article 4(1)(10) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID 2)</u> <u>Article 2(1)(8) of Regulation (EU) 600/2014</u> ), 2) retail clients (as defined in <u>Article 4(1)(11) of Directive 2014/65/EU (MiFID 2)</u> ) <u>Article 2(8) of Regulation (EU) 2017/565</u> )	
		— Professional clients (as defined in <u>Article 2(1)(8) of Regulation (EU) 600/2014</u> ) <u>Article 4(1)(10) of Directive 2014/65/EU (MiFID 2)</u> )	% (of NAV)
		— Retail clients (as defined in <u>Article 2(8) of Regulation (EU) 2017/565</u> ) <u>Article 4(1)(11) of Directive 2014/65/EU (MiFID 2)</u> )	% (of NAV)
...			

**TECHNICAL STANDARDS (TRANSPARENCY DIRECTIVE) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulation in accordance with Annex A of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings	Annex A

## Revocations

G. The FCA revokes the following EU Regulations.

Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level

## Commencement

H. This instrument comes into force on [29 March 2019 at 11 p.m.].

## Citation

I. This instrument may be cited as the Technical Standards (Transparency Directive) (EU Exit) Instrument 2019.

By order of the Board  
[date]

## Annex A

### Commission Delegated Regulation (EU) 2015/761 of 17 December 2014

**supplementing Directive 2004/109/EC of the European Parliament and of the Council  
with regard to certain regulatory technical standards on major holdings**

...

#### Article -1

#### **Definitions**

1. For the purposes of this Regulation the following definitions apply:
  - (a) ‘the Disclosure Guidance and Transparency Rules sourcebook’ means the Disclosure Guidance and Transparency Rules sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000, as it has effect on Exit day;
  - (b) ‘issuer’ means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a UK regulated market. In the case of depository receipts admitted to trading on a UK regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a UK regulated market;
  - (c) ‘securities’ means transferable securities as defined in Article 2(1)(24) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], with the exception of money market instruments as defined in Article 2(1)(25A) of that Regulation having a maturity of less than 12 months;
  - (d) ‘UK regulated market’ has the meaning given in Article 2(1)(13A) of Regulation 600/2014/EU;
  - (e) ‘Exit day’ has the meaning given in the European Union (Withdrawal) Act 2018.

#### Article 1

#### **Subject matter**

This Regulation lays down detailed rules ~~for the implementation of Article 9(6b), Article 13(1a)(a) and (b) and Article 13(4) of Directive 2004/109/EC~~ to specify:

- (a) the method of calculating any percentage threshold applying for the purposes of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook;

- (b) the method for calculating the number of voting rights in the case of financial instruments referenced to a basket of shares or an index;
- (c) the methods for determining delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement;
- (d) the cases in which the exemptions laid down in rules 5.1.3, 5.4.1, 5.4.2 and 5.8.6 of the Disclosure Guidance and Transparency Rules sourcebook apply to financial instruments held by a person fulfilling orders received from clients or responding to a client's requests to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

## Article 2

### **Aggregation of holdings**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ paragraphs (3) and (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook, holdings under UK law corresponding to Articles 9, 10 and 13 of that Directive 2004/109/EC shall be aggregated.

## Article 3

### **Aggregation of holdings in the case of a group**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ paragraphs (3) and (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in ~~Article 10(e) of that Directive~~ paragraph (e) of rule 5.2.1 of the Disclosure Guidance and Transparency Rules sourcebook.

## Article 4

### **Financial instruments referenced to a basket of shares or an index**

1. Voting rights referred to in ~~Article 13(1a)(a) of Directive 2004/109/EC~~ rule 5.3.3A of the Disclosure Guidance and Transparency Rules sourcebook in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

...

## Article 5

### **Financial instruments providing exclusively for a cash settlement**

1. The number of voting rights referred to in ~~Article 13(1a)(b) of Directive 2004/109/EC~~ rule 5.3.3A of the Disclosure Guidance and Transparency Rules sourcebook relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.

...

6. The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the applicable thresholds provided for in ~~Article 9(1) of Directive 2004/109/EC~~ rule 5.1.2 of the Disclosure Guidance and Transparency Rules sourcebook.

#### Article 6

### **Client-serving transactions**

The exemption referred to in ~~Article 9(6) of Directive 2004/109/EC~~ paragraph (4) of rule 5.1.3 of the Disclosure Guidance and Transparency Rules sourcebook shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

#### Article 7

### **Entry into force and application**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (PROSPECTUS DIRECTIVE) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulations in accordance with Annexes A - B of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus	Annex A
COMMISSION DELEGATED REGULATION (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards	Annex B

for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004	
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**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (Prospectus Directive) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]



ANNEX A

COMMISSION DELEGATED REGULATION (EU) No 382/2014

of 7 March 2014

supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus

...

Article -1

**Interpretation**

For the purposes of this Regulation, where a term is defined in Article 2 of Regulation (EU) No 809/2004 that definition applies.

...

Article 2

**Obligation to publish a supplement**

A supplement to the prospectus shall be published in the following situations:

...

- (f) ~~where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional Member State(s) or is intending to make an offer to the public in (an) additional Member State(s) other than the one(s) provided for in the prospectus;~~

...

Article 3

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## ANNEX B

**COMMISSION DELEGATED REGULATION (EU) 2016/301 of 30 November 2015  
supplementing Directive 2003/71/EC of the European Parliament and of the Council with  
regard to regulatory technical standards for approval and publication of the prospectus  
and dissemination of advertisements and amending Commission Regulation (EC) No  
809/2004**

...

## CHAPTER I

## GENERAL PROVISIONS AND APPROVAL OF THE PROSPECTUS

Article -1**Interpretation**In this Regulation:

“exit day” means 29 March 2019 at 11p.m or such date as is specified  
further to section 20(2) to (5) of the European Union (Withdrawal)  
2018;

“FSMA” means the Financial Services and Markets Act 2000;

“the FCA” means the Financial Conduct Authority;

“the Prospectus Rules sourcebook” means the Prospectus Rules  
sourcebook made under FSMA by the FCA, as it has effect on exit day.

For the purposes of this Regulation, where a term is defined in Article 2 of Regulation  
(EU) No 809/2004 that definition applies.

## Article 1

**Subject matter**

This Regulation establishes regulatory technical standards that further specify:

1. the arrangements for approval of the prospectus as referred to in ~~Article 13 of Directive 2003/71/EC~~ section 1 of chapter 3 of the Prospectus Rules sourcebook;
2. the arrangements for publication of the prospectus laid down in ~~Article 14(1) to (4) of Directive 2003/71/EC~~ section 2 of chapter 3 of the Prospectus Rules sourcebook;
3. the dissemination of advertisements referred to in ~~Article 15 of Directive 2003/71/EC~~ section 3 of chapter 3 of the Prospectus Rules sourcebook;

4. the consistency between information disclosed about an offer to the public or admission to trading on a regulated market, on the one hand, and the information contained in the prospectus, on the other, as laid down in ~~Article 15(4) of Directive 2003/71/EC~~ rule 3.3.4 of the Prospectus Rules sourcebook.

## Article 2

### Submission of an application for approval

...

2. ...
- (a) where required by the ~~competent authority of the home Member State~~ FCA in accordance with Article 25(4) of Regulation (EC) No 809/200] or on their own initiative, a cross reference list which shall also identify any items from Annexes I to XXX to Regulation (EC) No 809/200 that have not been included in the prospectus because, due to the nature of the issuer, offerer or person asking for admission to trading or the securities being offered to the public or admitted to trading, they were not applicable.

...

- (b) where the issuer, offerer or person asking for admission to trading on a regulated market is requesting that the ~~competent authority of the home Member State~~ FCA authorises the omission of information from the prospectus pursuant to ~~Article 8(2) of Directive 2003/71/EC~~ section 87B FSMA, a reasoned request to that effect;
- (c) ~~where the issuer, offerer or person asking for admission to trading on a regulated market requests that the competent authority of the home Member State notify the competent authority of a host Member State, upon approval of the prospectus, with a certificate of approval pursuant to Article 18(1) of Directive 2003/71/EC, a request to this effect;~~
- (d) any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the ~~same competent authority~~ FCA in accordance with ~~Article 11 of Directive 2003/71/EC~~ section 4 of chapter 2 of the Prospectus Rules sourcebook;
- (e) any other information considered necessary, on reasonable grounds, for the review by the ~~competent authority of the home Member State~~ FCA and expressly required by the ~~competent authority~~ FCA for that purpose.

## Article 3

### Changes to the draft prospectus

1. Following submission of the first draft of the prospectus to the ~~competent authority of the home Member State~~ FCA, where the issuer, offerer or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, the subsequent drafts shall be marked to highlight all changes made to the preceding unmarked draft of the prospectus as submitted to the ~~competent authority~~ FCA. Where only limited changes are made, marked extracts of the draft prospectus, showing all changes from the preceding draft, shall be considered acceptable. An unmarked draft of the prospectus shall always be submitted along with the draft highlighting all changes.

Where the issuer, offerer or person asking for admission to trading on a regulated market is unable to comply with the requirement set out in the first subparagraph due to technical difficulties related to the marking of the prospectus, each change made to the preceding draft of the prospectus shall be identified to the ~~competent authority of the home Member State~~ FCA in writing.

2. Where the ~~competent authority of the home Member State~~ FCA has, in accordance with Article 5(2) of this Regulation, notified the issuer, offerer or person asking for admission to trading on a regulated market that it considers that the draft prospectus does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the incompleteness notified by the ~~competent authority~~ FCA has been addressed.

Where changes made to a previously submitted draft prospectus are self-explanatory or clearly address the incompleteness notified by the ~~competent authority~~ FCA, an indication of where the changes have been made to address the incompleteness shall be considered sufficient.

...

## Article 5

### **Receipt and processing of the application**

1. The ~~competent authority of the home Member State~~ FCA shall acknowledge receipt of the initial application for approval of a prospectus in writing via electronic means as soon as possible and no later than by close of business on the second working day following the receipt. The acknowledgement shall inform the issuer, offerer or person asking for admission to trading on a regulated market of any reference number of the application for approval and of the contact point within the ~~competent authority~~ FCA to which queries regarding the application may be addressed. The date of acknowledgement shall not affect the date of submission of the draft prospectus, within the meaning of ~~Article 13(2) of Directive 2003/71/EC~~ section 87C FSMA, from which the time limits for notifications commence.
2. Where the ~~competent authority of the home Member State~~ FCA considers, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, for instance due to inconsistencies or

incomprehensibility of certain information provided, it shall notify the issuer, offerer or person asking for admission to trading of the need for supplementary information and the reasons therefor, in writing, via electronic means.

3. Where the ~~competent authority of the home Member State~~ FCA considers the incompleteness to be of a minor nature or timing to be of utmost importance, the ~~competent authority~~ FCA may notify the issuer, offerer or person asking for admission to trading orally, in which case there shall be no interruption of the time limits for approval of the prospectus as referred to in ~~Article 13(4) of Directive 2003/71/EC~~ section 87 FSMA.
4. Where the issuer, offerer or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested in accordance with paragraph 2, the ~~competent authority of the home Member State~~ FCA shall be entitled to refuse the approval of the prospectus and terminate the review process.
5. The ~~competent authority of the home Member State~~ FCA shall notify the issuer, offerer or person asking for admission to trading on a regulated market of its decision regarding the approval of the prospectus in writing, via electronic means, on the day of the decision. In the case of a refusal to approve the prospectus, the decision of the ~~competent authority~~ FCA shall contain the reasons for such refusal.

## CHAPTER II

### PUBLICATION OF THE PROSPECTUS

#### Article 6

##### **Publication of the prospectus in electronic form**

1. When published in electronic form pursuant to ~~points (c), (d) or (e) of Article 14(2) of Directive 2003/71/EC~~ paragraphs (3) or (4) of rule 3.2.4 of the Prospectus Rules sourcebook, the prospectus, whether a single document or comprising several documents, shall:
  - (a) be easily accessible when entering the website;
  - (b) be in searchable electronic format that cannot be modified;
  - (c) not contain hyperlinks with the exception of links to the electronic addresses where information incorporated by reference is available;
  - (d) be downloadable and printable.

...
3. If a prospectus for offer of securities to the public is made available on the websites of issuers or financial intermediaries or of regulated markets, these shall take measures to avoid targeting residents ~~in Member States~~ or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

...

## Article 7

**Publication of final terms**

The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the methods indicated in Article 14 of Directive 2003/71/EC rule 3.2.4 of the Prospectus Rules sourcebook.

## Article 8

**Publication in newspapers**

1. In order to comply with ~~point (a) of Article 14(2) of Directive 2003/71/EC paragraph (1) of rule 3.2.4 of the Prospectus Rules sourcebook~~ the publication of a prospectus shall be made in a general or financial information newspaper having national or supra-regional scope.
2. If the ~~competent authority FCA~~ is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose ~~taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.~~

## Article 9

**Publication of the notice**

1. ~~If a Member State makes use of the option, referred to in Article 14(3) of Directive 2003/71/EC, to require the publication of a notice stating how the prospectus has been made available and where it can be obtained by the public, that notice shall be published in a newspaper that fulfils the requirements for publication of prospectuses according to Article 8 of this Regulation.~~  
~~If the notice relates to a prospectus published only for the purpose of admission of securities to trading on a regulated market where securities of the same class are already admitted, it may alternatively be inserted in the gazette of that regulated market, irrespective of whether that gazette is in paper copy or electronic form.~~
2. ~~The notice shall be published no later than the next working day following the date of publication of the prospectus pursuant to Article 14(1) of Directive 2003/71/EC.~~
3. ~~The notice shall contain the following information:-~~
  - (a) ~~the identification of the issuer;~~
  - (b) ~~the type, class and amount of the securities to be offered and/or in respect of which admission to trading is sought, provided that these elements are known~~

- ~~at the time of the publication of the notice;~~
- ~~(c) the intended time schedule of the offer/admission to trading;~~
- ~~(d) a statement that a prospectus has been published and where it can be obtained;~~
- ~~(e) the addresses where and the period of time during which a paper copy is available to the public;~~
- ~~(f) its date.~~

## Article 10

### List of approved prospectuses

The list of the approved prospectuses published on the website of the ~~competent authority FCA~~, in accordance with ~~Article 14(4) of Directive 2003/71/EC~~ rule 3.2.7 of the Prospectus Rules sourcebook, shall mention how such prospectuses have been made available and where they can be obtained.

## CHAPTER III

### ADVERTISEMENTS

## Article 11

### Dissemination of advertisements

...

4. Where no prospectus is required ~~in accordance with Directive 2003/71/EC~~ under Part VI of FSMA, any advertisement shall include a warning to that effect unless the issuer, offerer or person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with ~~Directive 2003/71/EC~~ Part VI of FSMA, the Prospectus Rules sourcebook, Regulation (EC) No 809/2004 and this Regulation.

## Article 12

### **Consistency for the purposes of ~~Article 15(4) of Directive 2003/71/EC~~ rule 3.3.4 of the Prospectus Rules sourcebook**

...

## Article 13

### **Amendments to Regulation (EC) No 809/2004**



~~Regulation (EC) No 809/2004 is amended as follows:~~

- ~~1. in Article 1, paragraphs 5 and 6 are deleted;~~
- ~~2. Articles 29 to 34 are deleted.~~

Article 14

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (EUROPEAN LONG-TERM INVESTMENT FUND  
REGULATION) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in [Part 1 of the Schedule to the Regulations].
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulation in accordance with Annex A of this instrument.

(1)	(2)
Regulation 2018/480 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors	Annex A

**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

**COMMISSION DELEGATED REGULATION (EU) 2018/480  
of 4 December 2017**

**supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors**

...

Article 4

**Criteria for the valuation of the assets to be divested**

1. For the purpose of Article 21(2)(c) of Regulation (EU) 2015/760, the valuation of the assets to be divested shall comply with the following criteria:
  - a. it shall start as soon as it is appropriate and well in advance of the deadline for the disclosure of the itemised schedule for the orderly disposal of the ELTIF assets to the ~~competent authority of the ELTIF~~ FCA;
  - b. it shall be concluded no more than 6 months before the deadline referred to in point (a).
2. Valuations made in accordance with Article 19 of Directive 2011/61/EU may be taken into account where a valuation has been concluded no more than 6 months before the deadline referred to in paragraph 1 of this Article.

Article 5

**Specifications on the facilities available to retail investors**

1. For the purposes of Article 26(1) of Regulation (EU) 2015/760, the manager of an ELTIF shall put in place facilities to perform the following tasks:
  - (a) process retail investors' subscription, payment, repurchase and redemption orders relating to the units or shares of the ELTIF, in accordance with the conditions set out in the ELTIF marketing documents;
  - (b) provide retail investors with information on how orders referred to in point (a) can be made and how repurchase and redemption proceeds are paid;
  - (c) facilitate the handling of information relating to the retail investors' exercise of their rights arising from their investment in the ELTIF ~~in the Member State where the ELTIF is marketed~~;
  - (d) make available to retail investors, for inspection and for the obtaining of copies of:
    - (i) the fund rules or instruments of incorporation of the ELTIF;

- (ii) the latest annual report of the ELTIF;
  - (e) provide investors with information relevant to the tasks they perform in a durable medium ~~as defined in Article 2(1)(m) of Directive 2009/65/EC~~, meaning paper or any instrument which enables the recipient to store information addressed personally to him or her in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, this covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph. For the purposes of this term, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business is sufficient.
2. The manager of the ELTIF shall ensure that the facilities referred to in Article 26(1) of Regulation (EU) 2015/760 have the following technical infrastructure:
- (a) they perform their tasks in the official language or official languages of the ~~Member State where the ELTIF is marketed~~ United Kingdom, when the ELTIF is marketed in the United Kingdom;
  - (b) they perform their tasks in person, by telephone or electronically.

...

## Article 7

### Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (EUROPEAN SOCIAL ENTREPRENEURSHIP FUND  
REGULATION) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocations**

- F. The FCA revokes Commission Implementing Regulation (EU) 594/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 17(1) of Regulation (EU) 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds.

**Commencement**

- G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (European Social Entrepreneurship Fund Regulation) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

**TECHNICAL STANDARDS (EUROPEAN VENTURE CAPITAL FUNDS  
REGULATION) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocations**

- F. The FCA revokes Commission Implementing Regulation (EU) 593/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation (EU) 345/2013 of the European Parliament and of the Council on European venture capital funds.

**Commencement**

- G. This instrument comes into force on [29 March 2019 at 11 p.m.].



**Citation**

H. This instrument may be cited as the Technical Standards (European Venture Capital Funds Regulation) (EU Exit) Instrument 2019.

By order of the Board

[*date*]

